

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

(Supp SI No 18)

O.A. No. 709 of 2022

Smt. Deoki Devi W/o Ex Spr Dhan Singh Applicant
 By Legal Practitioner for the Applicant :**Shri Kishore Rai**, Advocate

Versus

Union of India & Others Respondents
 By Legal Practitioner for Respondents :**Shri Rajesh Sharma**, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>15.03.2024</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <ol style="list-style-type: none"> 1. Heard Shri Kishore Rai, learned counsel for the applicant and Shri Rajesh Sharma, learned counsel for the respondents and perused the record. 2. Supplementary rejoinder affidavit filed on behalf of the applicant is taken on record. 3. Learned counsel for the respondents declines to file reply of supplementary rejoinder affidavit. 4. On request of learned counsel for the parties, heard arguments. 5. O.A. is allowed. 6. For orders, see our order passed on separate sheets. <p style="text-align: center;"> (Maj Gen Sanjay Singh) Member (A) <i>rathore</i> </p> <p style="text-align: right;"> (Justice Anil Kumar) Member (J) </p>

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH, NAINITAL)**

ORIGINAL APPLICATION No. 709 of 2022

Friday, this the 15th day of March, 2024

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

Deoki Devi (Female), w/o No 1443830N Late Ex Spr Dhan Singh,
R/o Village-Bhura Kishani, Tehsil-Khatima, District-Udham Singh
Nagar, Uttarakhand.

.....Applicant

Ld. Counsel for the : **Shri Kishore Rai**, Advocate.
Applicant

Verses

1. Union of India, Ministry of Defence through its Secretary, South Block, New Delhi-11000.
2. PCDA (P), Allahabad, Uttar Pradesh.
3. Appellate Committee on First Appeals Dir PS-4, AG's Branch, Army HQs, DHQ, PO-New Delhi-110011.
4. Senior Record Officer, Records Defence Security Corps Records.

.....Respondents

Ld. Counsel for the : **Shri Rajesh Sharma**, Advocate
Respondents Central Govt Counsel

ORDER (Oral)

1. Present O.A has been filed under section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(i) A direction to the respondent No 4 to grant the family pension to the applicant w.e.f. the date of death of her husband i.e. 29.05.2018 along with arrears or to-

(ii) Summon the entire records of the applicant pertaining to computation of family pension.

(iii) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.

2. Brief facts of the case are that No. 1443830N Ex Nk (late) Nk Dhan Singh was enrolled in the Bengal Engineer Group (BEG) of the Indian Army on 28.10.1965 and discharged from service on 31.10.1980 (A/N) on completion of terms of engagement. After discharge from service, he was granted service pension vide PPO No. S/C/23662/1980. He was re-enrolled in Defence Security Corps (DSC) on 07.03.1984 and did not opt to count his former service towards DSC service. He was discharged from DSC service w.e.f. 31.03.2001 (AN) after rendering 17 years and 25 days service for which he was provided service pension vide PPO No. S/005242/2001. Ex Nk Dhan Singh died on 29.05.2018. After his death, applicant, whose name is recorded in Army service documents, was granted ordinary family pension, which she is receiving regularly.

3. Earlier, during the course of his Army service, the deceased soldier was married with Raghu Devi but her name is not recorded in service documents. As per Para 4 of the counter affidavit filed on

behalf of the respondents she is no more. Thereafter, he was married with Deoki Devi (applicant) whose name is entered in former service record i.e. Army service. Again, he married to Parwati Devi who is no more as per death certificate dated 08.06.2018 (Annexure-3). Applicant being in receipt of family pension of former service in respect of the deceased soldier has filed this O.A. for grant of family pension of DSC service.

4. Submission of learned counsel for the applicant is that the applicant who is in receipt of family pension from Army and being legally wedded wife of the deceased soldier is entitled to receive family pension of DSC service. His further submission is that the deceased soldier had solemnized plural marriage with Parwati Devi in the year 1985 during subsistence of first marriage and a son named Kailash Singh was born out from the said wedlock. His other submission is that since Parwati Devi had died on 16.12.2014 and the pensioner died on 29.05.2018, applicant is entitled for grant of family pension of second service of the deceased soldier.

