

RESERVED
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 986 of 2022

Wednesday, this the 25th day of October, 2023

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

Mrs. Dhan Maya Thapa
W/o No. 5044463, Late LNK Dhan Bahadur Thapa of 2/1 GR
C/o Til Bahadur,
R/o 594/GHA/026, Near Durga Mandir,
Durgapuri, Nilmatha,
Lucknow (UP) – 226002

.... Applicant

Ld. Counsel for the Applicant : **Col AK Srivastava (Retd),**
Advocate

Versus

1. The Government of India, (Through the Secretary, Ministry of Defence (Army), South Block, DHQ PO, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army) South Block, DHQ PO, New Delhi-110011.
3. OC Records 14 GTC, Sabathu, Simla Hills (HP), India.
4. The records, Indian Embassy Kathmandu (Nepal).
5. The Principal CDA, PCDA (P), Draupadi Ghat, Allahabad (UP) India - 211014.

... Respondents

Ld. Counsel for the Respondents : **Shri R.C. Shukla,**
Central Govt Standing Counsel

ORDER

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

“(a) Issue/pass an order or direction of appropriate nature to summon and quash/set aside orders leading to denial of applicant’s special family pension family pension after death of her husband on 1998 and accordingly grant arrears of her special family pension with compound interest @ 18%.

(b) Issue/pass an order or direction of appropriate nature to summon and quash/set aside orders leading to denial of applicant’s ordinary family pension family pension after her remarriage, with younger brother of her deceased husband, w.e.f. 08/03/2000.

(c) Issue/pass an order or direction of appropriate nature to respondents to consider and grant family pension, and ensuing benefits w.e.f. 20/08/2021 i.e. after marriage of her elder daughter or with immediate effect if PPO, already under process in respect of younger daughter is issued during pendency of this case.

(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 costs.”

2. Briefly stated facts are that husband of the applicant was enrolled in the Indian Army in 1988. Thereafter, he served in the Army for 9 years and 7 months and 19 days till he died in an accident on 19.06.1988 while proceeding on leave. The applicant was granted ordinary family

pension vide PPO No. F/NA/7044/99 w.e.f 19.06.1998. The applicant, wife of the deceased soldier, married to Mr. Rekh Bahadur Thapa, younger brother of her husband on 08.03.2000, whereafter family pension of the applicant was stopped by PCDA (P) Allahabad w.e.f. 08.03.2000 as confirmed by the Record Office Indian Embassy, Kathmandu vide letter dated 13.03.2020 in reply to applicant's personal application dated 03.03.2020 in which it was replied/stated that only childless widow is entitled to ordinary family pension even after remarriage as per PCDA (P) Allahabad Circular No. 421 and 479. After stoppage of ordinary family pension of the applicant, it was given to her elder daughter Himla Thapa vide PPO No. F/NA/006062/2001. After marriage of her elder daughter, Himla Thapa, ordinary family pension has been stopped w.e.f. 20.08.2021 being disqualified for family pension. Now, as per policy, motherless ordinary family pension claim in favour of Miss Deepa Thapa, unmarried younger daughter who is next eligible heir of deceased soldier was forwarded to Record Office and further it was forwarded to PCDA (P) Allahabad for notification of PPO vide Records 14 Gorkha Rifles letter dated 12.08.2022. Now the claim is pending with pension sanctioning authority. On 03.03.2020, applicant had submitted an application for grant of family pension in her favour which was replied by Record Office, Indian Embassy, Kathmandu vide letter dated 13.03.2020 informing the rule position/rejecting the prayer of the applicant. Aggrieved by denial of family pension in her favour, the present Original Application has been filed by the applicant for grant of Family Pension in her favour w.e.f. 20.08.2021, i.e. the date from which

ordinary family pension has been stopped after marriage of her elder daughter.

