

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

B.

OA 1434/2022

Dr Sonia Sabarwal D/o
Late Wg Cdr Vijay Janmeja
Versus
Union of India & Ors.

... Applicant

... Respondents

For Applicant : Mr. Indra Sen Singh, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C. P. MOHANTY, MEMBER (A)

ORDER
20.10.2023

Vide our orders of even date, we have dismissed the OA. Faced with the situation, learned counsel for the applicant makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT. GEN C. P. MOHANTY]
MEMBER (A)

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OA 1434/2022

Dr. Sonia Sabarwal Applicant
D/o Late Wg Cdr Vijay Janmeja
VERSUS
Union of India & Ors Respondents

For Applicant : Mr. I.S. Singh, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

Dated: 20 October , 2023

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

OA 1434/2022

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this application claiming grant of family pension after death of her parents including arrears of family pension with effect from 13th December, 2021, the date on which she took divorce from her husband. Further direction sought for is, continue to pay full family pension, i.e., 100 per cent of the family pension until she remarries or until her death, whichever is earlier and to pay interest at the rate of ten per cent on the arrears of family

pension with effect from 13th December, 2021 and to credit the same in her bank account as detailed in para 8(c) of the prayer clause. The final last prayer is to direct the respondents to pay all consequential benefits to the applicant as may be due to her as the recipient of family pension qua her father late Wg Cdr Vijay Janmeja. She also claims grant of CSD and ECHS facilities.

2. Facts in brief indicate that Late Wg Cdr Vijay Janmeja was commissioned in the Indian Air Force as an officer on 26th December, 1965 and was married to Mrs. Padma Janmeja, applicant's mother, on 23rd April, 1966. Applicant's elder sister – Ms. Rachna Datta was born on 25th March, 1969 and the applicant is the second child of her parents born on 22nd November, 1974. Details of the applicant's father service certificate have been filed as Annexure A-3 to substantiate the aforesaid contention.

3. Late Wg Cdr Vijay Janmeja took voluntary retirement from Air Force service on 15th June, 1989 after putting in 24 years of service. He was granted pension in accordance to the Rules and Regulations for his life. Copies of the PPOs have been collectively filed as ***Annexure A-4***. It is further the case of the

applicant that her elder sister Ms. Rachna Datta was married to Mr. Rajnish Datta on 3rd July, 1993. She is now blessed with two children; a son and a daughter, from the said wed lock and is living a happy married life with her husband and children. As far as the applicant is concerned, she got married to Mr. Asheesh Sabarwal and started staying with her husband in her matrimonial house. Two girl children, namely, Ms. Kashish Sabarwal on 12th November, 2003 and Ms. Jiya Sabarwal on 16th February, 2010 were born out of this wed lock.

4. Late Wg Cdr Vijay Janmeja passed away on 19th January, 2012 and as he was survived by his widow – applicant's mother Ms. Padma Janmeja, who was granted ordinary family pension in accordance to the Rules with effect from 20th January, 2012. The mother of the applicant continued to receive the same until her death on 28th April, 2021. Documents evidencing all these factors have been brought on record as *Annexures A-5 to A-7*.

5. It is further the case of the applicant that from the year 2012, a matrimonial dispute has developed between the applicant and her husband on account of various factors which included ill treatment meted out to her by her husband. As all

efforts put by the applicant did not yield any positive result, unable to bear the mental and physical cruelty perpetuated by her husband, the applicant was compelled to leave her matrimonial house and shift to her mother's place along with her daughters sometime in May 2014.

6. After she shifted to her mother's house, it is the case of the applicant that her husband stopped supporting her and her two daughters. Accordingly, the applicant was dependent upon her mother and the family pension received by her for maintaining herself and her children. However, at this point of time, it may be taken note of that the applicant is a Doctor (Dentist) by profession and her credentials are available on record. Be that as it may, it is the case of the applicant that on account of the cruelty and acts of commission and omission, which included domestic violence meted out to the applicant, the applicant raised complaints, however on 9th May, 2017 the applicant's husband filed a divorce petition in the Court of District Judge (FC), Gurugram against the applicant on the ground of desertion. Copy of the divorce petition is filed as **Annexure A-8**. Further grievance of the applicant is that as things stood according to the details mentioned hereinabove, applicant's

