

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Court No - 1****Original Application No. 235 of 2020****Thursday, this the 28th day of October, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Pradeep Kumar, S/o Late Gopal Das (Ex Hav No. 6259158), R/o Mohalla Din Dayal Bagh, Amethi Kohna, Post – Fatehgarh, District-Farrukhabad.

.... Applicant

Ld. Counsel for the: **Shri Ashok Kumar, Advocate.**
Applicant

Versus

1. Union of India through Secretary, Min of Def, Govt of India, South Block, New Delhi-110011.
2. Officer Incharge, Records Office, Signals Regiment, PIN-908770, C/O 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadighat, Allahabad (UP).

..... Respondents

Ld. Counsel for the : **Shri Anurag Mishra,**
Respondents. **Central Govt Counsel.**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed on behalf of the applicants under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicants have sought following reliefs:-

(I) Hon’ble Tribunal may graciously be pleased to quash the impugned order dated 29.10.2019 (Annexure No A-6) passed by respondent No. 2.

(II) This Hon’ble Court may graciously be pleased to direct the respondent No. 2 and 3 to release the family pension and its arrears in favour of applicant being disabled son of his father Late Ex Hav Gopal Das (No. 6259s158), in accordance with rules of the department, being the dependent w.e.f. 07.07.2014 (father of applicant died).

(iii) This Hon’ble Court may further be pleased to pass such other and /or further order as deem fit, proper and necessary in the circumstances of this case.

(iv). Award costs to the applicant.

2. Brief facts of the case are that father of the applicant Late Ex Hav Gopal Das was enrolled in the army on 14 October 1950 and discharged from service on 05.03.1974 after completion of terms of engagement. Father of the applicant was granted service pension as per rules. Mother of the applicant Smt Shakuntala Devi died on 09.10.2007 and father of the applicant also died on 07.07.2014. The applicant is a handicapped person, suffering from paresis right leg and the percentage of disability of the applicant is 50% as per medical

report, issued by office of the Chief Medical Officer, Farrukhabad. The applicant after death of his father sent representation before the respondents requesting therein for second family pension being disabled son/dependent of his father which was rejected. Being aggrieved, the applicant has filed instant Original Application for grant of family pension.

3. Learned counsel for the applicant pleaded that father of the applicant retired from army on completion of terms of engagement after rendering 19 years and 359 days of qualifying service under Army Rule 13 (3) Item III (i). Mother of the applicant died on 09.10.2007. Father of the applicant was granted service pension after his retirement till death i.e. 07.07.2014 vide PPO dated 14.02.1974. The applicant is younger son of his parents. Elder brothers of applicant namely Vishwanath and Rajiv Kumar have already died and now Sanjeev Kumar and applicant are surviving in their family. Sanjeev Kumar is above 25 years of age and married. The applicant is a handicapped son of his parents having 50% disability and is unable to earn his livelihood. As per Govt of India, Min of Def letter No 906/A/D(Pen/Serv)/05 dated 13.08.2008 applicant is fully entitled for second family pension. Applicant submitted representation requesting for grant of family pension, but the same was rejected vide order dated 29.10.2019 stating that in disability certificate it is not mentioned that applicant is unable to earn his livelihood. Learned counsel for the

applicant pleaded that directions be issued to respondents for grant of Family Pension to applicant from the next death of his father.

4. On the other hand, submission of learned counsel for the respondents is that father of the applicant was married to Smt Sakuntala Devi on 03.03.1958. Father of the applicant was blessed with daughter named Miss Radha, date of birth 12.12.1959. Mother of the applicant died on 09.10.2007 and father of the applicant died on 07.07.2014. After death of Ex Hav Gopal Dass, Mr Pradeep Kumar (applicant) filed application for publication of Part II Order along with birth certificate and disability certificate claiming to be son of the deceased soldier through Zila Sainik Kalyan Evam Punarvas Kalyan Office, Fatehgarh. Part II Order for birth was published vide order dated 19.01.2017 and Part II Order for occurrence of disability was published vide order dated 05.09.2019.

