

Court No 2
(RESERVED)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 937 of 2022

Tuesday, this the 05th day of September, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Lt Gen Anil Puri, Member (A)

Amit Bhardwaj son of No 3940797 Late Sep Dulo Prasad, R/o House No SS-II-DI-915, LDA Colony, Kanpur Road, Lucknow-226012.

.....Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of ministry of Defence (Army), DHQ, Post Office-New Delhi-110011.
3. The Officer-in-Charge, Records The Dogra Regiment, PIN-900235, C/o 56 APO.
4. The Chief Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad-14 (UP).

.....Respondents

Ld. Counsel for the : **Shri Shyam Singh**, Advocate
Respondents. Central Govt Counsel

ORDER

1. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by the applicant whereby the applicant has sought following reliefs:-

(i) Hon'ble Tribunal may be pleaded to direct the respondents to grant arrears of dual family pension of his late mother Smt Mridula Bhardwaj w.e.f. 24.09.2012 to 09.07.2021 (till date of death of mother) under the provision of CDA (P) Circular No 504 alongwith its arrears and interest thereon at the rate of 18% per annum.

(ii) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case.

2. Rejoinder affidavit filed on behalf of the applicant is taken on record.

3. Brief facts of the case are that applicant's father was enrolled in the Army (The Dogra Regiment) on 20.04.1950. He was transferred to pension establishment on 30.04.1965 and granted reservist pension w.e.f. 01.05.1965 vide PPO No. S/23772/65 dated 04.09.1965. He was re-employed as group-III employee in Govt of India, Ministry of Railways and was granted service pension after retirement.

4. The ex-serviceman, who was in receipt of service pension from railway department, died on 15.07.1993. After his death, deceased soldier's wife Smt Mridula Bhardwaj was granted family pension from railway department. Prior to 24.09.2012 dual family pension was not applicable to NOK of deceased soldier but later it was made applicable by Govt of India, Min of Def vide letter dated 17.01.2013 w.e.f. 24.09.2012 onwards. Accordingly, wife of the

deceased soldier submitted her petition dated 16.11.2015 to Records, The Dogra Regiment for grant of Ordinary Family Pension from Army. In response to her petition, certain forms were forwarded to Mrs Mridula Bhardwaj on 16.05.2016 for completion and return. When no document was received by the Records, they approached Zila Sainik Welfare Office, Lucknow vide letter dated 23.10.2017, but despite protracted correspondence on the subject she failed to submit requisite documents for grant of family pension. Finally, family pension documents were submitted to the Dogra Records vide Zila Sainik Welfare Office, Lucknow vide letter dated 08.10.2018 which were returned vide letter dated 15.12.2018 for rectification and re-submission but the said documents were misplaced by wife of the deceased soldier. Thereafter, one blank set of family pension booklet alongwith the forms were again forwarded to her vide letter dated 03.01.2020 and reminder to this effect was issued on 08.04.2020 and 18.06.2020 but there was no response from her.

5. Present applicant, being legal heir of the deceased soldier, submitted petition dated 10.09.2022 intimating demise of his mother on 09.07.2021 and claiming arrears of family pension in respect of her deceased mother. In response to his petition, Records The Dogra Regiment approached PCDA (P), Allahabad on 04.10.2022 for issuing direction in context with grant of family pension arrears but no direction was received. This O.A. has been

filed for grant of arrears of family pension in respect of his deceased mother for the period 24.09.2012 to 09.07.2021.

6. Submission of learned counsel for the applicant is that applicant's father, who was in receipt of reservist pension from Army vide PPO No. S/23772/65, was re-employed with Indian Railway and after his retirement he was granted service pension w.e.f. 01.05.1989. It was further submitted that after death of his father (17.07.1993) his mother was granted family pension from railway department vide PPO No. 0189150088.

7. Learned counsel for the applicant further submitted that consequent to issue of policy letter dated 17.01.2013 applicant's mother became eligible for grant of dual family pension w.e.f. 24.09.2012 and accordingly, on 03.05.2016 she approached respondent No. 3 for grant of dual family pension. In turn respondent No. 3 sent one blank set of family pension booklet on 16.05.2018. It was further submitted that on 08.10.2018 required papers were submitted to respondent No. 3 through Zila Sainik Kalyan Evam Punarvas Office, Lucknow but before family pension could be granted his mother, who was suffering from cancer, died on 09.07.2021.