mother Mrs. Padma Janmeja passed away on 28th April, 2021 and after her death the family pension payable to her was stopped. In the meanwhile in the divorce proceedings pending in the Family Court at Gurugram, a settlement was arrived at and by way of mutual consent a decree of dissolution of marriage, on the terms and conditions agreed to between the parties, was passed on 13th December, 2021. Accordingly, the proceedings of divorce at Gurugram were shown as withdrawn vide *Annexure A-11* on 19th July, 2021 vide order passed on 19th July, 2021. A copy of the order passed on 13th December, 2021 dissolving the marriage is filed as *Annexure A-12*. It is the case of the applicant that after her divorce she has remained a single unmarried woman till date, she does not intend to get in matrimonial alliance and is staying alone with her two daughters and is looking after them. On account of her financial difficulties and as the respondents stopped the family pension after the death of applicant's mother, the applicant, who claims to be a qualified Dentist but does not practice dentistry after divorce, has claimed family pension in accordance to the notification issued by the respondent, Government of India, Ministry of Defence

on 3rd February, 1998 (*Annexure A-14*). Further reference is made out to notification dated 31st January, 2001 (*Annexure A-15*) and a policy letter dated 14th December, 2012 (*Annexure A-16*) and other documents to say that a divorced daughter who is unable to maintain herself and who is living in harness is also entitled to family pension after death of her parents who got family pension. On the ground that the applicant even though a qualified Dentist has stopped practicing dentistry after her divorce, is a single parent looking after her two grown up children who are 12 and 20 years of age at the time of filing of this OA on 1st July, 2022 has filed this application and the reliefs, as detailed herein above, are claimed.

7. The respondents have filed a detailed counter affidavit and it is their contention that as per the record and family details of Wg Cdr Vijay Janmeja, his family consisted of his wife – Mrs. Padma Janmeja and two daughters, namely, Ms. Rachna Janmeja and the applicant Ms. Sonia Janmeja. After the death of Wg Cdr Vijay Janmeja his wife Mrs. Padma Janmeja was in receipt of the family pension and according to the respondents in accordance to the policy contained in

Annexure R-3 dated 23rd July, 2019 a widow, divorcee or unmarried daughter above the age of 25 years of an armed force personnel is eligible for grant of family pension after demise of both of her parents subject to the following conditions:

- “(i) The family pension to unmarried/widowed/divorced daughters above the age of 25 years shall be payable only after the other children below the age of 25 years have ceased to be eligible to receive family pension.*
- (ii) There is no disabled child to receive family pension.*
- (iii) Family pension to unmarried/widowed/divorced daughters shall be payable in order of their date of birth and younger of them will not be eligible unless the next above her has become ineligible for grant of family pension.*
- (iv) She should not have been married/re-married.*
- (v) Her income from all the sources should not exceed the minimum pension i.e. 9,000 plus dearness relief (DR) as applicable from time to time.*
- (vi) She was dependent on her last parent at the time of death.”*

8. It is the case of the respondents that according to the inquiry conducted and intimation received from the applicant and as per the income certificate filed by the applicant herself, as her income is more than Rs.9,000/- per month, she is not entitled to any family pension. It is the contention of the respondents that according to their information filed

as document MA-2 to the additional affidavit filed on 12th April, 2023, the applicant is in receipt of rental income of Rs.1,16,065/- per month and in support thereof they have brought on record a detailed investigation report conducted in the matter filed vide Annexure MA-2 dated 5th January, 2023 to indicate the following conclusion:

“3. Detailed investigation: Staff of this unit visited Ridgewood Estate, DLF Phase IV Gurugram (Haryana) and carried out detailed investigation into the case. The following facts were emerged during investigation:-

(a) Inquiry from Mrs. Sonia Sabarwal: Staff of this unit met with Mrs. Sonia Sabarwal D/o Late Wg Cdr Vijay Janmeja (10021) at flat No.J/94, Ridgewood Estate, DLF Phase IV Gurugram. It was revealed that Mrs. Sonia Sabarwal staying with two daughters Ms. Kashish aged 19 yrs studying at Narsee Monjee College Mumbai and Ms Jiya aged 13 yrs studying in Sri Ram School, Gurugram.. Mrs. Sonia Sabarwal stated that she is staying in this flat on rent after divorce from her husband since Sep. 21. She received parental property i.e. Flat No.J/60, First Floor, Saket, New Delhi-110017 after death of her parents. She is getting 73,000/- per month as rent on this property. The copy of rent agreement has been obtained and annexed as Exhibit A. Smt. Sonia Sabarwal also received a property at SCO No.109, Vipul Trade Centre, Sector 48 Sohna Gurugram Road, Gurugram during her divorce settlement and she is getting Rs.43065/- pm as rent on this property. Copy of payment receipt was obtained and annexed as Exhibit B. Bank statement of Smt Sonia Sabarwal of her account No.1546000100087765 of Punjab National Bank, New Delhi was obtained and annexed as Exhibit C.

