

E- Court No. 1

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

Original Application No 293 of 2021

Monday, this the 3rd day of January, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt Roshani Devi, Mother of No 3207897 Late Sepoy Tarun
Kumar, R/o Vill & PO- Bhatona, District- Bulandshahar (U.P.)

..... Applicant

Ld. Counsel for the Applicant: **Shri KK Misra, Advocate**

Versus

1. Union of India through its Secretary, Ministry of Defence,
New Delhi.
2. The Chief of Army Staff, Army Headquarters, New Delhi.
3. Officer in Charge, Records, The JAT Regt, Bareilly.
4. PCDA (P), Draupadighat, Allahabad, (U.P.)
5. Smt Pooja Choudhary, W/o Late Sepoy Tarun Kumar,
Daughter of Sri Manvir Singh, Vill & Post- Manana
Jafrabad, District- Bulandshahar (U.P.)

..... Respondents

Ld. Counsel for the Respondents : **Ms Anju Singh,**
Central Govt Counsel.

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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:-

- “(i) To direct the respondents No 3 to disclose the details of WILL and Nomination made by the applicant’s son.
- (ii) Thereafter, to direct the respondents No 4 to divide and pay the benefits of service granted to the applicant’s son after his death equally as per his nomination or as per the provisions of pension regulations on the subject with effect from the dte these were sanctioned, i.e. 01.11.2020, with interest, as applicable.
- (iii) Any other relief which Hon’ble Court may think just and proper may be granted in favour of the applicant.
- (iv) Cost of the case may be awarded in favour of the applicant.”

2. The facts of the case, in brief, are that son of the applicant late Sep Tarun Kumar was enrolled in the Army on 31.03.2013. He was married to Smt Pooja Choudhary on 27.06.2015. Son of the applicant died on 01.11.2020 and his death was declared as a case of Battle Casualty. Smt Pooja Choudhary has one daughter and after death of Sep Tarun Kumar, Smt Pooja Choudhary is staying with her parents. Applicant represented her case for division of financial benefits and family pension but the same was not replied by the respondents. Being aggrieved, the applicant has filed instant Original Application for division of pension and other financial benefits.

3. Learned Counsel for the applicant submitted that son of the applicant late Sep Tarun Kumar was married to Smt Pooja Choudhary. She along with her husband made sacrifice in getting their son capable for joining Army. Her son in his nomination and WILL, added the name of the applicant for receiving the benefits of service, in case any eventuality arise. Despite all efforts of the applicant, Record Office refused to disclose the details of WILL and nomination to the applicant. All the entitled benefits of Battle Casualty have been released to Smt Pooja Choudhary. Applicant approached

Commandant, The JAT Regimental Centre, Bareilly and her case for division of pension was recommended by Commandant but till date no action has been taken. Late Sep Taun Kumar was only son of the applicant. Smt Pooja Choudhary left the applicant's house after death of her son. She made repeated efforts to bring her back to the applicant's house yield no results. Since the applicant lost her only son untimely, the entire affairs of the family got shattered. The applicant after death of her son is living in pathetic financial condition. After death of her son applicant was paid Rs. 10,0000/- (Rupees Ten lacs only) against Army Group Insurance Fund. Learned counsel for the applicant submitted that action on the part of the respondents rejecting division of family pension and financial benefits is illegal, unjust, improper and affecting the livelihood of the applicant which is violative of fundamental rights as guaranteed by Article 14 of the Constitution of India. Learned Counsel for the applicant prayed that directions be issued to respondents for division of family pension between Smt Pooja Choudhary (wife) and the applicant.