5. Learned counsel for the respondents further submitted that applicant submitted representation for grant of family pension along with arrears. He was informed vide letter dated 29.10.2019 that “the applicant became disabled w.e.f. 22.09.2015 i.e. after death of his parents and the clause ‘He is unable to earn his livelihood’ was not reflected in his disability certificate, hence he was not eligible for family pension”. As per Department of Pension & Pensioners Welfare, letter No 1/5/09-P&PW(E)90192, dated 22 October 2013 those children who are dependent and meet other condition of eligibility for

grant of family pension at the time of death of the Government servant, are eligible for grant of family pension. A Disabled child may be eligible for family pension provided he/she fulfils all eligibility conditions at the time of death of his/her parents and on the date his/her turn to receive family pension comes and the clause "he is unable to earn his livelihood" should be endorsed in disability certificate.

6. As per Regulations 68 (b) of Pension Regulation for the Army Part-I (2008) "Ordinary family pension shall first be payable to the surviving spouse and in his absence or in the event of his disqualification or death, to the eligible child in the order of birth irrespective of the sex of the child and the younger of them will not be eligible for family pension unless the elder above him becomes ineligible for the grant of ordinary family pension. Regulations 69 (a) (I) & (b) of Pension Regulation for the Army Part-I (2008) stipules that "The ordinary family pension shall be paid to a physically/mentally handicapped child through the guardian as if he or she was a minor except in the case of the physically crippled or disabled son/daughter, who has attained the age of majority. However, in the case of a mentally retarded son or daughter, the family pension shall be payable to a person nominated by the service personnel/ pensioner, as the case may be, and in case no such nomination has been furnished to the Army Headquarters/ Record Office by such service personnel or pensioner during his life time, to the person nominated by spouse of such service personnel or family pensioner, as the case

may be, later on". Further as per Govt of India, Min of Def (Department of Ex Servicemen Welfare) letter dated 15 May 2015 "The employee/pensioner/family pensioner may, at any time before or after retirement/death of Armed Forces Personnel, make a request to the Appointing Authority seeking advance approval for grant of family pension for life to a permanently disabled child/sibling in terms of provisions contained in Govt of India, Min of Def letter dated 27 August 1987 as amended vide GOI, MoD Letter dated 13 August 2008. As per para 1 and 2 of Govt of India, Min of Def, letter dated 15 May 2015, a physically/mentally disabled son/daughter would be eligible for family pension. If disability of the claimant occurred during the life time of his parent and is of such nature so as to prevent him/her from earning his livelihood and the same shall be endorsed in the disability certificate. In addition to this, the monthly income of the claimant should not be more than Rs. 3500/- pm + DA wef January 2006 and Rs. 9000/- pm + DA wef 01 January 2006 in terms of Explanation 3 appended below Regulation 69 of Pension Regulations for the Army, Part I (2008) and various Govt letters issued from time to time.

7. Learned counsel for the respondents further submitted that, based on the documents submitted by the applicant, he became disabled w.e.f. 22 September 2015 due to disability "PPRP (R) Lower Limb", after death of his parent and the clause "He is unable to earn his livelihood" which is the one of the most important aspect for grant

of Family Pension was not endorsed in his Disability Certificate issued by the Competent Medical Authority. Hence, the applicant, Mr Pradeep Kumar Son of Ex Hav Late Gopal Das is not eligible for grant of family pension. Learned counsel for the respondents prayed that instant Original Application is devoid of merit and is liable to be dismissed.

8. We have heard learned counsel for the parties and perused the material placed on record.

9. In the emerging facts and circumstances, the question to be answered by our judicious conscience is whether the ordinary family pension can be granted to the applicant or not by considering the objections raised by the respondents.

10. As far as grant of ordinary family pension for life and Ordinary Family Pension to Physically/Mentally Handicapped Children is concerned, in this regard, Regulation 68 (b) and Regulation 69 of Pension Regulations for the Army, Part-I (2008) is relevant, which for convenience sake is reproduced as under:-

Ordinary Family Pension to only one Member of a Family

68. (a) xxxxx

(b) The ordinary family pension shall first be payable to the serving spouse and in his absence or in the event of his disqualification or death, to the eligible child in the order of birth irrespective of the sex of the child and the younger of them will not be eligible for family pension unless the older above him becomes ineligible for the grant of ordinary family pension.