(b) Discreet Inquiry: Discreet inquiry was also carried out from the other resident of the area and

Sh. Pankaj Kumar, Manager Ridgewood Estate Condominium Association and revealed that the owner of Flat No.J/94 is Sh. Rabindra K. Sharma and presently Mrs. Sonia Sabarwal is staying with her daughter in this flat on rent. On inquiry about other source of income of Smt. Sonia Sabarwal, they stated that she is housewife and not working anywhere.

5. Conclusion:- During inquiry it was revealed that Smt. Sonia Sabarwal is staying along with one daughter at Flat No.J/94, Ridgewood Estate, DLF Phase-IV Gurugram. She owned two properties at Saket, New Delhi (received from her parents) and Vipul Trade Centre, Sohna Gurugram Road, Gurugram (received during her divorce settlement). She is receiving total Rs.1,16,065/- as rent from these properties. As per available records and inquiry she is not having any other source of income.”

Accordingly, it is the case of the respondents that the applicant is not entitled to any benefit as she does not fulfills the criteria laid down for grant of family pension and also on account of fact that her monthly income exceeds Rs.9,000/-.

9. Mr. I.S. Singh, learned counsel for the applicant, argued that fixation of a ceiling in the matter of receiving of family pension is unsustainable in law. When no ceiling limit is fixed for the purpose of grant of ordinary family pension; then fixing a ceiling limit for special family pension or liberalized pension and denying family pension to the applicant is unsustainable in law. He places reliance to canvas the aforesaid proposition on a judgment of the Punjab and Haryana High Court in the case of

Kartar Kaur and Anr. Vs. Union of India and Ors. (CWP No.19665/2009) decided on 3rd January, 2011 wherein it has been observed by the Hon. High Court that a wife cannot be denied the benefit of ordinary family pension only on the ground that she is getting one family pension after death of her son also and the limit of family pension received by her, i.e., her income is more than Rs.9,000/- per month. Similarly, reliance is placed on an order passed by this Tribunal also in the case of Smt Santosh Devi Vs. Union of India and Ors. (OA No.418/2015) decided on 27th May, 2019 wherein based on the law laid down by Hon. Punjab and Haryana High Court in the case of Kartar Kaur (supra) ordinary family pension has been directed to be paid to the applicant on the ground that merely because the combined income of the parents is more than the prescribed limit, ordinary family pension cannot be granted. Similar view is taken by another Bench of this Tribunal in the case of Mrs. E. Rama Devi Vs. Union of India and Ors. (OA No.1090/2018) decided on 21st March, 2022 is also relied upon to advance identical contention. Finally, taking us through the documents available on record, learned counsel

for the applicant submitted that in this case the limit fixed cannot be a ground for denying family pension to the applicant.

10. We had heard the matter at length and reserved the case for orders on 24th April, 2023. However, while processing the case for preparing the judgment, we observed certain factors and, therefore, a detailed order was passed on 25th April, 2023 and parties were directed to submit the following information or documents and we directed the parties to file the documents along with additional affidavits.

(a) A copy of the petition filed by applicant's husband Shri Asheesh Sabarwal under Section 13(B) of Hindu Marriage Act based on which the Judgment annexed Annexure - A12 dated 13.12.2021 was passed by the Family Court i.e. the Court of Additional Principal Judge, Family Court, Gurugram, and the decree issued available at page 44. Apart from the petition filed by the applicant's husband under Section 13(B) all enclosures including the settlements entered into between the applicant and her husband based on which the marriage was dissolved should also be filed.

(b) The income tax returns, for the last five financial years, if any, be filed by the applicant. i.e. five years prior to the date of filing of this application.

(c) To be filed by the respondents: in the additional affidavit filed by the respondents on 12.04.2023 they have enclosed a report with regard to the grant of Family Pension to the applicant as Annexure MA-2 dated 05.01.2023 submitted by Wing Cdr K.H. Jana, wherein, in respect to the inquiry conducted and referred in Para 3 exhibits are referred to in the report, namely, exhibit A, B and C. These three exhibits which are (i) rent agreement, (ii) payment receipt and (iii) bank statement of the applicant with regard to an account held by her in Punjab National Bank, New Delhi are referred to. However, copies of these three exhibits

are not enclosed with the report. The respondents are directed to bring on record the aforesaid three exhibits.