5. On the other hand, submission of learned counsel for the respondents is that the deceased soldier, who was in receipt of service pension from the Army, was re-enrolled in the DSC and after completion of terms of engagement he was released from DSC service and granted service pension. Further submission of learned counsel for the respondents is that after death of the pensioner, applicant claiming to be NOK of the deceased soldier had applied for grant of family pension from DSC, but since her name is not recorded in second service record, she was denied grant of family pension as

in second service record name of Smt Parwati Devi, who is no more, is recorded as wife of the deceased soldier.

6. Learned counsel for the respondents further submitted that on receipt of claim of the applicant verification was done through District Collector, Pithoragarh (UK) vide letter dated 21.08.2017 but there was no response from their office. He further submitted that the deceased soldier had solemnized three marriages viz firstly with Smt Raghu Devi who is no more, secondly with the applicant and thirdly with Smt Parwati Devi. It was further submitted that since name of Smt Parwati Devi is recorded in service documents of the deceased soldier and name of the applicant is not recorded in second service documents of the deceased soldier, she is not entitled to get family pension. He pleaded for issuing direction to the concerned authority to forward investigation report, which was asked vide letter dated 17.01.2019, for processing family pension claim in respect of the applicant.

7. Heard learned counsel for the parties and perused the record.

8. It is undisputed fact of the parties that No. 1443830N Ex Nk (late) Dhan Singh was enrolled in the Army on 28.10.1965 and discharged from Army service on 31.10.1980 (AN). He was granted service pension vide PPO No. S/C/23662/1980. He was re-enrolled in DSC on 07.03.1984 and did not opt to count his former service towards DSC service. On completion of terms of engagement, he was discharged from DSC service w.e.f. 31.03.2001 (AN) having rendered 17 years and 25 days service and granted second service pension vide PPO No. S/005242/2001 (Annexure R-2).

9. During the course of his service, the deceased soldier solemnized marriage with Raghu Devi who is no more as stated by the respondents in Para 4 of the counter affidavit but her death certificate is not on record. Later, he solemnized marriage with Deoki Devi (applicant) whose name is recorded in his first service documents of the deceased soldier. During the course of his DSC service, he solemnized marriage with Parwati Devi whose name is recorded in his second service documents of the deceased soldier. The record shows that Parwati Devi died on 16.12.2014 and pensioner died on 29.05.2018. As far as Raghu Devi is concerned, she is stated to have died as per letter dated 16.09.2018 (Annexure R-3) filed on behalf of the respondents and also mentioned in Para 4 of the counter affidavit.

10. Keeping in view that applicant's name is recorded in Army documents of the deceased soldier and she is in receipt of family pension for first service, and also keeping in view that Parwati Devi, whose name is recorded in second service documents and she is no more as per death certificate dated 08.06.2018, applicant seems to be entitled for grant of family pension from DSC. In regard to grant of family pension for the second service, her name has to be recorded in second service documents of the deceased soldier based on entry made in Army Records.

11. During the course of hearing, learned counsel for the applicant has filed supplementary rejoinder affidavit in which it is stated that though Kailash Singh (legitimate son of deceased Parwati Devi) is entitled for grant of family pension, but since he has crossed 25

years age, he is not eligible for grant of family pension. In the said supplementary rejoinder affidavit it is also stated that respondents have every right to withhold applicant's family pension in case son of the deceased Parwati Devi comes forward to claim family pension in respect of the deceased soldier.

12. In view of the above, O.A. is **allowed**. The respondents are directed to notify applicant's name in second service records of the deceased soldier on the basis of authentic documents submitted by the applicant within a period of two months and grant her family pension within a period of four months on receipt of certified copy of this order. Default will invite interest @ 8% p.a.

13. It may also be observed that the claim for pension is based on continuing wrong and relief can be granted if such continuing wrong creates a continuing source of injury. In the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, in Para-9, the Hon'ble Apex Court has observed as under:-

"In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone."

14. This O.A. was filed with delay of 01 year, 09 months and 21 days and delay has been condoned by this Tribunal vide order dated 07.09.2022, as such, in view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass** (supra), we are of the considered view that benefit of grant of family pension may be granted to the applicant w.e.f.

three years preceding the date of filing of this O.A., which was filed on 06.09.2022.

15. No order as to costs.

16. Miscellaneous application (s), pending if any, stand disposed off.

17. Maj MS Chauhan, Departmental Representative for the respondents orally submitted to grant leave to appeal against the above order, which we have considered and no point of law of general public importance being involved in this case, the plea is rejected.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 15.03.2024

rathore

(Justice Anil Kumar)
Member (J)