4. Per contra, learned Counsel for the respondents submitted that as per policy after marriage of Sep Tarun Kumar,

nomination for the Next of Kin/ Heir to family pension, Death cum retirement gratuity and WILL were changed in the name of his wife Smt Pooja Choudhary instead of his mother Smt Roshni Devi on the basis of declaration given by the deceased soldier and casualty to this effect was published. The couple was blessed with one child from their wedlock on 11.04.2019. Sep Tarun Kumar while serving in Operation Snow Leopard died on 01.11.2020 and his death was classified as Battle Casualty (Fatel) in accordance with Para 1 (g) of Appendix 'A' of Army Order 1/2003/MP of Army Headquarters letter dated 18.12.2020. Subsequently, all terminal benefits were paid to Next of Kin i.e. Smt Pooja Choudhary (wife). In addition, Smt Pooja Choudhary was granted Liberalized Family Pension Alongwith Central Govt Ex Gratia amounting to Rs, 35,000,00/-. Applicant preferred an application for division of Liberalized Family Pension between herself and widow (Smt Pooja Choudhary) on the basis of nomination executed by her deceased son during his life time and payment of some share of the death benefits. Recruiting Office, Meerut is investigating the matter and outcome is awaited. Now the applicant has filed O.A. No 293 of 2021 for directions to disclose details of WILL

and nomination made by her son and to divide and pay and terminal benefits between her and Smt Pooja Choudhary.

5. Learned counsel for the respondents submitted that as per Para 174 of Regulations for the Army 1987, (Revised), Special Army Instructions 8/S/90, Army order 4/91 and Army Order 23/2002, nomination for the next of kin was made by deceased soldier initially in the name of Smt Roshni Devi (mother) at the time of his enrolment which was cancelled and will was made in the name of Smt Pooja Choudhary (wife). On scrutiny of service records of Sep Late Tarun Kumar, it revealed that his father Shri Davendra Singh was also serving in Army and presently getting service pension and Smt Roshani Devi (mother of deceased soldier) is dependent upon him till his life and thereafter she will get family pension of her husband. Learned counsel for the respondent submitted that Smt Pooja Choudhary is legitimate nominee to get all terminal benefits and Liberalized Family Pension after death of Sep Tarun Kumar. Learned counsel for the respondents prayed that instant original application is misconceived and devoid of merit as such liable to be dismissed.

6. Heard learned Counsel for the parties and perused the documents available on record.

7. The question before us to decide is whether the applicant is entitled for division of financial benefits and liberalized family pension or not?

8. At this juncture, we would like to quote Regulation 46 of Pension Regulations for the Army, Part- II (2008) which deals with the procedure for division of pension. The relevant part of the said Regulation reads as under :-

DIVISION OF SPECIAL/LIBERALISED FAMILY PENSION

46. (a) In case there is a claim for division of special/liberalised family pension between the eligible heirs, the Integrated Headquarter Ministry of Defence (Army) in case of Officers and the Record Office in the case of Personnel Below Officer Rank shall investigate the claim through the Branch Recruiting Officer/Recruiting Organisation/Zila Sainik Board. The following documents will be forwarded to the Principal Controller of Defence Accounts (Pensions)-

(i) In case of Officer-

(1) Application from the claimant requesting division of special family pension.

(2) Sanction letter for division of special family pension from AG /PS4

(ii) In case of Personnel Below Officer Rank-

(1) Application from the claimant requesting division of special family pension.

(2) Family pension claim in the prescribed form in duplicate as at Appendix VIII to these Regulations.

(3) Sheet Roll

(4) Investigation report with the recommendations of the Recruiting Organisation/Zila Sainik Board showing

percentage of division of special/ liberalised family pension.

(b) The Principal Controller of Defence Accounts (Pensions) shall then authorise division of special/liberalised family pension through Pension Payment Order in favour of claimants for division of family pension, if otherwise admissible.

9. Family Pension is granted to the family of a Govt. servant in the event of his death while in service and also after retirement provided he was on the date of death in receipt of a pension or compassionate allowance.