(c) & (d) xxx xxx

ORDINARY FAMILY PENSION TO PHYSICALLY/MENTALLY HANDICAPPED CHILDREN

“69. (a) If a son or daughter is suffering from any disorder or disability of mind including mentally retarded or is physically crippled or disabled so as to render him/her unable to earn a living even after attaining the age of 25 years, the ordinary family pension shall be payable to the child for life in the order as set out in Regulation 68 of these Regulations and also subject to the following conditions:

(i) The ordinary family pension shall be paid to such son or daughter through the guardian as if he or she was a minor except in the case of the physically crippled or disabled son/daughter who has attained the age of majority. However, in the case of a mentally retarded son or daughter, the family pension shall be payable to a person nominated by the service personnel/pensioner, as the case may be, and in case no such nomination has been furnished to the Army Head Quarters/Record Office by such service personnel or pensioner during his life time, to the person nominated by the spouse of such service personnel or family pensioner, as the case may be, later on.

(ii) to (iii) xxxx xxxx

(b) Before allowing the ordinary family pension for life to any such son or daughter, the appointing authority shall satisfy himself that the handicap is of such a nature so as to prevent him/her from earning his livelihood and the same shall be evidenced by a certificate obtained from a Medical Board comprising of a Medical Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman and 2 other members, out of which at least one shall be a Specialist in the particular area of mental or physical disability including mental retardation, setting out as far as possible, the exact mental or physical condition of the child.

(c) The person receiving the ordinary family pension as a guardian of such son or daughter or such son or daughter not receiving the ordinary family pension through guardian, shall produce a certificate from a Medical Board of aforesaid composition, if the disability is permanent and if the disability is temporary, once in every 5 year, to the effect that he/she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled.

(d) to (e) xxxx xxxx

Explanations:

1. For the purpose of grant of ordinary family pension under this Regulation, the disability that manifests itself before or after the retirement or death of the service personnel shall be taken into account. This benefit will also be admissible to the eligible disabled children whether born before or after retirement.

2. A disable son/daughter shall become ineligible for ordinary family pension under this Regulation from the date he/she gets married.

3. Ordinary family pension payable under this Regulation shall be stopped from the date of earning more than Rs. 2550/- per month from any source. It shall be the duty of the guardian or son or daughter to furnish a certificate to the Pension Disbursing Authority, annually to the effect that:

(i) he/she has not started earning his livelihood.

(ii) he/she has not yet married.

4. The divorced/widowed daughter shall not be require to come back to parental home to become eligible.

11. As per the material available on record and not disputed by the respondents, the applicant is the only legal heir of deceased Late Hav Pradeep Kumar who is handicapped. As per the Disability Certificate issued by Chief Medical Officer, Farukhabad, applicant has been diagnosed suffering from **Paresis @ 50%**. It implies that none other than the applicant can be said to be dependent upon late Hav Gopal Das after his death for grant of family pension, therefore, applicant can be granted this benefit. 50% disabled person cannot earn his livelihood. The objections raised by the respondents in the case of the applicant are that none of his deceased parents during their lifetime, ever declared his disability and applicant has been declared handicapped after the death of his parents, therefore, not eligible for family pension.

12. The grant of Ordinary Family Pension is governed by Regulation 212 of the Pension Regulations for the Army, 1961 (Part-I), reproduced in Army Instruction 51 of 1980. AI 51/80 is reproduced below for ready reference:-

“Grant of Ordinary Family Pension

1. In supersession of all existing orders on the subject, the family pensionary benefits, as detailed in paragraph 2 and subsequent paras will be admissible to the families of the Armed Forces personnel (excluding families of reservists), who were in service on 1.1.1964 or who joined/ join service thereafter and who died/ die while in service or after retirement with a retiring, disability or invalid pension/ special pension, on account of causes which are neither attributable to nor aggravated by service.

