

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

T.A.No. 372 of 2010

[Arising out of WP(C)No. 4724 of 2007 of Delhi High Court]

Shri Ram Parshad

...Petitioner

Versus

Union of India & Ors.

...Respondents

For the Petitioner : Lt. Col. (Retd.) VD Sharma, Advocate

For the Respondents: Mr. Ankur Chibber, Advocate.

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, ADMINISTRATIVE MEMBER

JUDGMENT

1. Petitioner by this Writ Petition has prayed that he may be granted family pension with effect from 27th March, 2004 till life.

2. Brief facts which are necessary for disposal of this petition are that petitioner is the father of deceased soldier Sanjay Kumar (No. 15670385). Deceased soldier Sanjay Kumar was enrolled in the Army (Corps of Signal), Jabalpur, Madhya Pradesh, with effect from 5th July, 2001 and after basic training posted to 14 Corps O.P. Signal Regiment. He died on the night of 26th / 27th March, 2004 at the age of 25 years under mysterious circumstances. The total service put in by deceased was two years eight months and twenty days. The cause of death was on account of poison of substance.
3. It is alleged that deceased soldier was married with one Renu and his marriage was solemnised in the year 2001. She was issueless and she also died on 27th March, 2004 at parent's house. Since the deceased

soldier died with issueless and his wife also died, therefore, no Family Pension could be released to them.

4. Petitioner, who is father of deceased soldier, applied for Family Pension and same was not given. Consequently, he filed this petition for grant of Family Pension.
5. A reply was filed by the respondent and the respondent has pointed out that the deceased soldier was enrolled in Army. While serving with 14 Corps Op Signal Regiment, he was sent on 30 days part of annual leave with effect from 19th February, 2004. On expiry of the said leave he reported back to 229 Transit Camp on 20th March, 2004 for onward movement to his unit i.e. 14 Corps Op Sig Regiment. Accordingly, the petitioner reported to 229 Transit Camp on 20th March, 2004.

6. Due to non-availability of courier/convoy to his Regiment he remained in Transit Camp upto 25th March, 2005. On 26th March, 2004 he absented without leave and deserted the Army and reached his home. On reaching at home his dead body was found in the field of his father on 27th March, 2004. Since the deceased soldier left the Transit Camp without permission, he was declared absentee without leave and a Court of Inquiry was conducted by the Station Headquarter, Rohtak.
7. It is alleged by the respondent that since the son of the petitioner died while absent without leave, therefore, the father is not entitled to the Family Pension.
8. Petition was transferred from Delhi High Court to this Tribunal, after its formation.

9. Learned counsel for the petitioner has invited our attention to *Army Instruction 51 of 1980*, which deals with '*Grant of Ordinary Family Pension*'. Army Instruction 51 of 1980, which is relevant, reads as under:

"In supersession of all existing orders on the subject, the family pensionary benefits, as detailed in paragraph 2 and subsequent paras will be admissible to the families of the Armed Forces personnel (excluding families of reservists), who were in services on 1.1.1964 or who joined/join service thereafter and who died/die while in service or after retirement with a retiring, disability or invalid pension/special pension account of causes which are neither attributable to nor aggravated by service."

Detailed procedure has been prescribed that what shall be rates of Ordinary Family Pension. But clause 6 of Army Instruction 51 of 1980 says that:

"Family for the purpose of family pension means:

- (i) *Wife/Husband provided the marriage took place before retirement and also judicially separated wife/husband if the judicial separation was granted not on ground of adultery and the person surviving was not held guilty of committing adultery.*
- (ii) *Sons below the age of 25 years.*
- (iii) *Unmarried daughters below the age of 25 years.*
- (iv) *Sons and daughters adopted legally upto the age limit (ii) and (iii) above.*

Note: *Sons or daughters born after retirement and also a posthumous child are entitled to Family Pension.*

Clause 7 of Army Instruction 51 of 1980 says that:

"The pension will be admissible:

- (a) *To a widow or widower upto the date of death or disqualification whichever is earlier;*
- (b) *To a son until he attains the age of 25 years;*
- (c) *To an unmarried daughter until she attains the age of 25 years or marriage whichever is earlier;*

Provided that if a son or daughter 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 even after attaining the age of 25 years the ordinary family pension shall be payable to such son or daughter for life. [MOD letter No. N49601/AG/PS-4(e)/3363/B/D(Pens/serv) dated 7/8/87].

Clause 13 of Army Instruction 51 of 1980, which is also relevant, further says that *"families of individuals who have committed or commit suicide will also be eligible for pensionary benefits detailed in this Instruction."*

Significantly, in this order parents have not been made eligible for Ordinary Family Pension.

