

Reserved Judgment**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No. 101 of 2016****Thursday, this the 11th day of October, 2018****Hon'ble Mr. Justice S.V.S. Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**

Smt Madhubala widow of late 637740-N
Warrant Officer Shree Kant Mishra Elect Fit,
No 25 Squadron, C/o 36 Wing, Air Force,
R/o Village – Badhwari Udhau, Pergana & Tehsil –
Mohammadi, District – Khiri, Uttar Pradesh

.....Applicant

Ld. Counsel for the: **Shri Diwakar Singh, Advocate**
Applicant

Versus

1. Union of India through, Ministry of Defence,
Through its Defence Secretary, South Block,
New Delhi – 110011.
2. The Chief of the Air Staff, Air Force Head Quarters,
Vayu Bhavan, New Delhi - 110011.
3. The Commanding Officer, No 25 Squadron,
C/o 36 Wing, AF Station, Bareilly.

....Respondents

Learned Counsel for the: **Dr. Shailendra Sharma Atal,**
Respondents **Senior Central Govt. Counsel**

ORDER

“Hon’ble Air Marshal BBP Sinha, Member (A)”

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by means of which the applicant has made the following prayers:-

(I) To issue an order or direction directing the respondents to grant special family pension due w.e.f. 13.09.2015 to the petitioner with 18% interest with all consequential benefits.

(II) To issue an order or direction directing the respondents to release of retiral dues i.e. payments of Ex-Gratia of Rs. 10 Lakhs, of Death cum Retirement Gratuity of Rs. 10 Lakhs, payment of Air Force Group Insurance Society Scheme fund of Rs. 25 Lakhs, payment of Air Force Personnel Provident Fund of lying in the petitioner’s husband AFPP fund, AFGIS Death Claim lying in the petitioner’s husband AFGIS account & pending arrears.

(III) To issue an order or direction directing the respondents to pay an interest @ 18% on the entire amount of retiral dues which have been arbitrarily withheld and payment of the same have been delayed which was due w.e.f. 13.09.2015 to till date.

(IV) This Hon’ble Tribunal may graciously be pleased to issue any other orders or directions as this Hon’ble Court may deem fit, just, and proper in the circumstances of the case, in favour of petitioner and also award the cost of the petition to the petitioner against the opposite parties.”

2. The brief facts are that the husband of the applicant Warrant Officer (Late) Shree Kant Mishra was enrolled in the Indian Air Force on 06.12.1979. He died on 13.09.2015 while undergoing treatment at Command Hospital, Central Command, Lucknow for lung cancer. He was having family

dispute with his wife for which he had filed a divorce petition on 01.11.2014 at Family Court Bareilly with a prayer not to pay service benefits to his wife after his death. Earlier the applicant had also made a prayer for change of nomination but he died on 13.09.2015 while undergoing treatment in Command Hospital, Lucknow. Before his death on 05.05.2015, Mrs Madhubala his wife i.e. the present applicant had made a representation that her husband had illicit relations with a lady and he was not taking care of his family since Oct 2014. After death of the deceased soldier his brother also filed a Court case to deny retiral benefits to the applicant. After the death of WO Shree Kant Mishra, the applicant's legal wife was granted ordinary family pension. She however approached the competent authority for grant of special family pension which was rejected. Being aggrieved, the applicant has filed this application for grant of special family pension, ex gratia and other retiral benefits.

3. Learned counsel for the applicant has submitted that husband of the applicant was enrolled in the Air Force on 06.12.1979 for an initial terms of 20 years regular service and 6 years' reserve service. The husband of the petitioner was granted extension of service after completion of initial terms of engagement. The applicant is legally wedded wife of Shree Kant Mishra and occurrence to this effect was published vide

POR No 27 S/57/81 and name of the applicant is recorded as next of kin in service record of her husband. Learned counsel for the applicant vehemently pleaded that the applicant is entitled to special family pension, ex gratia and other related retiral benefits which have not yet been paid to the applicant. He also demanded interest on delayed payments.

4. **Per Contra**, learned counsel for the respondents submitted that husband of the applicant was having family dispute with his wife for which he had filed a divorce petition on 01.11.2014 at Family Court Bareilly with a specific prayer that no service benefits should be paid to his wife and daughters in case of his demise. Husband of the applicant has also described in his Will that in case of his death, his monetary dues should not be distributed to any one till his Court case is pending. The applicant's late husband had also made a prayer for change of nomination to deny retiral benefits to his wife, in the meantime, he died on 13.09.2015. After the death of her husband, the applicant made representation for grant of family pension which was duly released to her as legal wife within a reasonable period. Learned counsel for the respondents claimed that the applicant's husband had died of a disease and that his death was not attributable to Air Force service and the applicant is neither entitled for special family pension nor payment of ex-gratia. He claimed that while pension was

released to the applicant in time, there has been certain delay in releasing other retiral benefits linked to insurance etc due to a conflicting legal situation where the late husband had given specific instructions to deny all retiral benefits to the applicant. He claimed that after appropriate legal advice now all the other retiral dues like provident fund and insurance amount etc have been paid to the applicant and nothing is due to be paid. Learned counsel for the applicant accepted that all dues have been cleared by respondents except the denial for special family pension, ex gratia and the interest on delayed payments.

5. We have heard Shri Diwakar Singh, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents and perused the record.

6. The issue emerging out of this case which needs to be decided is two fold i.e. firstly is the applicant entitled for special family pension and ex gratia and secondly is she entitled to interest for delayed payments of non pension related retiral dues.

7. Coming to the first issue, it is clear that the husband of the applicant has died of a disease and his death has not been held attributable to or aggravated by service hence the applicant in our considered opinion is neither entitled to special family pension nor ex-gratia. Coming to the second issue as to,

is the applicant entitled to interest for delayed payments, we find that as a legal wife she is entitled to family pension and her late husband could not have deprived her of her entitled family pension through a will. The family pension was however released to her within a reasonable time hence no interest is due to applicant on account of family pension. However for every other retiral dues, WILL and nomination was an important factor in deciding the rightful claimant. We find that while respondents have made no delay in releasing the family pension there has been certain delay in release of insurance related amounts and certain other retiral dues. We however consider this delay as acceptable in view of the complex legal position whereby the husband of the applicant had given a specific instruction and nomination to deny these benefits to the applicant and the respondents have taken time to resolve the matter after obtaining proper legal advice and thereafter paid the retiral dues to the applicant.

8. In view of the above position, the relief prayed for in O.A. No 101 of 2016 is rejected.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Date : October 2018
ukt/-

(Justice S.V.S. Rathore)
Member (J)