3. Learned counsel for the applicant submitted that husband of the applicant was enrolled in the Indian Army in 1988. Thereafter, he served in the Army for 9 years, 7 months and 19 days till he died in an accident on 19.06.1988 while proceeding on leave. The death of applicant's husband was declared as attributable to military service, however, the applicant was granted ordinary family pension instead of special family pension vide PPO No. F/NA/7044/99 w.e.f 19.06.1998. The applicant, wife of the deceased soldier, married to Mr Rekh Bahadur Thapa, younger brother of her husband on 08.03.2000, whereafter family pension of the applicant was stopped by PCDA (P) Allahabad w.e.f. 08.03.2000 as confirmed by the Record Office Indian Embassy, Kathmandu vide letter dated 13.03.2020 in reply to applicant's personal application dated 03.03.2020 in which it was replied/stated that only childless widow is entitled to ordinary family pension even after remarriage as per PCDA (P) Allahabad Circular No. 421 and 479. After stoppage of ordinary family pension of the applicant, it was given to her elder daughter Himla Thapa vide PPO No. F/NA/006062/2001. After marriage of her elder daughter, Himla Thapa, ordinary family pension has been stopped w.e.f. 20.08.2021. Now, It is learned that family pension in favour of Miss Deepa Thapa, younger daughter aged about 25 years, is under process since last one year. The applicant's younger daughter Miss Deepa Thapa is likely to be married any time and

thereafter, she would also not be entitled to family pension. Hence, considering the fact that applicant despite being illegally denied special family pension was *ab in initio* entitled for grant of ordinary family pension, which was granted to her and stopped after her remarriage with real brother of her late husband w.e.f. 08.03.2000 be restarted immediately.

4. Learned counsel for the applicant further submitted that applicant is entitled to family pension even if she was married to her husband's younger brother and hence, her family pension is liable to be revived and granted by the respondents since action to stop her family pension was illegal, arbitrary, without application of mind since remarried wives of Indian Army deceased soldiers are entitled to relevant family pension. That even after her remarriage, her both daughters continued to reside with her and hence, grant of family pension to her daughter Miss Himla Thapa under her guardianship did not adversely affect her financial condition. Since, both the applicant and her husband are Gorkhas domiciles of Nepal and their marriage is governed by prevalent Personal Laws of Nepal where, even plural marriage is recognised in case a previous marriage subsists and no prior/post permission/sanction is required for such marriage. This aspect is also included in Army Order 44/2001 (DV) which is applicable to Nepal Domiciles serving in the Indian Army.

5. Learned counsel for the applicant placed reliance on the judgment of the Delhi High Court in **Smt. Kashmiro Devi vs. Union of India and**

Others, decided on 19.05.2008 and pleaded that applicant's case is fully covered with this case and therefore, applicant is entitled to ordinary family pension from the date it was stopped in favour of her elder daughter after her marriage, i.e. w.e.f. 20.08.2021. He pleaded that respondents be directed to take expeditious action to issue a PPO to the applicant restarting family pension in her favour w.e.f. 20.08.2021.

6. Per contra, submission of learned counsel for the respondents is that applicant's husband, Ex Rifleman (Late) Dhan Bahadur Thapa was enrolled in the Indian Army (4 GR) on 10.11.1988 and died on 19.06.1998 in a traffic accident at Syangia (Nepal) while on leave which was considered as unnatural death. The deceased soldier had 09 years and 183 days of service at the time of death. After death of applicant's husband, applicant reported to Pension Paying Office, Pokhra (Nepal) for grant of family pension. The case of the applicant was investigated by the Assistant Military Attache (Records) under the provisions of Para 174 of Regulation for the Army, 1987 (Revised Edition) and claim for grant of special family pension was forwarded to PCDA (P) Allahabad by the Record office vide letter dated 15.12.1998 but the PCDA (P) rejected claim of special family pension considering death of deceased soldier as neither attributable to nor aggravated by military service and ordinary family pension was granted to the applicant vide PPO No. F/NA/007044/1999 dated 19.06.1998. The applicant received ordinary family pension for approx two years and thereafter, on 08.03.2000, she got remarried with Shri Rekh Bahadur Thapa, real brother of deceased

soldier. Subsequently, ordinary family pension of the applicant was stopped w.e.f. 09.03.2000. Para 68 of Pension Regulations for the Army, 2008 (Part-1) clearly states that ordinary family pension is payable upto date of death of widow or widower or marriage whichever is earlier. In the instant case, applicant got remarried with Shri Rekh Bahadur Thapa, hence, family pension was stopped.

