

(Court No 2)

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

Original Application No. 39 of 2023

Monday, this the 06th day of October, 2023

**"Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)"**

Smt Usha Devi widow daughter of No 2935425 Ex Havildar
Jiwa (Jiva) Lal, R/o Village & Post-Maudah, District-
Farrukhabad (UP), 206451.

.....Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence,
South Block, New Delhi-110011.
2. Officer-in-Charge Records, Rajput Regiment, PIN-
900427, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pensions),
Draupadi Ghat, Allahabad.

.....Respondents

Ld. Counsel for the: **Shri RC Shukla**,
Respondents Central Govt. Counsel.

ORDER (Oral)

1. This instant Original application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 by which the following reliefs have been sought:-

(I) The Hon'ble Court may graciously be pleased to direct the respondent No 2 to made publication of Part-II Order for the widow daughter/applicant Smt Usha Devi of No 2935425 Ex Havildar Jiwa (Jiva) Lal, in accordance with rules of the department and release the family pension to the applicant being widow daughter of her deceased father.

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

(III) Award costs to the applicant.

2. Brief facts of the case are that No. 2935425A Ex Hav Late Jiwa lal was enrolled in the Army on 02.08.1948 and was discharged from service on 31.07.1969. During the course of his service, he got married to Smt Naraini on 01.07.1948 and her name is recorded as next of kin (NOK) of the deceased soldier. A son named Satish (DOB-17.07.1954), daughter named Sashi (DOB-15.04.1959) and another son named Sudhish (DOB-26.01.1962) were born out of aforesaid wedlock. He was in receipt of service pension vide PPO No. S/033043/69 w.e.f. 01.08.1969. After his death on

10.10.2017, Treasury Officer, Fatehgarh, Distt-Farrukhabad (UP) was informed by Records, the Rajput Regiment for payment of family pension to NOK but due to mismatch in name of NOK, it is not clear whether she was granted family pension or not and she died on 10.08.2022.

3. Applicant claiming to be widowed daughter of the deceased soldier submitted an application dated 24.09.2022 to Records, Rajput Regiment for grant of family pension. In response to her application, Records vide letter dated 04.11.2022 submitted reply informing that her name is not recorded in service documents of the deceased soldier.

4. Submission of learned counsel for the applicant is that applicant, being widowed daughter of the deceased soldier, is entitled for grant of family pension after demise of her parents. In support of contention that she is widowed daughter of the deceased soldier, applicant has produced copy of 'Parivar Register' mentioning therein that applicant's nick name is Shashi but her actual name is Usha Devi. She has also produced copies of Aadhar Card, PAN Card, Voter Card, bank pass book and affidavit. In all the aforesaid documents her name is recorded as Shashi but as per the affidavit her nick name is Sashi and actual name is Usha Devi.

5. Learned counsel for the applicant further submitted that since applicant's four real brothers viz. Shatish Kumar (age 67 years), Sudhir Kumar (Age 60 years), Subhash Kumar (age 52 years) and Sunil Kumar Mishra (age 48 years) have given their consent on affidavit that they have no objection in granting family pension to their widowed sister, therefore, applicant is entitled to grant of family pension.

6. On the other hand hand, learned counsel for the respondents submitted that service documents related to No 2935425A Ex Hav Late Jiwa Lal have been destroyed by burning on 08.07.2021 by the Board of Officers. It was further submitted that as per long roll very limited information is available as under:-

(a) Date of enrolment	-02.08.1948
(b) Date of discharge	-01.08.1969
(c) PPO No	-S/033043/69 (Army)
(d) Name of NOK	-Smt Naraini
(e) Date of marriage	-01.07.1948
(f) Son Satish	-DOB – 17.07.1954
(g) Daughter Sashi	-DOB – 15.04.1959
(h) Son Sudhish	-DOB – 26.01.1962

7. Learned counsel for the respondents further submitted that after death of Jiwal Lal, Smt Maharani Devi claiming to be widow of the deceased soldier approached the Records for

grant of family pension but she was intimated that her name is entered in the records as Naraini Devi. Thereafter, Records the Rajput Regiment intimated Treasury Officer, Fatehgarh vide letter dated 24.07.2018 that she may be granted family pension as her name is duly entered in the Records. She died on 10.08.2022 i.e. five years later from the death of her husband.

8. Learned counsel for the respondents further submitted that since applicant's name is not entered in service record of the deceased soldier, she can only be granted family pension provided a succession certificate is produced for publication of Part-II Order.

