

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH, NAINITAL)**

Original Application No. 778 of 2022

Tuesday, this the 14th day of March, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

Ganesh Singh S/o Ex-pensioner No 4132454 late Shri Gopal Singh, R/o village-Dhari, PO-Barabe, District-Pithoragarh (UK).

..... Applicant

By Legal Practitioner – **Shri PS Bohra**, Advocate
Shri Prabhat Bohra, Advocate

Versus

1. Union of India through Secretary to the Govt, Ministry of Defence, South Block, New Delhi-110011.

2. The Officer-in-Charge Records, The Artillery Records, PIN-908802, C/o 56 APO.

3. The Principal Controller of Defence Accounts (Pension), Allahabad (UP).

..... Respondents

By Legal Practitioner – **Shri Rajesh Sharma**, Advocate
Central Govt Counsel.

ORDER (Oral)

1. By means of this Original Application, filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made prayer for the following reliefs :-

(i) To issue appropriate order or direction calling for the records and the impugned rejection order dated 28.02.2022 of the LTA pension be declared null and void ab-initio being contrary the spirit and intent of the Para 111 of the Pension Regulation Part-I, 2008 and principles of natural justice and passed without application of mind in arbitrary manner.

(ii) To issue appropriate order or direction(s) and the applicant/petitioner be granted the LTA pension of the widow-claimant who had died on 15.03.2013 as she had been illegally deprived of her fundamental rights as guaranteed under the Constitution of India on account of the negligent attitude of the respondents despite of the valid entitlement as widow under CCS Rule 54 and release the LTA for widow with 12% interest p.a. on the arrear till date of payment.

(iii) To issue appropriate order or direction any other relief, which this Hon'ble Armed Forces Tribunal may deem fit and proper on the facts and circumstances and adequate compensation as damages to the tune of Rs 5,00,000.00 (Five Lakhs) against the mental agony and injury caused to the deceased in her lifetime by not sanctioning the pension to meet the ends of justice.

(iv) Cost of the petition be awarded in favour of the petitioner.

2. Brief facts of the case are that father of the applicant was enrolled in the Regiment of Artillery on 16.02.1948 and he was discharged from service on 18.02.1965 (FN) on fulfilling the conditions of enrolment under Rule 13 (3) III (i) of Army Rules, 1954. He was in receipt of service pension vide PPO No. S/2128/1965 dated 23.01.1965. The pensioner died on 14.05.2011. After death of the deceased

soldier Smt Khema Devi, whose name is entered in the Army records, submitted petition dated 02.05.2012 for grant of family pension to which she was advised to submit claim documents through Zila Sainik Welfare Office along with death certificate. Consequently, Smt Khema Devi submitted aforesaid claim documents through Zila Sainik Welfare Office, Pithoragarh vide letter No 2/1/ZSW/CT dated 13.06.2012. Further, certain requisite documents for grant of family pension were received vide 14 MECH INF (16 JAK RIF) letter No 41324548/Pers dated 19.11.2013. However, she died on 15.03.2013 without getting family pension. Thereafter, applicant claiming to be only son/legal heir of the deceased soldier came forward for the grant of life time arrear of family pension in respect of his deceased mother. Applicant had submitted petition dated 19.01.2022 for grant of life time arrears but it was rejected vide letter dated 28.02.2022, hence this O.A. has been filed.

3. Learned counsel for the applicant submitted that applicant is the sole claimant of life time arrears of family pension which his mother was entitled to, but due to late processing of documents on the part of the respondents she died before her documents for grant of family pension could be processed and finalized. It was further submitted that applicant's father, who was a pensioner, died on 14.05.2011 i.e. prior to death of his mother. Thereafter, claim with

regard to grant of family pension in respect of her mother Smt Khema Devi (NOK of the deceased soldier) was processed through Zila Sainik Welfare Office, Pithoragarh but she died on 15.03.2013 before granting family pension.

4. Learned counsel for the applicant further submitted that applicant, who is the legal heir of the deceased Ex-serviceman (ESM), is entitled to life time arrears of family pension for the period 15.05.2011 to 15.03.2013 which was due to his deceased mother. He pleaded for grant of life time arrears.

