

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Court No - 1

Original Application No. 38 of 2021

Monday, this the 04th day of October, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Swami Nath, Son of No 2880405K Late Naik Bagedu Singh,
R/o Village – Kushahoriya, Post – Durgawati, District- Kaimur
(Bihar),

Presently residing at Anpara Tapi Pariyojana, Colony, Anpara,
District- Sonbhadra, PIN- 231225.

.... Applicant

Ld. Counsel for the: **Shri R Chandra, Advocate.**
Applicant

Versus

1. Union of India through the Secretary, Min of Def, Govt of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Min of Def (Army) DHQ, PO- New Delhi-110011.
3. OIC Records, The Records Office, Raj Rifles, PIN- 900106, C/O 56 APO.
4. PCDA (P), Draupadighat, Allahabad (UP).

... Respondents

Ld. Counsel for the : **Shri Manu Kumar Srivastava,**
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 be pleased to direct the respondents to grant family pension to the applicant w.e.f. 22.03.2013 to 16.04.2017 along with its arrears and interest thereon at the rate of 18% per annum.

(II) Any other appropriate order or direction which the Ho’ble Tribunal may deem just and proper in the nature and circumstances of the case.

2. Brief facts of the case are that No. 2880405K Ex Late Nk Bagedu Singh father of the applicant was enrolled in the Army on 24.09.1983 and discharged from service on 17.01.2003 after completion of about 19 years of service. He was granted service pension vide PPO No. S/0577700/2003 (Army) dated 10.09.2003. Father of the applicant died on 02.01.2009. After death of the father of applicant, Smt Bipha Devi, mother of the applicant was granted family pension. On 22.03.2013, mother of the applicant also died. As per service record, date of birth of the applicant is 16.04.1992. Consequent to death of parents, their son i.e. applicant

became eligible for grant of Ordinary Family Pension w.e.f. 23.03.2013. At the time of death of his mother, applicant was about 21 years old. Applicant is entitled family pension from the date of death of his mother till completion of 25 years of age i.e. from 23.03.2013 to 15.04.2017 near about 04 years. This O.A. has been filed by the applicant for grant of Ordinary Family Pension for the period 23.03.2013 to 15.04.2017 i.e. till he attained the age of 25 years.

3. Learned counsel for the applicant pleaded that after death of father of the applicant, his mother was granted Ordinary Family Pension till 22.03.2013. After death of the mother of the applicant, he is authorised for grant of family pension from the next date of death of his mother till attaining the age of 25 years. Applicant submitted letter requesting for grant of family pension through Zila Sainik Kalyan Karayalaya, Bhojpur (Arrah). He was asked to submit family pension book for granting family pension but till date family pension has not been issued by the respondents. Applicant submitted all papers duly completed through Zila Sainik Board Arrah. 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 mother till attaining the age of 25 years.

4. On the other hand, submission of learned counsel for the respondents is that applicant filed application through Zila Sainik Kalyan Karyalaya, Bhojpur (Arrah) vide their letter dated 20.01.2015 for grant of family pension after death of his mother accompanying certain documents. On perusal of these documents following discrepancies have been observed:-

(a) Complete set of documents are required to be in triplicate.

(b) Name of father of the applicant in death certificate has been mentioned as "Bagedu Yadav" whereas as per service record his name is "Bagedu Singh. Death certificate is required to be amended accordingly.

(c) Name of mother of the applicant in death certificate has been mentioned as "Bepha Kanwar" whereas as per service record her name is "Smt Bipha Devi". Death certificate is required to be amended accordingly.

(d) As per service records, date of birth of Swami Nath (applicant) is 16.04.1992 whereas in Adhaar Card and Pan Card his date of birth is mentioned as 25.09.1994 which does not match.

5. In view of the above, applicant was issued reminders to forward the above documents through Zila Sainik Board duly

rectified. The same have not been submitted by the applicant till date. Case of the applicant is held up for the same. Learned counsel for the respondents submitted that case of the applicant will be submitted to PCDA (P), Allahabad on receipt of above documents from the applicant.

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

7. In the counter affidavit respondents have conceded that applicant is entitled for grant of family pension from the date of birth as recorded in service documents of his father i.e. 16.04.1992 till attaining the age of 25 years. As far as grant of family pension is concerned, in this regard, para 219 of Pension Regulations for the Army, 1961 (Part-I) is relevant, which for convenience sake is reproduced as under:-

“Conditions of eligibility for a family pension

219. A relative specified in Regulation 216 shall be eligible for the grant of family pension, provided;

General

(i) he or she is not in receipt of another pension from Government;

(ii) he or she is not employed under Government

Widow

(iii) a widow has not remarried.

This condition shall not apply to a widow who remarried her deceased husband's brother, and continues to live a communal life with and/or contributes to the support of the other living eligible heirs.

Son.

(iv) a son is below the age of 25 years.

Daughter

(v) a daughter until she attains the age of 25 years or marriage whichever is earlier.”

8. Thus, keeping in view of aforesaid provision which says that a son is entitled to receive Ordinary Family Pension up to the age of 25 years, we are of the view that applicant is entitled for grant of family pension from next date of death of his mother till attaining the age of 25 years i.e. from 23.03.2013 to 15.04.2017.

9. We also observed that, applicant has forwarded all the required documents to prove that he is entitled for grant of family pension after death of his mother. Moreover, applicant has prayed for family pension from the date as recorded in service documents of his late father and not from the date as recorded in Adhaar Card and Pan Card. Respondent cannot deny his legal right only on the ground that there is some different in name and date of birth. Once applicant has produced various documents as asked, then respondents cannot deny for grant of family pension on the silly grounds. At least respondents after ascertaining the factual position should assist the applicant in granting family pension and means of livelihood. The public interest demands that administration must abide by the promises held out to citizens. It is totally immoral to go back from the promises held out by the mighty state to the detriment of a small people. Therefore, it is the function of the Courts to see that the citizen's rights should be protected

against the mighty state and state should be forced to abide by the promises made to its citizens. Respondents cannot be hard to say that name of the applicant is different in service documents of the deceased soldier, therefore, they are not under obligation to grant family pension. Accordingly, applicant is entitled for grant of family pension after the next date of death of his mother.

10. Thus, in the result, Original Application succeeds and is **allowed**. Applicant is directed to submit all requisite documents as asked by the respondents within one month. After receipt of the necessary documents, respondents shall grant Ordinary Family Pension to the applicant from the next date of death of Smt Bipha Devi, mother of the applicant till attaining the age of 25 years. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 8% on the amount accrued from due date till the date of actual payment.

11. No order as to cost.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 04 October, 2021
Ukt/-