

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 13 of 2020****Tuesday, this the 12th day of October, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt Omkari Devi mother of No 14843739L Late Sep Jitendra Kumar, resident of House No 95, Tej Vihar, Rohta Road, Meerut (U.P.), PIN-250002.

.... Applicant

Ld. Counsel for the: **Shri SK Sharma**, Advocate.
Applicant **Shri BPS Chauhan**, Advocate.

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-110001.
2. Chief of the Army Staff, (Through Adjutant General), IHQ's of the Ministry of Defence (Army), South Block, New Delhi-110001.
3. Officer-in-Charge, ASC Records (South), Bangalore, PIN-560007, C/O 56 APO.
4. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad (UP), PIN-211014.
5. The Controller General of Defence Accounts (Pension), Ulan Battar Road, Palam, Delhi Cantt-110010.

...Respondents

Ld. Counsel for the **Shri Amit Jaiswal**, Advocate
Respondents. Govt Standing Counsel

ORDER (Oral)

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:-

(a) To issue/pass an order or direction to the respondents to set aside/quash the arbitrary order of denial of family pension to the applicant (Annexure No A-1).

(b) To issue/pass an order or direction to the respondents to grant family to the applicant.

(c) To issue/pass an order or direction to the respondents to expedite the matter as the applicant is facing financial hardship.

(d) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(e) Allow this application with cost.

2. The factual averments are that applicant's son No. 14843739-L was enrolled in the Army on 15.10.2003. While on leave, he committed suicide on 04.05.2010. Applicant, who is the NOK of the deceased soldier, had forwarded many representations for grant of family pension. She was paid death benefits/financial assistance including death gratuity as decided by adjudication board held on 06.03.2011. Death of deceased soldier was held as not attributable to military service as per remarks of Officiating General Officer Commanding, Meerut Sub Area vide order dated 13.01.2011. The Records ASC (South) intimated applicant to complete family pension documents vide letter dated 11.05.2010 which applicant forwarded to PCDA (P), Allahabad alongwith income certificate. The aforesaid family pension claim documents were rejected vide PCDA (P), Allahabad vide letter dated 15.07.2011 stating that applicant's income exceeded Rs 9,000/- per month as laid down in policy. Thereafter, applicant approached Chairperson, Veer Nari Committee, New Delhi who sought certain details/documents which applicant failed to submit even after resorting to numerous correspondence with various agencies. The

family pension claim was denied vide letter dated 31.05.2016 in absence of certain documents which Records ASC (South) had asked for. Applicant has filed this O.A. for grant of family pension.

3. The contention of learned Counsel for the applicant is, that applicant being NOK of her deceased son is entitled to family pension as she is living separately from her husband who is in receipt of his pension. Her contention is that claim of family pension is based on the fact that she has received death benefits in respect of her deceased son. Learned counsel for the applicant has submitted that Records ASC (South) had sought certain documents which were supplied to them, even then the claim for family pension has been denied vide letter dated 31.05.2016. He pleaded for grant of family pension to applicant.

4. On the other hand, the learned Counsel for the respondents admitted that applicant is mother of the deceased soldier but contended that she was denied family pension on the ground that her income exceeded Rs 9,000/- per month as observed by PCDA (P), Allahabad vide letter dated 15.07.2011. His further contention is that she was asked to submit certain documents in the year 2016 but she never submitted those papers to ASC Records (South) till date. His submission is that proper documentation of any Govt organization is first priority to avoid any lapse/fraud at later stage especially in the cases related to financial matters. He pleaded that since applicant has failed to submit requisite documents to ASC Records (South), this O.A. deserves dismissal.

5. We have heard learned counsel of both sides and perused the material placed on record.

6. Suffice it to say that a close look at exhibit-4 to 13, show that the factum of individual dying on 03.05.2011, the applicant being his mother, communication between applicant and Record Office/PCDA (P), Allahabad is

not in dispute. Obviously, son of applicant committed suicide by hanging himself (exhibit-2) when he was on leave at home. Applicant being mother (Next of Kin as per service documents of the deceased soldier) is clearly entitled to receive family pension. Since the family pension has been denied to applicant on account of certain documents being not submitted to pension sanctioning authority till date, it was not granted in absence of aforesaid documents. Applicant's son died in the year 2010 and this O.A. was filed on 10.12.2018 only, the actual payment of family pension cannot be directed to be made to applicant for any period beyond three years before filing of the present petition.

7. In view of the above applicant is directed to submit requisite papers as asked by the pension sanctioning authority for completion of necessary documentation related to grant of family pension.

8. Accordingly, this petition is **allowed** and the applicant is held entitled to receive the actual benefit of family pension w.e.f. 18.12.2015. Impugned order dated 31.05.2016 is set aside. The respondents are directed to make necessary calculations and payment be made to the applicant within three months from the date of receipt of a copy of this order by the learned Counsel for the respondents, failing which the amount shall carry interest @ 8% per annum till actual payment.

9. No order as to costs.

10. Pending application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 12.10.2021
rathore