

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

ORIGINAL APPLICATION No. 182 of 2022

Thursday, this the 14th day of March, 2024

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

Asha Thapa (female) D/o Late Jushya Thapa, R/o Paltan Bazar, Near-Kotwali, Almora, District-Almora.

.....Applicant

Ld. Counsel for the : **Shri Akshay Latwal**, Advocate.
Applicant

Verses

1. Union of India through Secretary, Ministry of Defence, Central Civil Secretariat, New Delhi.
2. Principal Controller of Defence Accounts (Pension), Grants-4 Section, Draupadi Ghat, Allahabad-211014.
3. Officer-in-Charge, Records 39 Gorkha Rifles, PIN-900445, C/o 56 APO.
4. District Solder Welfare and Rehabilitation Board, through Secretary, Almora-263601.

.....Respondents

Ld. Counsel for the : **Shri Neeraj Upreti**, 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) This Hon'ble Tribunal may graciously be pleased to summon the entire records and direct the respondents to grant family pension to the petitioner from the month of October, 2010 alongwith arrears and other retiral dues alongwith appropriate interest, otherwise petitioner shall suffer irreparable loss and injury.

(ii) Such other suitable order is deemed fit and proper in the facts and circumstances of the case also kindly be pleased to meet in the interest of justice.

2. The facts draped in brevity are that No. 3049 Ex Hav (late) Jushya Thapa was enrolled in the Army on 28.06.1905 and he was discharged from service w.e.f. 01.10.1932. He was granted service pension vide PPO No. 34478/SPC No 129 dated 01.09.1932. During the course of his service, the deceased soldier was married with Smt Moti Thapa (first wife). From this wedlock, two children i.e. Smt Bhawani Thapa (daughter) and Shri Anand Thapa (son) were born. After death of Smt Moti Thapa on 12.08.1939, the deceased soldier got married with Smt Kalawati Thapa (second wife). From this wedlock, four children i.e. (i) Leela Thapa (daughter), (ii) Asha Thapa (daughter), (iii) Puran Singh Thapa (son) and (iv) Rukmani Thapa (daughter) were born.

Smt Moti Thapa (first wife of the deceased soldier) died on 12.08.1939 and the pensioner died on 25.10.1953 and thereafter, Smt Kalawati Thapa (second wife of the deceased soldier) also died on 26.03.1979. Smt Bhawani Thapa (daughter of first wife) died on 05.02.1958 and Shri Anand Thapa (son of first wife) is married. Smt Leela Thapa and Smt Rukmini Thapa (daughters of second wife) are married and Shri Puran Singh Thapa died on 13.02.1996. In the present case, the applicant Ms Asha Thapa, unmarried daughter of the deceased soldier, has filed this O.A. for grant of family pension in respect of her deceased father.

3. Learned counsel for the applicant submitted that the applicant is daughter of the second wife of the deceased soldier whose name is notified in service records of the deceased soldier vide Part-II Order No. 01/0015/005/2013 which was published by Records, 39 Gorkha Rifles and it was conveyed to Zila Sainik Kalyan Evam Punarvas, Almora vide letter dated 25.07.2013. It was further submitted that applicant, being sole eligible daughter of the deceased soldier, is entitled to receive family pension on the ground that her father and mother have died and other eligible family members are either married or are no more.

4. Per contra, learned counsel for the respondents submitted that after publication of birth Part-II Order in respect of the applicant, a blank set of family pension

documents was forwarded to her through Zila Sainik Board, Almora asking the applicant to submit pension form alongwith requisite documents, but the said form has still not been received duly completed alongwith income certificate in respect of the applicant. It was further submitted that applicant's family pension documents have been kept pending for want of required documents which were asked by Records 39 Gorkha Rifles vide letters dated 12.05.2016 and 09.06.2018. It was however, submitted that once the requisite documents are received, claim related to grant of family pension will be processed.

5. Heard Shri Akshay Latwal, learned counsel for the applicant and Shri Neeraj Upreti, learned counsel for the respondents and perused the record.