1. *Definition of Family*
2. *Eligibility and Period of Grant*
3. *Missing Govt. Servant / Pensioner*
4. *Calculation Of Family Pension*
5. *Enhanced Family Pension*
6. *Model Calculation*
7. *Minimum/Maximum Limit*

Definition of Family

For the purpose grant of Family pension the 'Family' shall be categorised as under:-

Category -I

1. *Widow or widower, upto the date of death or re-marriage, whichever is earlier.*
2. *Son / daughter (including widowed daughter), upto the date of his / her marriage / re-marriage or till the date he / she starts earning or till the age of 25 years, whichever is the earliest.*

Category -II

3. *Unmarried / Widowed / Divorced daughter, not covered by Category -I above, upto the date of marriage / re-marriage or till the date she starts earning or upto the date of death, whichever is earliest.*
4. *Parents who were wholly dependent on the Government servant when he / she was alive provided the deceased employee had left behind neither a widow nor a child. Family pension to dependent parents unmarried/divorced/widowed daughter will continue till the date of death. Family Pension to Unmarried/ widowed / divorced daughters in Category II and dependent parents shall be payable only after the other eligible family members*

in Category I have ceased to be eligible to receive family pension and there is no disabled child to receive the family pension. Grant of family pension to children in respective categories shall be payable in order of their date of birth and younger of them will not be eligible for family pension unless the next above him / her has become ineligible for grant of family pension in that category.

Eligibility and Period of Grant

1. **Widow/Widower:** *Where a deceased Govt. servant is survived by a widow/widower, the widow/ widower shall be entitled to the award of family pension from the date following the date of death of the Govt. servant till death or remarriage which ever is earlier.*

2. **More than one Widow:** *Where a Hindu deceased Govt. servant leaves behind more than one widow the second and other widow are not entitled to family pension as a legally wedded wife under the Hindu Marriage act 1955. In other cases the award of family pension will be divided among the surviving widows in equal shares.*

3. **Divorced Wife:** *Divorced wife loses the status of a legally wedded wife and as such is not entitled to the award of family pension. However, the eligible child/children from a divorced wife shall be entitled to the share of family pension which the mother would have received at the time of death of her husband had she not been divorced.*

4. **Child / Children:** *On the death of the widow / widower the family pension shall become payable to the eligible child / children. Family Pension to children shall be payable in the order of their birth and the younger of them shall not be eligible for family pension unless the elder next above him/her has become ineligible for the grant of family pension.*

5. **Son / Daughter:** *The award of family pension to son / daughter including widowed / divorced daughter shall be payable till he / she attains the age of 25 years or upto the date of his / her marriage/remarriage or starts earning his/her livelihood, whichever is earlier.*

6. **Handicapped Child/Children:** *If the son or daughter of a Govt. servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living, the family pension shall be payable to such son or daughter for life. In case the handicapped daughter gets married, her family pension will be stopped from the date of marriage. The family pension to child who is suffering from disorder or disability of mind, is paid through a legal guardian.*

The award of Family Pension in respect of Handicapped child is not notified jointly along with the pension/Family Pension of his/her parents. It is notified as and when the contingency arises.

7. **Parents:** *When deceased Govt. servant left behind neither widow/widower and children, family pension shall be payable to the parents who were wholly dependent on the Govt. servant during the life time of the deceased Govt. servant, provided their income does not exceed Rs.3500/- p.m. and DR*

10. We have given our earnest consideration to the submissions of the learned counsel for the parties and gone through the rules on division of pension. We find that Pooja Choudhary is legally wedded wife of late Sep Tarun Kumar.

She has one daughter named Kuhu Choudhary. In the instant case, the applicant, Smt Roshni Devi is dependent on her husband Ex Havildar Davendra Singh who is getting service pension and applicant was not dependent on her son. Son of the applicant was married and having one child hence respondents have rightly granted pension to Smt Pooja Chouhan, wife of the deceased soldier. In these circumstances division of pension between applicant and wife is against the settled law hence, applicant is not entitled to relief prayed by her.

11. We also find that applicant's claim for division of Liberalized Family Pension has rightly been rejected by the respondents as per rule, which needs no interference.

12. In view of the above, the Original Application is devoid of merit and deserves to be **dismissed**. It is accordingly **dismissed**.

13. No order as to costs.

14. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: 03 January , 2021

Ukt/-