10. The contingency which is before us is that in case the deceased soldier does not leave behind any widow or any issues and only the next kin is the parent, then, in that

case, whether the parents will be eligible for Family Pension or not.

11. Learned counsel for the respondent has submitted that since parents are not included in the definition of the Family Pension, as mentioned above, then, in that case, we cannot read the general definition of Family to include the parents, therefore, the order which confines to the Members of the Family, as given in this order, should only be entitled to Family Pension.
12. Learned counsel for the petitioner submitted that it is true that specifically parents have not been included in the definition of the family, but, in Regulation 216, in case of *Special Family Pension*, parents i.e. mother and father have been included in the definition of the family. Therefore, it appears that there is bonafide omission for

not including parents in the definition of family in the aforesaid order and, there appears to be no rationale that why parents have not been included in the definition of Family Pension under the Ordinary Family Pension, whereas, in the case of Special Family Pension the parents are included. Therefore, this is a case of omission and in cases of omission court can supply the necessary lacunae for advancing the cause of justice.

13. It is true that ordinarily we would not expand the definition of Family given in this order. But in the definition of family under Special Family Pension parents have been included in the definition of the family given in Regulation 216. Regulation 216 reads as under:

"216. Eligible members of the family: 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.*

Note 1: *The term "widow" in the above or any other regulation in this sub-section in respect of special family pensionary awards shall be deemed to include such a widow who was married after the individual's discharge/invalidment.*

Note 2: *The term "child" used in the above or any other regulation in this subsection in respect of special family pensionary awards shall be deemed to include such a child born out of a marriage after discharged/invalidment of the individual.*

Note 3: *The term "father" and "mother" or "parents" used in the above or any other rule in this sub-section shall also be deemed to include such putative parents (or surviving parents as the case may be) as had not contracted a lawful marriage, but were living as husband and wife at the time of, or got lawfully married subsequent to, the conception of deceased member of the forces."*

We do not see any reason why, in case of Ordinary Family Pension, parents are not included

14. In a case like the present one when the father has lost his child, without there being any issue, then the next kin are parents. We do not see any reason why parents, who are alive, should be ignored for grant of Ordinary Family Pension. This appears to be a bonafide omission.
15. In this connection learned counsel for the petitioner has invited our attention an order No. B/38207/AG/

PS4(b)/931/B/D(Pens/Serv) dated 26th August, 1998, issued by Ministry of Defence, on the recommendation of 5th Central Pay Commission, and clause 4 of the order makes the parents and widowed/divorced daughters eligible for family pension w.e.f 1.1.1998. Clause 4 of the order dated 26th August, 1998 reads as under:

"4. Admissibility of ordinary family pension to parents and widowed/divorced daughter will be effective from 1.1.1998 subject to fulfilment of other usual conditions. The cases where ordinary family pension has already been granted to sons/daughters after 1.1.1998, before issue/implementation of this letter without imposition of earlier condition need not be reopened."

16. Therefore, in view of the subsequent order that leaves no manner of doubt that the parents of the deceased soldier are also entitled to the benefit of Family Pension.

17. In this connection learned counsel for the petitioner drawn our attention to a decision of Punjab and Haryana High Court, in the case of *Jagan Singh v. Union of India & Ors.*, wherein, grant of Family Pension was upheld but court declined to grant Special Family Pension.
18. Since the Government Order dated 26th August, 1998 makes it clear that parents are also entitled to pension with effect from 1.1.1998, therefore, there is no reason why authorities denied this Family Pension to the petitioner.
19. In this connection our attention was invited to a decision of the Apex Court in the case of *State of H.P. and Anr. V. Kedar Nath Sood and Anr.* [1998 (2) SCC 361], which does not help the petitioner.

20. Now the question of payment of Ordinary Family Pension to the parents is no more remains to be *res integra* i.e. clinched by order dated 26th August, 1998 of Ministry of Defence, Government of India. Accordingly, we allow this petition and direct that the respondents should calculate the Ordinary Family Pension of the parents of the deceased soldier (Sanjay Kumar - No. 15670385) and be paid with interest @ 12%. We would have ordinarily confine the benefit for three years from the date of filing this Writ Petition, but, looking to the advanced age of the petitioner and the fact that this order was not available with the petitioner, therefore, we direct that all the amount of Family Pension of the parents of the deceased Sanjay Kumar(No.15670385) should be worked out with effect from 1st January, 1998 and shall be paid to the

petitioner with 12% interest. Petition is allowed. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
26th March, 2010