9. Heard learned counsel for the parties and perused the record.

10. No. 2935425A Ex Hav Late Jiwa Lal was enrolled in the Rajput Regiment of the Indian Army on 02.08.1948 and he was discharged from service w.e.f. 01.08.1969 (FN). After discharge from service he was granted service pension vide PPO No. S/033043/69 (Army) w.e.f. 01.08.1969 for life. He died on 10.10.2017 and his wife Smt Naraini Devi died on 10.08.2022. After a gap of four years applicant claiming to be widowed daughter of the deceased soldier submitted an

application dated 24.09.2022 to Records the Rajput Regiment for grant of family pension. In response to her application, the Records Rajput Regiment replied on 04.11.2022 (Annexure R-6) that her name is not entered in the Records of the deceased soldier.

11. Regulation 66 of Pension Regulations for the Army, 2008 (Part-I) speaks about the term 'family' for grant of family pension after death of pensioner as under:-

(i) Wife in the case of male service personnel or husband in the case of female service personnel lawfully married before or after retirement.

(ii) A judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.

(iii) Unmarried daughters/unmarried sons under 25 years of age (including those legally adopted), widowed/divorced daughters.

(iv) Parents who were wholly dependent on the service personnel when he was alive.

12. From the aforesaid, it is clear that a widowed daughter is eligible for grant of family pension subject to fulfilling other

criterion i.e. her relationship with the deceased soldier and publication of Part-II Order.

13. Applicant's contention is that her name is Usha whereas her nick name is Sashi. The applicant has produced copies of Aadhar Card, PAN Card, bank pass book and affidavit containing her name as Sashi whereas she has filed this application in the name of Usha. If her name is Sashi which has been recorded in the deceased soldier's record, she should have filed case in the name of Sashi instead of Usha Devi. We also find that her date of birth as recorded in documents produced in the court and in service record mismatches.

14. The respondents while filing counter affidavit in Para 9 (d) have conceded that 'an unmarried daughter above the age of 25 years, a widowed/divorced daughter irrespective of her age and son or daughter who is suffering from any disorder or disability including mentally retarded or physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of 25 years, the family pension shall be payable to such son or daughter for life'. Further, in Para 9 (f) of counter affidavit it has been stated that on receipt of succession certificate, Part-II Order related to birth

of applicant may be notified to enable her for grant of family pension. For convenience sake, para 9 (f) of counter affidavit is reproduced as under:-

"9 (f). As soon as the applicant will submit the succession order issued by the court of law, Records The Rajput Regiment will publish the occurrence of birth and will further process her case with PCDA (P), Prayagraj for notification of pension payment order for grant of family pension entitled to widow daughter."

15. While filing rejoinder affidavit, learned counsel for the applicant stated that if there is need for succession certificate, applicant is ready to provide such certificate to prove that she is daughter of the deceased soldier. For convenience sake, extract of para 11 of rejoinder affidavit is reproduced as under:-

"11. x x x x x x x. In reply thereof it is submitted that by documentary evidence it is fully proved that the applicant is daughter of her parents therefore no need to obtain succession order from any competent court of law, however if this Hon'ble Court may be pleased to pass order, the applicant is ready to obtain such succession certificate. It is further submitted that applicant respondents are always free to take any action if it is found that applicant has obtained any document fraudulently to show herself as daughter of Late Jiwa Lal, rest averments made in para under reply are misleading and not correct."

16. On the basis of documents produced before us, it is not clear that applicant is widowed daughter of the deceased soldier and also that Sashi and Usha is the same person. In our view applicant may be eligible for grant of family pension

only after notification of Part-II order for which succession certificate is required by the respondents. While filing rejoinder affidavit and during the course of hearing learned counsel for the applicant submitted that he is ready to provide succession certificate if so required. In our considered opinion, succession certificate issued by the concerned court of law would suffice for notification of Part-II Order.

17. In view of the above, O.A. is disposed off finally with directions to the applicant to provide succession certificate to the respondents within a period of four months for publication of Part-II Order. On receipt of succession certificate, the respondents are directed to publish casualty with respect to birth in respect of the applicant and process her claim for grant of family pension. Liberty is granted to the applicant to file fresh O.A. if she is still aggrieved.

18. No order as to costs.

19. Miscellaneous applications (s), pending of any, stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: 06.10.2023

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(Justice Anil Kumar)
Member (J)

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.2 (Sl. No. 31)

O.A. No. 39 of 2023

Smt Usha Devi Applicant
 By Legal Practitioner for the Applicant: **Shri Ashok Kumar**, Advocate

Versus

Union of India & Ors Respondents
 By Legal Practitioner for Respondent: **Shri RC Shukla**, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>06.10.2023</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <ol style="list-style-type: none"> 1. Heard learned counsel for the parties and perused the record. 2. O.A. is allowed. 3. For order, see our order passed on separate sheets. <p style="text-align: center;"> (Maj Gen Sanjay Singh) Member (A) <i>rathore</i> (Justice Anil Kumar) Member (J) </p>