5. On the other hand, learned counsel for the respondents submitted that the deceased soldier, who was in receipt of service pension vide PPO No. S/2128/1965, died on 14.05.2011. He further submitted that on demise of the pensioner his NOK Smt Khema Devi, whose name is entered in service record, submitted petition for grant of family pension but in turn she was advised to submit pension documents through Zila Sainik Welfare Office. It was further submitted that widow of the deceased soldier submitted pension claim documents through Zila Sainik Welfare Office, Pithoragarh vide letter dated 13.06.2012 and further certain requisite documents for grant of family pension were received vide 14 MECH INF (16 JAK RIF) letter dated 19.11.2013 i.e. much after the death of Smt Khema Devi (widow of the deceased soldier). Therefore, her claim for

grant of family pension could not be finalized due to non receipt of the required documents in stipulated period.

6. Learned counsel for the respondents further submitted that grant of life time arrears of family pension to applicant is not tenable in terms of Para 111 of Pension Regulations for the Army, 2008 (Part-I) as per which 'if the claim of a widow fails to establish Special Family Pension, through her negligence or omission, before her death, the amount of pension to which she would have been entitled, if living, shall not be allowed to her representative'. It was further submitted that since widow of the deceased soldier died on 15.03.2013 before finalization of her claim for grant of family pension, processing of claim for grant of life time arrears of family pension in favour of the applicant is not feasible at this belated stage owing to policy constraints.

7. The other limb of arguments advanced by learned counsel for the respondents is that since name of the applicant is not recorded in service documents of the deceased soldier, he is not entitled to receive life time arrears of family pension in respect of her deceased mother. He pleaded for dismissal of O.A.

8. Heard Shri PS Bohra and Shri Prabhat Bohra, learned counsel for the applicant and Shri Rajesh Sharma, learned counsel for the respondents and perused the records.

9. No. 413245 Gnr Gopal Singh was enrolled in the Army on 16.02.1948. He was discharged from service on 18.02.1965 (FN) after completion of 17 years qualifying service for which he was granted service pension vide PPO No. S/2128/1965 dated 23.01.1965. He died on 14.05.2011. After death of the soldier, Smt Khema Devi whose name is entered in service documents of the deceased soldier, applied for grant of family pension. She was advised to submit pension claim documents through Zila Sainik Welfare Office which she submitted on 13.06.2012. Thereafter, certain requisite documents for grant of family pension were received vide 14 MECH INF (16 JAK RIF) letter dated 19.11.2013 i.e. after death of Smt Khema Devi. In this regard we find that the deceased lady had taken steps for grant of family pension but it could not be granted during her life time.

10. Respondents' first contention for denial of life time arrears is that in view of Para 111 of Pension Regulations for the Army, 2008 (Part-I), applicant is not entitled to life time arrears of family pension of her deceased mother. In this regard we find that since applicant's deceased mother had submitted petition for grant of family pension on 02.05.2012, therefore, there being no negligence or omission on her part, the aforesaid Para 111 (supra) is not applicable in this case.

11. Respondents' other contention for denial of life time arrears is that since applicant's name is not entered in service documents of the deceased soldier, he is not entitled to receive life time arrears of family pension in respect of his deceased mother. In regard to this, we have perused Aadhar Card, PAN Card of the applicant and certificate issued by Sub Divisional Magistrate, Pithoragarh dated 11.11.2013 establishing that the applicant is the legal son of the deceased ESM and his mother who died on 14.05.2011 and 15.03.2013 respectively. In the circumstances the applicant is entitled for grant of life time arrears of family pension on demise of his mother. The aforesaid certificate issued by Sub Divisional Magistrate also mentions date of deaths in respect of his parents.

12. We have scrutinized the documents placed before us and upon perusal we find that applicant, being legal heir of the deceased ESM, seems to be entitled to grant of life time arrears of family pension in respect of his deceased mother.

13. In view of the above, the O.A. is **allowed**. The applicant is held entitled to grant of life time arrears of family pension in respect of his deceased mother for the period 15.05.2011 to 15.03.2013 subject to verification by the respondents. The respondents are directed to grant aforesaid dues within a period of four months on receipt of a

certified copy of this order. Default will invite interest @ 8% p.a.

14. No order as to costs.

15. Miscellaneous application(s), pending if any, stand disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated: 14.03.2023

rathore

(Justice Anil Kumar)
Member (J)