2. to 7. xxx xxx xxx”

13. Persons who are already getting family pension even after marriage or disability shall be entitled to get the benefit in terms of Government of India order dated 17.01.2013. Letter dated 17.01.2013 is reproduced in its entirety as under:-

“No 02(03)/2010-D/(Pen/Policy)

Government of India

Ministry of Defence

Department of Ex-Servicemen Welfare

New Delhi dated: 17th January, 2013

To:

The Chief of the Army Staff

The Chief of the Naval Staff

The Chief of the Air Staff

SUBJECT : Implementation of the Government Decision on the recommendations of Committee on the issues related to Defence Service Personnel and Ex-Servicemen, 2-12-Grant of family pension for life to handicapped children of Armed Forces Personnel

Sir,

1. The under signed is directed to refer to the provisions contained in this Ministry's letter No A/49601/AG/PS-4 (e)/3363/Q/D(Pen/Ser)/05 dated 13.08.2008, which provides that the son or daughter of an Armed Forces Personnel who is suffering from any disorder or disability of mind or is

physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty five years is eligible for lifelong family pension. Such disabled son or daughter, however, becomes ineligible for family pension on his/her getting married or when he/she starts earning his/her livelihood.

2. *A Committee of Secretaries headed by Cabinet Secretary was constituted by the Government to consider various issues on pension of Armed Forces personnel and Ex-servicemen, who have recommended for continuance of family pension to mentally/physically challenged children who drew, are drawing or may draw family pension even after their marriage. The above recommendation of the committee has been accepted by the Government and the President is pleased to decide that the son or daughter of an Armed Forces Personnel who is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn livelihood, granted family pension for life even after his/her marriage subject to fulfilment of other prescribed conditions as hitherto fore.*

14. On careful consideration of the above aspect of the matter with due application of mind, we fail to ignore the fact that it is a case of an individual, who is 50% disabled due to PARESIS which has rendered him unable to survive on his own and earn a living even on attaining the age of 25 years. We also fail to ignore the fact that under proviso to AI 51/80, the applicant is, otherwise, eligible for grant of family pension. On the other hand, the objections raised by the respondents, though important for the purposes of record and scrutiny, seem to be of technical nature only. We understand that it was mandatory on the part of the parents of the applicant to have declared the disability of their child during their life time as per the rules and regulations on the subject. This inaction or mistake on their part, possibly due to a social

stigma attached to disabilities in rural areas cannot, however, form the basis for leaving the applicant to the vagaries of life unattended. Even humanitarian grounds would compel us to consider the case sympathetically in the peculiar facts and circumstances of the present case.

15. We, therefore, feel firm in taking the above view for the further reason that allowing a son or a daughter to be eligible for grant of ordinary family pension for life in case of disability rendering them unable to earn a living even after attaining the age of 25 years, the intention of the framers of the rules was to provide a humanitarian safeguard if a son or a daughter in conditions of extreme disability. Keeping in mind such an intention, our judicious conscience does not permit us to reject the claim of the applicant purely on the basis of the technical objections raised by the respondents which, otherwise, are factual and cannot be discarded out rightly. In any case, it would be a travesty of justice, totally unreasonable and unjustified on our part to reject the claim of the applicant and leave the applicant to suffer the adverse consequences of any inaction or mistake on the part of his parents to have failed to declare his disability during their life time. That in itself cannot disprove the fact that the applicant has remained disabled throughout his life and now it is vital factor of his survival. It is clarified that applicant was suffering from disability "PARESIS" from childhood, but disability certificate was obtained on 22.09.2015, hence applicant is eligible for grant of family pension from the date of issuance

of disability certificate. Impugned order passed by the respondents rejecting his claim for grant of family pension is quashed.

16. Thus, in the result, Original Application succeeds and is partly **allowed** with directions to the respondents to grant second Ordinary Family Pension to the applicant to the extent of 50% from the date of issuance of disability certificate i.e. w.e.f. 22.09.2015 onwards till lifetime, and pay him the accrued arrears in this regard as per rules of the department. No interest is, however, payable, but in case the compliance is not made as ordered aforesaid, the applicant shall be entitled to interest on the arrears @ 8% per annum from the due date i.e. 08.07.2014, till actual payment thereof.

17. No order as to costs.

18. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 28 October, 2021
Ukt/-