6. There is no dispute that No. 3049 Ex Hav (late) Jushya Thapa was enrolled in the Army on 28.06.1905 and during the course of his service, he was married to Smt Moti Thapa (first wife of the deceased soldier). Smt Bhawani Thapa (daughter) and Shri Anand Thapa (son) were born through this wedlock. After death of Smt Moti Thapa on 12.08.1939, the deceased soldier got married with Smt Kalawati Thapa (second wife). From this wedlock, four children i.e. (i) Leela Thapa (daughter), (ii) Asha Thapa (daughter), (iii) Puran Singh Thapa (son) and (iv) Rukmini Thapa (daughter) were

born. The pensioner died on 25.10.1953 and thereafter, Smt Kalawati Thapa (second wife of the deceased soldier) also died on 26.03.1979. Smt Bhawani Thapa (daughter of first wife) died on 05.02.1958 and Shri Anand Thapa (son of first wife is married). Smt Leela Thapa and Smt Rukmini Thapa (daughters of second wife) are married and Shri Puran Singh Thapa died on 13.02.1996. In the circumstances, applicant being unmarried daughter of the deceased pensioner, became potentially eligible for grant of family pension.

7. Applicant's birth Part-II Order No. 01/0015/2013 dated 10.07.2013 was published vide Records, 39 Gorkha Rifles after numerous correspondence on the subject and scrutiny of various documents. After publication of birth Part-II Order in respect of the applicant, Records, 39 Gorkha Rifles on 06.09.2013 forwarded a set of pension documents to the applicant through Zila Sainik Board, Almora for completion and return so that claim for grant of family pension could be processed. However, these documents have been pending between 39 Gorkha Rifles, Zila Sainik Board, Almora and PCDA (P), Allahabad for quite long and till date. Due to non receipt of income certificate in respect of the applicant, the pension claim is held up with Records, 39 Gorkha Rifles for want of income certificate.

8. During the course of hearing, the respondents have conceded that applicant, being unmarried daughter of the deceased soldier, is eligible for grant of family pension as no other person in the family is eligible for grant of family pension. Further, the respondents have also stated that claim for grant of family pension is held up for want of income certificate in respect of the applicant.

9. While filing counter affidavit, respondents have emphatically conceded that pension documents are held up with Records, 39 Gorkha Rifles for want of certain documents. For convenience sake, Para 26 of the counter affidavit is reproduced as under:-

"26. That in reply to the contents of Para 4.18 of the O.A., it is further submitted that Records 39 GR process the family pension case to pension sanctioning authority i.e. PCDA (P), Allahabad for issue of PPO only on receipt of family pension documents in r/o Miss Asha Thapa. Her case was submitted to them for issue of PPO, but the same was turned down with some observations. The fact was intimated to the petitioner as well as Zila Sainik Board for rectifying the observations and submit alongwith relevant documents, but the same has not yet been received till date."

10. In view of the averment made by the respondents, and in view of the fact that all pension related documents are issued by the respondents, applicant is responsible to furnish income certificate to enable the respondents for processing pension documents.

11. The facts on record clearly suggest that applicant, being sole eligible member of deceased soldier, is entitled for grant of family pension. At present, all documents related to grant of family pension, except income certificate, are available with Records, 39 Gorkha Rifles. In the circumstances, applicant has to submit income certificate to enable the respondents to process family pension claim.

12. In view of the above, O.A. is allowed directing the respondents to process family pension claim in respect of the applicant within a period of two months after receipt of requisite documents (viz. Income certificate) from the applicant. Respondents are also directed to grant family pension to the applicant within a period of four months after receipt of a 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 08 years, 11 months and 13 days and delay has been condoned by this Tribunal vide order dated 05.09.2022, 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 02.03.2022.

15. O.A. is **allowed**, accordingly.

16. No order as to costs.

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

18. 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 : 14.03.2024

rathore

(Justice Anil Kumar)
Member (J)