7. Learned counsel for the respondents further submitted that as per para 68 (b) of Pension Regulations for the Army, 2008, *'the ordinary family pension shall first payable to the surviving spouse and in her absence or in the event of 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'*. Therefore, as per above policy, the applicant was disqualified for family pension due to remarriage. Again, investigation was carried out by the Record Office and Miss Himla Thapa, elder daughter of the deceased soldier was recommended motherless ordinary family pension and PCDA (P) Allahabad granted ordinary family pension to Miss Himla Thapa vide PPO No. F/NA/6062/2021. After marriage of her elder daughter, Himla Thapa, ordinary family pension has been stopped w.e.f. 20.08.2021 being disqualified for family pension. Now, as per policy, motherless ordinary family pension claim in favour of Miss Deepa Thapa, unmarried, unemployed younger daughter who is next eligible heir of deceased soldier was forwarded to Record Office and further it was forwarded to

PCDA (P) Allahabad for notification of PPO vide Records 14 Gorkha Rifles letter dated 12.08.2022. Now the claim is pending with pension sanctioning authority.

8. Learned counsel for the respondents further submitted that on 03.03.2020, applicant had submitted an application for grant of family pension in her favour which was replied by Record Office, Indian Embassy, Kathmandu vide letter dated 13.03.2020 informing the rule position/rejecting the prayer of the applicant. He further submitted that as per PCDA (P) Circular No. 421 and 479, only childless widow is entitled to ordinary family pension even after remarriage, therefore, applicant is ineligible for family pension. He pleaded for dismissal of O.A. in terms of aforesaid Circulars/Regulations.

9. We have heard the learned counsel for the parties and perused the records.

10. The sole question that arises for our consideration is whether the widow on remarriage with younger brother of the deceased husband is eligible or ineligible to continue to draw Ordinary Family Pension?

11. Admittedly, the applicant being deceased soldier's widow, due to being next of kin, is entitled for receiving the Ordinary Family Pension and accordingly, she was granted ordinary family pension from the next date of death of her husband, i.e. w.e.f. 20.06.1998 and the applicant received ordinary family pension for approx two years and thereafter, on 08.03.2000, she got remarried with Shri Rekh Bahadur Thapa, real brother of deceased soldier and hence, ordinary family pension of the

applicant was stopped w.e.f. 09.03.2000 under the provisions of Para 68 of Pension Regulations for the Army, 2008.

12. As per Regulation 63 of the new Regulations, Ordinary Family Pension is payable to the family of the deceased. Regulation 66 defines 'family', which consists of four categories i.e. wife/husband, judicially separated wife/husband, unmarried daughters/unmarried sons and parents wholly dependent on the service personnel when the deceased soldier was alive. In this way, firstly, the widow is entitled Ordinary Family Pension and has preference over other members of the family. If there is no widow and no child, the parents are entitled to the Ordinary Family Pension. Regulation 67 of the new Regulations deals with the period for which Ordinary Family Pension is payable, according to this provision, the Ordinary Family Pension in the case of a widow or widower is payable upto the date of his or her death or marriage, whichever is earlier. The said Regulation 63, 66 and 67, being relevant, are reproduced as follows:

63. Ordinary Family Pension. *Where Service personnel dies in the circumstances mentioned in the Category A of the Regulation 82 of these Regulations:*

- (i) Either while in service, provided he had been found fit after successful completion of the requisite training and medical examination for commission, or at the time of enrolment in the case of Personnel Below Officer Rank; or*
- (ii) After release/ retirement/discharge /invalidment with a pension of any kind under these Regulations, the family of the deceased shall be entitled to ordinary family pension under these Regulations*

66. Definition of Family. *Family for the purpose of Regulations in this Section shall consist of the following:*

- (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 (including those legally adopted), widowed/divorced daughters.