8. Learned counsel for the applicant further submitted that after death of his mother, applicant became entitled for grant of arrears of family pension in respect of his deceased mother for the period 24.09.2012 to 09.07.2021 in terms of policy letter dated 17.01.2013 which caters for grant of dual family pension.

9. On the other hand, learned counsel for the respondents submitted that after death of her husband Smt Mridula Bhardwaj (applicant's mother) submitted petition dated 16.11.2015 requesting for grant of family pension. In response to her petition Records The Dogra Regiment forwarded documents for processing her claim for grant of dual family pension but the same were misplaced by Smt Mridula Bhardwaj. It was further submitted that after several correspondence on the subject, pension papers were again made available to her which on being received by the Records The Dogra Regiment were returned on 15.12.2018 to Smt Mridula Bhardwaj for rectification and re-submission, but the said papers were never received duly rectified.

10. Learned counsel for the respondents further submitted that applicant's mother submitted a petition dated 30.03.2019 during her visit to Records The Dogra Regiment and stated that family pension claim documents which were returned by Records, had been misplaced. It was further submitted that in her petition dated 03.01.2020 she conceded that family pension claim documents were missed by her and she wanted to apply again for grant of family pension. Respondents' learned counsel further submitted that one blank set of family pension booklet alongwith the forms were again forwarded to her for correction and re-submission in triplicate through Zila Sainik Welfare Office, Lucknow but despite sending two reminders the required documents were never received till her death on 09.07.2021.

11. Learned counsel for the respondents further submitted that applicant submitted a petition dated 10.09.2022 to Records The Dogra Regiment and stated that his mother, Smt Mridula Bhardwaj passed away on 09.07.2021 and requested to grant the arrears of family pension of his mother in his favour being legal heir. Accordingly, Records the Dogra Regiment approached PCDA (P), Allahabad to furnish suitable directions to the applicant in context with grant of family pension arrears of his mother, however no directions were received from them till date. The learned counsel pleaded for dismissal of O.A. stating that applicant is not entitled to receive arrears of family pension in respect of his mother in view of paras 66, 67 and 91 of Pension Regulations for the Army, 2008 (Part-I).

12. Heard Shri R Chandra, learned counsel for the applicant and Shri Shyam Singh, learned counsel for the respondents and perused the records.

13. No. 3940797 Sepoy Dulo Prasad, being in receipt of service pension from Army vide PPO No. S/23772/65, was re-employed in the Northern Railways as Class-III employee. He was discharged from railway service on 30.04.1989 and granted service pension w.e.f. 01.05.1989 vide PPO No. 0189150088. The pensioner died on 15.07.1993.

14. Govt of India, Min of Def vide letter dated 17.01.2013 made provisions for grant of dual family pension w.e.f. 24.09.2012. Accordingly, Smt Mridula Bhardwaj (widow of the deceased soldier)

submitted petition dated 03.05.2016 to Records The Dogra Regiment for grant of family pension. In response to her petition, the Record Office sent a set of pension papers for completion and return. Pension papers were submitted to Record Office through Zila Sainik Welfare Office, Lucknow but the said papers were returned to widow of the deceased soldier on 15.12.2018 raising some observations. These papers were misplaced by Smt Mridula Bhardwaj which fact she conceded while her visit to Dogra Regiment Records on 03.01.2020. During her visit she submitted another petition dated 03.01.2020 for grant of family pension. Accordingly, one blank set of family pension booklet alongwith the forms were again forwarded to her for correction and submission in triplicate through Zila Sainik Welfare Office, Lucknow. Despite sending two reminders in this regard, pension papers duly rectified were not received by Records The Dogra Regiment till 18.06.2020. Since Smt Mridula Bhardwaj was suffering from cancer, she died on 09.07.2021.

15. Applicant submitted a petition dated 10.09.2022 to Records The Dogra Regiment in which he stated that his mother Smt Mridula Bhardwaj passed away on 09.07.2021 and requested for grant of arrears of pension of his mother in his favour being a legal heir. Accordingly, Records the Dogra Regiment approached PCDA (P), Allahabad on 04.10.2022 to furnish suitable directions for grant arrears of family pension to the applicant. However, as stated by the respondents no directions have been received from their office.

