

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT
NEW DELHI

O.A. No. 187/2009

With

O.A. No. 122/2010

With

O.A. No. 27/2010

Smt. Saroj Devi

.....Applicant

Versus

Union of India & Others

.....Respondents

For applicant: Sh. S.M. Hooda, Advocate.

For respondents: Sh. Anil Gautam, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER
04.08.2010

1. All the three cases involved identical question of law therefore, they are disposed of by this common order.

2. For convenient disposal of all the three cases, the facts given in the case of Smt. Saroj Devi vs. Union of India & Others (O.A. No. 187/2009) are taken into consideration. Brief facts of the case are that applicant's late husband Nk. Anil Kumar

Lamba, No. 15125406A was enrolled in regular Army on 15.10.1995 and married to the applicant on 18.06.2000. The husband of the applicant died on 21.05.2002 and the widow i.e. applicant was granted ordinary family pension w.e.f. 22.05.2002. Thereafter, the applicant remarried on 23.03.2005 and accordingly the respondents was informed about the remarriage. Thereafter, the Bank stopped her pension. A legal notice was served by the applicant but without any result. Thereafter, applicant filed this Original Application before this Tribunal and prayed that the respondents may be directed to release the pension w.e.f. 22.05.2002 and with revised rates from 01.01.2006 with arrears and interest.

3. Learned counsel for the respondents contested the petition and submitted that applicant's husband died on 22.05.2010 on account of consuming Aluminum Phosphide and a Court of Inquiry was held and in this Court of Inquiry the death of the applicant's husband was not found to be attributable to Military Service by the Station Commander, Delhi Cantt. Thereafter, applicant remarried as per Hindu Rites to another person and her ordinary pension was stopped. It is submitted by learned counsel

for the respondents that on account of her remarriage, she is not entitled to family pension.

4. Now only question arises for consideration is whether the applicant is entitled to ordinary pension after remarriage or not. Learned counsel for the applicant has submitted that this is a social measure and this condition should not come in her way. Learned counsel for the applicant invited our attention to the Circular passed for implementation of the Sixth Pay Commission dated 12th November, 2008 wherein it is mentioned that the remarriage is no more condition to prevent the family pension. In that connection, learned counsel for the applicant invited our attention to para 11.3 of the aforesaid Circular.

5. Learned counsel for the respondents submitted that this Circular issued by Government of India dated 12th November, 2008 lays down the condition that this Circular will be applicable to the persons who are retiring or dying in harness on or after 01.01.2006. Therefore, applicant is not entitled to the ordinary family pension on her remarriage.

6. Learned counsel for the applicant has submitted that the condition of 01.01.2006 is a condition which has not been made applicable for other kinds of pension i.e. Special Family Pension and Liberalised Family Pension but it has been imposed with regard to ordinary family pension. This condition is nothing but discriminatory. Learned counsel for the applicant has relied on the case of **Union of India Vs. SPS Vains** [2008(9) SCC 125]. This decision has been based on Constitution Bench decision given in the case of **D.S Nakara Vs. U.O.I** (AIR 1983 SC 130). In this case, their Lordships have held that such condition is arbitrary and has been struck down. Following this decision of Hon'ble Supreme Court, this Bench also in the case of Lt. Col. P.K. Kapoor Vs. Union of India (T.A. No. 139/2009) has also struck down the imposition of condition of 01.01.2006 being arbitrary and violative of Article 14 of the Constitution. Similarly in the present case, we do not see the rationale in the imposition of condition of 01.01.2006 in the case of ordinary family pension whereas in other pensions like Special Family Pension and Liberalised Family Pension such condition has not been imposed. Even otherwise also we do not see any rationale that a person

who dies after 01.01.2006, his widow will get pension whereas the person who was died prior to 01.01.2006, his widow will not get any pension. This is nothing but arbitrary. We do not think this kind of condition will be sustained. Accordingly, we set aside the order of making discrimination on the basis of cut off date since pension is welfare measure and for welfare measure there should be no discrimination for the persons who are similarly situated on the basis of artificial cut off dates. Therefore, we are of the opinion that applicant is entitled family pension subject to the conditions laid down in Clause 11.3 of the Circular dated 12th November, 2008. For the emancipation of women, such kind of condition should not have been imposed. The petition is allowed. Applicant will be entitled to family pension subject to conditions in Clause 11.3 of the Circular dated 12.11.2008 from 01.01.2006.

7. In the case of Maya Devi Vs. Union of India & Others (O.A. No. 122/2010), applicant's husband late Rfn. Surender Patter was enrolled in the regular Army as Combatant Soldier and he died on 24.09.2005. Applicant remarried on 10.01.2008 and her pension which she was getting earlier was discontinued on account of remarriage. Therefore, after filing of the representation

and giving legal notice to the respondents, applicant approached this Court by filing this application. In this case also, applicant is entitled to get family pension in terms of the aforesaid reason given in the case of Saroj Devi vs. Union of India (O.A. No. 187/2010) from 01.01.2006.

8. In the case of Meenakshi Devi Vs. Union of India & Others (O.A. No. 27/2010), applicant's husband late Manoj Kumar was enrolled in the regular Army as Sawaar on 15.03.1999 and the applicant married to him on 25.05.2001. Applicant's husband Sawaar Manoj Kumar died on 02.04.2001. Thereafter, she got remarried on 08.07.2003. Her pension was stopped on account of her remarriage. Therefore, she filed representation and given a notice and approached this Tribunal by filing the present application. This application is also allowed in terms of the reasons mentioned in the aforesaid case of Saroj Devi vs. Union of India (187/2009).

9. Arrears of all the three applicants may be worked out and paid to them with interest @ 12% p.a. as far as possible within the period of three months. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
August 04, 2010.