

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TRANSFER APPLICATION No. 09 of 2017

Monday this the 11th day of October' 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)

Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt. Sharda Devi, W/o Late Sri Virendra Singh, mother of late Cpl Jitendra Kumar R/o Village and Post – Pohar Harchand Keda, District – Kanpur Nagar **(U.P.)**

..... Applicant

Ld. Counsel for the Applicant : **Shri Ravi Prakash Tripathi and Shri Virat Anand Singh, Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Air Marshal, Air Officer Incharge, Personal, Air Head Quarter, Vayu Bhawan, New Delhi.
3. A.O.C. AIR FORCE, Record Office, Subroto Park, New Delhi-110010.
4. 1 WING Air Force O/o 56 A.P.O New Delhi
5. Smt Madhubala Yadav, W/o (Now) Vishal Yadav, R/o 117/Q/485, Sharda Nagar, Kanpur.

.....Respondents

Ld. Counsel for the Respondent No 1 to 4 : **Shri Kaushik Chatterji, Central Govt Counsel**

Ld. Counsel for the Respondent No 5 : **Shri VP Pandey , Advocate**

ORDER**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(A) Issue a writ, order or direction in the nature of mandamus to direct the respondents to sanction the monthly pension to the petitioner

(B) Issue a writ, order or direction in the nature of mandamus to direct the respondents to decide and consider the representation of the petitioner dated 16.05.2025. (Annexure No.5)

(C) Issue any other writ, order or direction in suitable nature as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.

(D) Award the cost of the petition in favour of the petitioner.

2. Brief facts of the case giving rise to this application are that son of the applicant Late Cpl Jitendra Kumar was enrolled in the Air Force on 04.09.1995 and died on 01.06.2005. Son of the applicant was married to Smt Madhubala Yadav in February 2004. After death of her son, applicant wrote letter dated 03.10.2006 to respondents for granting her family pension. She was informed that after death of Late Cpl Jitendra Kumar, family pension and other benefits have been remitted to his wife

namely Madhubala Yadav. Being aggrieved, applicant has filed instant O.A. for grant of family pension.

3. Ld. Counsel for the applicant submitted that the son of the applicant was enrolled Indian Air Force on 04.09.1995 and died on 01.06.2005 while on duty. Son of the applicant was married to Smt Madhubala Yadav in February 2004. After death of her son applicant moved a representation dated 03.10.2006 to the respondents for providing her family pension. Applicant was informed vide letter dated 21.02.2006 that her prayer for grant of family pension is under consideration. On 16.04.2007, applicant was informed that she is not entitled for grant of family pension and other benefits and the same has been granted to wife of deceased soldier Smt Madhubala Yadav. Learned counsel for the applicant submitted that applicant is a aged widow lady and her husband died 20 years back and she was wholly dependent on her son Late Cpl Jitendra Kumar. She has an unmarried daughter and she has no source of income to arrange the marriage of her daughter. Smt Madhubala Yadav, wife of deceased late Cpl Jitendra Kumar has re-married to a businessman named Vishal Yadav @ Monu, Son of Shri Sant Lal Yadav, R/o 117/Q/485 Sharda Nagar, Kanpur. Learned

counsel for the applicant prayed that applicant be granted pension for her survival being mother of deceased Airman.

4. On the other hand, Ld. Counsel for the respondents submitted that Late Cpl Jitendra Kumar Yadav was married to Smt Madhubala Yadav on 22.02.2004. Death of the deceased airman was adjudicated as attributable to service and Smt Madhubala Yadav has been sanctioned Special Family Pension and DCRG vide PPO No 08/14/B/F/P/0351/2006. Smt Sharda Devi, mother of deceased airman submitted instant writ petition requesting for grant of family pension as the widow of deceased has remarried and not contributing for her livelihood. Special Family Pension being paid to Smt Madhubala Yadav (wife) continuously even after her remarriage. However, there are provisions in Pension Regulations for the Air Force 1961 (Part I) which enumerate that the family pension is intended for the support of all the eligible members of the deceased family, irrespective of whose name it stands and if the recipient of special family pension is contributing proportionately towards the support of other eligible members of the family who were dependant on the deceased, the competent authority, on the advice and recommendation of deputy commissioner or collector of district, may divide the special family pension

among the eligible heir of the deceased airman. Such parents, whose monthly income (combined income of mother and father) does not exceed Rs 2550/- per month, can be considered as dependant on their late son and thus, may claim for division of special family pension under Regulation No 202. In the instant case especially after remarriage of the widow and residing separately, income certificate can be sought from the applicant and if feasible, subsequent investigation report can be sought from District Collector of the district to check the feasibilities of division of special family pension as per the provisions. As per RCSR, the parents and unmarried sister of the deceased are not recorded as dependant. In view of aforesaid fact, the writ petition has no merits and deserved to be dismissed.