16. Govt of India, Min of Def vide letter dated 17.01.2013 issued letter for grant of dual family pension vide which dual family pension was made applicable w.e.f. 24.09.2012. Accordingly, PCDA (P), Allahabad issued circular No. 504 dated 17.01.2013 which reads as under:-

"1. Consequent upon issue of Govt of India, Ministry of Defence letter No 01(05)/2010-D(Pen-policy) dated 17.01.2013 (copy enclosed), the families of an Armed Forces Pensioners who got second re-employment in Central Civil Departments or State Govt/PSUs/Autonomous bodies/local Funds of Central/State Governments after getting retired/discharged from military service and were in receipt of ordinary family pension would be entitled to draw two family pension i.e. the family pension (Ordinary) from military side in addition to the family, if any, authorized by the re-employer for re-employed civil service subject to fulfillment of other prescribed conditions as hitherto.

2. There may be case where ordinary family pension already sanctioned to next of kin (NOK) of ex-serviceman has been stopped for payment/held in abeyance for sanction of family pension for civil service of the ex-serviceman being more beneficial. Such cases may be reviewed and submitted for continuance/grant of ordinary family pension to officer-in-charge, Grants-4 Section of this Office for necessary action along with following documents:-

(a) Corr/fresh LPC-cum Data-sheet duly supported with sheet roll.

(b) A certificate regarding grant/non-grant of family pension from re-employer along with family details or details of grant of family pension for civil service with the following details:-

(i) Name and address of the civil office where the ex-serviceman served after discharge from Armed Forces.

(ii) Death certificate of Ex-serviceman.

(iii) PPO No notifying family pension for civil service and name and address of PPO issuing authority.

(iv) Pension Disbursing Agency in case of Bank, name of Bank, Branch Address and Account Number.

(c) An application from widow for grant of family pension from Army side.

(d) Last payment certificate by PDA, in respect of ordinary family pension for military service indicating date upto which family pension was paid to, if pension was

sanctioned, name of family pensioner date of stoppage of family pension, PPO number notifying family pension must be clearly mentioned.

(e) Descriptive Roll of widow duly affixed with recent photograph.

3. The provision of this circular shall be effective from 24th September 2012."

17. Thus, from the aforesaid circular it is abundantly clear that Smt Mridula Bhardwaj (applicant's mother), who died on 09.07.2021, was eligible for grant of ordinary family pension from Army w.e.f. 24.09.2012. The record shows that during her life time she could not receive her entitled dues.

18. We find that since applicant's name is entered in service records of the deceased soldier vide Part II Order No. NE/18/5/2000, he being legal heir of the deceased pensioner Smt Mridula Bhardwaj is entitled to receive life time arrears of family pension in terms of Para 91 of Pension Regulations for the Army, 2008 (Part-I), which for convenience sake, is reproduced as under:-

"(a) In the event of death of family pensioner, the right to receive any arrears of family pension shall pass on to the eligible member of a family next in line in accordance with Regulation 66 of Pension Regulations for the Army, 2008 (Part-I).

(b) The succession certificate for payment of any arrears shall be required only in cases where there is no eligible member as defined in Regulation 66 above, after death of family pensioner."

19. In view of the above applicant, being legal heir of the deceased pensioner Smt Mridula Bhardwaj, is entitled to receive arrears of family pension for the period 24.09.2012 to 09.07.2021

i.e. with effect from the date dual family pension was made applicable to the date of death of the deceased pensioner.

20. The O.A. is **allowed**, accordingly with directions to the applicant to submit life time arrears claim to Records The Dogra Regiment through Zila Sainik Welfare Office, Lucknow within four weeks, if not already submitted. On receipt of pension arrear claim, respondents are directed to process claim of the applicant expeditiously and pay his entitled dues within a period of six months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum.

21. No order as to costs.

22. Miscellaneous application (s), pending if any, stand disposed of.

(Lt Gen Anil Puri)
Member (A)

Dated : 05.09.2023

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(Justice Anil Kumar)
Member (J)

RESERVED
Court No 2

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

O.A. No. 937 of 2022

Amit Bhardwaj
 By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Ors
 By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>05.09.2023</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Lt Gen Anil Puri, Member (A)</u></p> <p>Judgment pronounced. O. A. No. 937 of 2022 is allowed. For orders, see our judgment and order passed on separate sheets.</p> <p>(Lt Gen Anil Puri) Member (A) <i>rathore</i></p> <p>(Justice Anil Kumr) Member (J)</p>