The applicant produced certain documents along with the additional affidavit and respondents also filed additional documents and other material. During the course of hearing that took place on 31st May, 2023 and 10th July, 2023 the additional material filed by the applicant on 6th September, 2023 indicates that after divorce from her husband, she is in possession of two properties, i.e., her parental property Flat No.7/60, 1st Floor, Saket, New Delhi and from the said property she is getting a rent of Rs.73,000/- per month. Then as per the divorce settlement she received another property being a commercial property bearing No.109, Vipul Trade Centre, Sector 48 Sohna Gurugram Road, Gurugram and from this property she is receiving a rent of Rs.43065/- per month. It is her contention that her total income per month from these properties is Rs.1,16,065/-. She further goes on to say that as per the divorce agreement certain property held by her with her ex husband has been sold and the proceeds of the said property have been consumed by her. Further from para 3 onwards she explains the expenses which she has to bear on account of the tuition fee, hostel fee and other expenses of her.

two daughters. It is indicated that this expense comes to more than her income and, therefore, she claims family pension on the ground that her expenditure exceeds her income of Rs.1,16,065/-. Further earlier to filing of the said affidavit on 24th May, 2023, the applicant had filed the certified copy of the judgment passed by the Family Court, Gurugram on 13th December, 2021. Certified copy of the settlement and copies of the income tax returns are marked collectively as ***Annexure A-4*** wherein she has filed her income tax returns for the Assessment Year 2018-19 to the Assessment Year 2022-23 and in sum and substance the contention of the applicant now before us is twofold, (a) that the ceiling of income limit prescribed is unsustainable in view of the judgments relied upon by her counsel at the time of hearing and; (b) looking to her expenditure which she is required to undertake every month for upkeep of her family and education of her children and other aspects of life, she is entitled to the family pension.

11. On the contrary respondents have filed documents to show that expenditure of the applicant cannot be a criteria for the purpose of grant of family pension. Mr. Anil Gautam, learned Sr. CGSC, for the respondents invited our attention to a

judgment of the Hon. Gujarat High Court in the matter of Union of India Vs. Rekhaben (R/Special Civil Application No.1871/2021) decided on 22nd December, 2021 to submit that once the earning of the claimant is beyond the ceiling fixed by the Government, they are not entitled to family pension. Another judgment of the Hon. Calcutta High Court in the case of Sikha Rani Musib Vs. State of West Bengal and Ors. (WF No.14172 (W) of 2014) dated 19th February, 2015 (2015 SCC Online Cal 3152) was also mentioned on the same issue.

12. We have heard learned counsel for the parties at length and perused the record. As far as the issue of fixing a ceiling limit of Rs.9,000/- and denying family pension based on the ceiling limit is concerned, nothing has been brought to our notice to indicate that this is unsustainable in law and impermissible. The ceiling of an amount of Rs.9,000/- as on date may be less. The ceiling was fixed a long time back and in a given case there may be an issue with regard to issuing direction to the Government. However, as this is not the issue before us, it is not necessary for us to go into the said issue. As far as factual aspect of the present matter, namely, the applicant being a divorcee daughter is entitled to family pension in

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accordance with the policy is concerned, it is admitted, but the same is denied to her only because she does not fulfill the criteria laid down in the policy. It is the contention on behalf of the applicant that in view of the judgments relied upon, the criteria is unsustainable in law.

13. We have gone through all the four judgments brought to our notice, particularly the case of *Kartar Kaur* (supra). In the said case the imposition of monetary limit for grant of ordinary family pension has been held as unsustainable because in the matter of grant of ordinary special family pension and liberalised family pension, there is no such limit prescribed. In our considered view for the present it is not necessary for us to go into all these aspects for the simple reason that the justification and reasonableness for this differentiation is not a subject matter before us in the prayer made nor is the criteria challenged on this ground in the pleadings. Except for relying upon the judgment no pleading in this regard has been specifically made for justifying the claim. That apart, in our considered view in the peculiar facts and circumstances of this case which we may discuss hereinafter this issue may not be gone into. The other three cases of the Armed Forces Tribunal,

relied upon by the applicant, pertain to denying the benefit of ordinary family pension after clubbing together the earnings received by the claimant from two other pensions. It is the combined income of two pensions received by the claimant which resulted in the claimant's monthly income exceeding Rs.9,000/- and this Tribunal held that when the claimant is entitled to pension from two sources, may be from her husband and the son, clubbing together of the pensionary benefits is not proper for the purpose of determining the ceiling limit. In our considered view all the three judgments do not help the applicant in any manner whatsoever.