5. Heard the Ld. Counsel for the parties and perused the material placed on record.

6. Having heard the submissions of learned counsel of both sides we find that it was the moral and even legal duty of widowed daughter-in-law to look after properly to the mother of deceased soldier who was wholly dependent on her son during his service and after death on his pensionary benefits, but to leave them in a destitute condition and herself living quite

comfortably on the pensionary benefits of deceased soldier is quite unjust and unlawful on her part.

7. According to Section 8 of Hindu Succession Act, 1956, Class- I, heirs are entitled to get share in assets left by a deceased soldier in equal proportion :-

“8. The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter :-

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.”

8. Heirs in Class I of Schedule are as below :-

Son; daughter, widow; mother; son of a predeceased son; daughter of a predeceased son; son of a predeceased daughter; daughter of a predeceased daughter; widow of a predeceased son; son of a predeceased son of a predeceased son; daughter of a predeceased son of a predeceased son; widow of a predeceased son of a predeceased son.

9. Regulation 191 of Pension Regulations for the Air Force, 1961 (Part- 1) read as under:-

Pension intended for the whole family

191. A family pension is intended for the support of all the eligible member of a family, irrespective of in whose name it stands.

10. If the recipient of a family pension refuses to contribute proportionately towards the support of other eligible heirs in the family who were dependent upon the deceased airman, or if the pension is in the name of a child but is not devoted to the interests of the family, the competent authority may, divide, at its discretion, the family pension among the eligible heirs of the deceased airman.

11. The question of division only comes up in the case of special and liberalised family pension. Liberalised family pension as per Para 218 of Chapter 6, Grant of Family Pensionary Awards taken from PCDA(P) Website, pcdapension.nic.in, is to be decided as per Paras 182 & 183, which contain guidelines for division of Special family pension. Para 182 states :-

“The competent authority may order similar division of special family pension at the time of initial grant, if at the time of initial investigation of a claim, it is found that the nominated heir is not

living a communal life with other eligible heirs or he/she is not willing to contribute proportionately towards their support.”

12. Smt Madhubala Yadav widow of deceased airman has no child, therefore widow and mother both are entitled to get share of family pension, being inherited property of the deceased soldier. In this case, the guiding principles should be the emotional bond and societal expectations of the mother. We do not wish to go into the claims and counter-claims of the holding of agricultural land, the income of the parents of the deceased soldier and whether the mother is bed ridden. It is rather unfortunate that the widow and the in-laws are not on the best of terms. The emotional and financial needs of both need to be recognised and met. It is but obvious that the greater need for financial security is of the widow mother who has to bring up her daughter and live the rest of her life with dignity. However the mother not only gave birth to late Cpl Jitendra Kumar but also raised him and imbibed certain values in him. Her son achieved martyrdom in the service of the nation. This is one of the greatest sacrifices a parent can make. At this stage whatever award of pension is given to the mother would only be a token to recognise the martyrdom of her son. Further the mother is also recognised as a Class One heir under the Hindu Succession Act 1956. Based on the above discussion, it

emerges that amount of special family pension needs also to be paid to the mother.

13. We are of the view that the demands of justice would be met if 50% of special family pension be paid to the mother of the deceased, Late Cpl Jitendra Kumar. On the demise of the mother, this amount of 50% will be restored to the widow and not pass on to the father or brothers of late Cpl Jitendra Kumar.

14. In view of aforesaid, Original Application is **disposed of** with the direction to the respondents to consider the claim of the applicant for division of family pension in equal share (i.e. 50% each) between the wife and mother of deceased soldier. 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.

15. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 11th October, 2021
UKT/-