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

67. Period for which Ordinary Family Pension Payable. The period for which ordinary family pension is payable shall be as follows:

(i) In case of a widow or widower upto the date of death or marriage, whichever is earlier.

(ii) In the case of eligible unmarried son, till he attains the age of 25 years or upto the date of his marriage, whichever is earlier and subject to income criteria as given in Note-2 below:

(iii) In the case of eligible daughter, till she attains the age of 25 years or upto the date of her marriage, whichever is earlier and subject to income criteria is given in Note-2 below:

Provided that a 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 of mind 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.

Notes: 1. Eligible son/daughter including widowed/divorced daughter shall furnish to his Pension Disbursing Authority a half yearly certificate in regard to marital status.

2. Eligible son/daughter including widowed/divorced daughter shall be paid ordinary family pension if his/her earning is not more than Rs.2550/- per month from all sources including pay and or pension. He will also submit annually a certificate to the effect that his earning is not more than Rs.2550/- per month to his Pension Disbursing Authority."

13. In the present case, after remarriage of the applicant with real younger brother of her late husband, ordinary family pension of the applicant was stopped and it was granted to elder daughter of the deceased soldier, i.e. Miss Himla Thapa. After marriage of her elder daughter, Himla Thapa, ordinary family pension has been stopped w.e.f. 20.08.2021 being disqualified for family pension. Now, as per policy,

motherless ordinary family pension claim in favour of Miss Deepa Thapa, unmarried younger daughter who is next eligible heir of deceased soldier is under process with PCDA (P) Allahabad for notification of PPO vide Records 14 Gorkha Rifles letter dated 12.08.2022.

14. Regulation 216 of the Pension Regulations for the Army 1961 (Part-1) speaks about eligible members of the family to receive pension, which is reproduced as under :-

“Eligible members of the family

216. The following members of the family of a deceased individual shall be viewed as eligible for the grant of a special family pension, provided that they are otherwise qualified: -

- (a) widow/widower lawfully married. It includes a widow who was married after individuals' release/retirement/discharge/invalidment.
- (b) Son actual and legitimate/including validly adopted.
- (c) Daughter, actual and legitimate/ (including validly adopted).
- (d) Father.
- (e) Mother.
- (f) Brother
- (g) Sister

15. As per Regulation 219 of Pension Regulations for the Army 1961 (Part-1), conditions of eligibility for a family pension are given which 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.

Parents

Second life Awards (special family Pension) shall be admissible to the parent (s) of the deceased and in the absence of the parents, eligible brother and sisters of the deceased of the rate of 50% of the special family pension determined vide Regulation 227(a), if the claimants was/were largely dependent on the deceased for support and is/are in pecuniary need.

Mother

(vi) a mother who is a widow at the time of her son's death or who becomes a widow thereafter, has not remarried. If she had remarried before her son's death, she shall remain eligible for the special family pension, unless and until she again becomes a widow and remarries.

Brother/Sister

(vii) The brothers/sisters were largely dependent on the deceased for support and are in pecuniary need.

(viii) In the case of brother he has not completed the age of 25 years.

(ix) In the case of sister, she has not completed the age of 25 years or has not married".

16. The husband of the applicant died on 19.06.1998 during service while proceeding on leave to his home town. The applicant was in receipt of family pension. Thereafter, applicant got remarried with real younger brother of her late husband on 08.03.2000 and her pension was stopped by the PCDA (P) Allahabad on the ground of her widowhood and remarriage under the provisions of Para 68 of Pension Regulations for the Army, 2008. Since, case of the applicant for disqualification of family pension on remarriage pertains to year 2000, applicant will be governed by the old Pension Regulations for the Army, 1961 (Part-1), i.e. Regulation 219 and not by the new Pension Regulation of 2008. The applicant is entitled for family pension on her remarriage as per Regulation 219 (iii) of Pension Regulations for the Army, 1961 which is quoted as under :-

“219.**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.”

