

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1

R.A. No. 98 of 2021 Inre O.A. No. 554 of 2018

Union of India & Others

By Legal Practitioner for the Applicant

Applicants

Versus

Smt. Poonam Devi W/o Late Ranbir Kumar & Other

By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>23.03.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>1. This Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 has been preferred by the applicants-respondents (Union of India) against judgment and order of the Armed Forces Tribunal, Regional Bench, Lucknow dated 22.10.2021 passed in O.A. No. 554 of 2018.</p> <p>2. Short counter affidavit filed by the applicants-respondents today in the Court is taken on record.</p> <p>3. Heard Shri Rajiv Pandey, learned counsel for the applicants-respondents (Union of India) and Shri Rang Nath Pandey, learned counsel for the respondent-applicant.</p> <p>4. Learned counsel for the applicants-respondents submits that in the judgment and order dated 22.10.2021, service pension granted to the deceased soldier (husband of the applicant) from the date of discharge from service and thereafter, family pension has been granted to the applicant from the date of death of her husband, however, neither husband of the applicant nor applicant is entitled service pension/family pension as per Air Headquarters letter No. Air HQ/24229/283/PP&R-3 dated 02.05.1996, GOI, MOD letter dated 12.11.2008 and AFI 14/80 read with Regulation 145 of Pension Regulations for the Army, 1961 (Part-1) as an NC (E) is eligible for pension only after having 20 years of reckonable service. In the instant case, applicant was discharged from service under Rule 15 (2) of Air Force Rules, 1969 under the clause "HIS SERVICE NO LONGER REQUIRED – UNSUITABLE FOR RETENTION IN</p>

THE IAF” after rendering 16 years and 262 days of qualifying regular service (excluding 155 days of non qualifying service due to Absent Without Leave) against 20 years pensionable service being a NC (E).

5. Learned counsel for the applicants-respondents also submits that in serial 12 of the service documents of the deceased soldier (Ranbir Kumar), produced before the court, period of engagement is written 20 years regular service and 5 years reserve service. Hence, order dated 22.10.2021 passed in O.A. No. 554 of 2018 needs to be reviewed and fresh directions allowing Review Application and dismissing the Original Application by setting aside its judgment and order dated 22.10.2021 be passed.

6. Learned counsel for the respondent-applicant submits that there is no error apparent at the face of record as this Tribunal after hearing both the parties at length and after considering all the aspects of the case has passed the order dated 22.10.2021 allowing grant of service pension to husband of the applicant and family pension to the applicant. He further submits that vide letter dated 05.05.2009, issued by Ministry of Defence, in paragraph 5.1 provision of Special Pension has been given for which 15 years service is required which also corroborate the stand taken by applicant. He also submitted that it is a settled law that in absence of adequate pleadings in support of a contention, no relief can be granted to a party and the ground taken by respondents in Review Application was never raised at any point of time in the pleadings (Counter Affidavit) filed by the respondents in O.A. No. 554 of 2018, hence, it is against the provision of review application.

7. Learned counsel for the respondent-applicant placed reliance on the judgment of this Tribunal in O.A. No. 317 of 2020, Naresh Kumar Safaiwala vs. Union of India & Ors, decided on 03.03.2022 being a case of similar nature and pleaded for dismissal of Review Application filed by the respondents (Union of India).

8. Regulation 102 (c) of Pension Regulations for the Air Force, 1961 on the matter “**Individuals dismissed, removed or discharged under the Air Force Act**” is reproduced below :-

“102 (c). An individual who is discharged under the provisions of Air Force Act and the rules made there under remains eligible for pension or gratuity under these Regulations.”

9. Regulation 145 of Pension Regulations for the Army, 1961 (Part-1), Sub Section II - Non Combatants (Enrolled) deals with grant of service pension to NCs (E) which is quoted below :-

“145. The minimum qualifying service for earning a service pension is 20 years.”

10. The benefit of judgment passed by this Tribunal in O.A. No. 317 of 2020, ***Naresh Kumar Safaiwala vs. Union of India & Ors***, decided on 03.03.2022 cannot be granted to the respondent-applicant as in this case applicant was discharged from service just before 5 ½ months in completion of 20 years of pensionable service and therefore, shortfall of 5 months and 17 days was condoned as per rules which is condonable upto 1 year.

11. It is also not a case of Special Pension as claimed by respondent-applicant in which 15 years service is taken as pensionable service as submitted by the applicant in para 4 above rather applicant's case pertains to normal service pension for which 20 years qualifying service is required being a case of Non Combatants (Enrolled).

12. We have gone through the order dated 22.10.2021 and rules/regulations/policy letters/Pension Regulations governing grant of service pension to NCs (E), we find that while allowing the O.A., husband of the respondent-applicant was granted service pension and from the next date of death of her husband, applicant was granted family pension inadvertently assuming that minimum qualifying service for grant of service pension is 15 years whereas in the case in hand, it is 20 years as laid down in Regulation 145 of Pension Regulations for the Army, 1961 (Part-1). On careful scrutiny of the rules/regulations/policy letters/Pension Regulations governing the subject, we find that the respondent-applicant is not entitled to service pension/family pension. We, therefore, find that there is an error apparent at the face of record which requires to be corrected.

13. As a result of foregoing discussion, the Review Application is allowed and order dated 22.10.2021 passed in O.A. No. 554 of 2018 by this Tribunal granting service pension to husband of the applicant and family pension to the applicant is set aside resulting dismissal of Original Application No. 554 of 2018.

14. The review applicants be informed accordingly.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

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