17. In case of the applicant, condition of disqualification of remarriage after death of her husband will not apply because she has remarried her deceased husband's brother and is continued to live a communal life. There is nothing to show that she is not supporting other living eligible heirs. In this context, Paras 19, 20 and 22 of the judgment of the Delhi High Court in **Kashmiro Devi** (supra) being relevant are reproduced as under :-

“19. The object of maintaining the widow in the commune of the family remains the same which is the cause for the exception carved out in Regulation 219.

20. It is no doubt true that Regulation 212 is based on the Administrative Instructions as incorporated therein. Here, remarriage disentitles her to pension. Similarly, Regulation 216 under the heading of 'Special Family Pension' also refers to family pension. No doubt, the first sentence of Regulation 219 does make a reference to Regulation 216, but that is in the context of the number of heirs specified therein which include not only heirs as enlisted in Regulation 216, but also under Regulation 212 - (Regulation 212 having more restricted number of heirs). The case of the widow falls under the heading 'General'. The disqualification in case of a widow, who is remarried, is qualified by the condition that as long as she is remarried to the brother of the deceased husband and continues to live a communal life and / or contributes to the support of the other living eligible heirs, she would not be disentitled to pension. We see no reason why this principle should not equally apply to the ordinary family pension under Regulation 212 and should be restricted only to special family pension under Regulation 216. A contrary view would result in an arbitrary distinction which would be hit by Articles 14 and 21 of the Constitution of India.

21. x x x x x x x x x

22. We are, thus, of the considered view that the petitioner is entitled to the ordinary family pension since she has married only the brother

of her deceased husband and falls within the 'exception' category. However, in view of the delay on the part of the petitioner in approaching the Court, it is not possible to direct payment of arrears to the petitioner beyond the period of three years prior to the date of filing of the petition which is 25.03.1995 and, thus, the petitioner would be entitled to the said ordinary family pension from April, 1992 onwards."

18. In view of the rules/regulations/judgments discussed above, we are of the view that applicant being wife and widow of the deceased soldier is entitled to receive Ordinary Family Pension w.e.f. the date of remarriage i.e. 08.03.2000. Though, after remarriage of the applicant with real younger brother of her late husband, ordinary family pension was stopped and it was granted to elder daughter of the deceased soldier, i.e Miss Himla Thapa and after marriage of her elder daughter, Himla Thapa, ordinary family pension has been stopped w.e.f. 20.08.2021, therefore, applicant is entitled to received ordinary family pension from the date it was stopped to elder daughter, Himla Thapa, i.e. w.e.f. 20.08.2021. Since, the action to grant motherless ordinary family pension in favour of Miss Deepa Thapa, unmarried younger daughter who is next eligible heir of deceased soldier is under process with PCDA (P) Allahabad for notification of PPO as averred by the respondents in their counter affidavit, there is necessity to stop process of granting family pension to younger daughter, Miss Deepa Thapa and case of the applicant for grant of ordinary family pension w.e.f. 20.08.2021 to be processed.

19. In view of above, Original Application deserves to be allowed and is **allowed**. Impugned order, if any, is set aside. The applicant is held entitled to receive ordinary family pension from the date it was stopped

to her elder daughter, Himla Thapa, i.e. w.e.f. 20.08.2021. The respondents are directed to grant Ordinary Family Pension to the applicant w.e.f. 20.08.2021 for life by issuing Corrigendum PPO in her favour and pay arrears of pension accordingly. 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. Default will invite interest @ 8% per annum.

20. No order as to costs.

21. Pending Misc. Application(s), if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: October, 2023
SB

(Justice Anil Kumar)
Member (J)