14. Now when we analyse the facts of this case, the applicant admits in her affidavit filed on 6th September, 2023 in para 2 that the rental income received by her from the properties is Rs.1,16,065/- per month. However, she further tries to demonstrate that this income is less than her expenditure detailed in the affidavit and, therefore, she is entitled to family pension. In our considered view the criteria for grant of family pension is the earning limit of the claimant and it is not based on the expenditure of the claimant. Admittedly, based on the documents available on record, we find that even if the

applicant admits that her monthly income is about Rs.1,16,065/- but on scrutiny of various documents that have been filed by the applicant on 24th May, 2023, we find that it should be more than the same.

15. In the additional documents filed by the applicant on 24th May, 2023, we find a copy of the settlement entered into between the applicant and her ex husband which formed the basis for dissolution of marriage in the decree passed by the Family Court, Gurugram on 13th December, 2021. A perusal of the said agreement goes to show that there is a property which was jointly held by the applicant and her ex husband, namely, a residential property located at MF-7, Eldeco Mansion, Sector 48, Sohna Road, Gurugram, Haryana. It was agreed to between the parties that this property shall be mutually sold and the proceeds shall be divided equally at the rate of fifty percent each between the applicant and her ex husband. Further it is indicated in para 6 of the agreement that the rate of the property at which it should be sold and other details shall be worked out by mutual agreement between the parties. However, the agreement further stipulates that in case any of the parties does not go ahead with the sale of the property then

it shall be incumbent upon said party to pay to the other party a sum of Rs.1.75 crores. This itself shows that the minimum off set price of the property is more than Rs.3.5 crores and the parties agree to receive fifty per cent of the same at the rate of Rs.1.75 crores. That apart, the applicant has been given the right, title and interest of property SCO No.109, Vipul Trade Centre, Sector 48 Sohna Gurugram Road, Gurugram for which, according to the applicant's own showing she was getting a rent of Rs.43,065/- per month. That apart, the applicant is the owner of another property at Saket, New Delhi, which she inherited from her parents, accordingly, the applicant has three properties.

16. The applicant is a doctor (Dentist) by profession and even though the income tax returns filed by her from 2018 onwards indicate that she was getting annual salary of around Rs.2,88,000/- to more than Rs.3,00,000/- upto the year 2021, she claims that after her divorce she is not earning anything. On a perusal of the income tax returns filed by the applicant on 24th December, 2022 for the Assessment Year 2022-23 and in the final tax return acknowledgement provided by the department, we find that the total income of the applicant for

the said assessment year is shown as Rs.30,63,158/-, the net tax payable is Rs.5,46,136/- and the applicant has paid a tax of Rs.6,45,284/-. If the total taxable income of the applicant was more than Rs.30 lacs, there seems to be some patent error in the calculation and figures submitted by the applicant to say that her monthly income is only Rs.1,16,065/-. In our considered view, on applicant's own showing and the documents filed by her a different picture emerges.

17. Accordingly, we find that the applicant is earning substantial amount of income and the same being much beyond the limit prescribed in the matter of grant of family pension, it is not a case where any indulgence into the matter by this Tribunal is called for. Even though there are various aspects of the matter for which we refrain from commenting on account of the fact that it is not necessary now to go into all these aspects, we are of the considered view that grant of family pension to a divorced daughter who is dependent upon her parents' income or pension is a welfare measure to tide over the financial crisis that falls on the divorcee lady on account of her parents' death. It is a welfare scheme enacted by the Government, a welfare State to help the needy and people in

financial crisis on account of death of the bread winner on whom they were dependant. It is not a scheme which should be liberally interpreted and benefit granted in cases where the material on record indicates that the claimant is financially well off and is able to maintain herself with the earnings or the profession in which she/he is involved. Family pension to dependants of the government servant including a divorced daughter is granted when the person is not in receipt of any financial aid and is unable to maintain herself. It is not a scheme or a process wherein merely because the person concerned is a divorced daughter, she will be entitled to the benefit. It should be shown that she was dependant on her late parents at the time of their death and on discontinuation of the family pension, after death of her parents, she is unable to sustain herself and a financial crisis has dawned on her which prevents her from earning a livelihood and maintain her. If we analyse the facts and circumstances of the case in the back drop of the aforesaid principle which is the reason for bringing into force such a scheme for a deserving person, we are of the considered view that in the peculiar facts and circumstances of

the present case, no case is made out for granting any benefit to the applicant.

18. A family pension scheme is intended to grant benefit to those family members who need the support of pension for maintaining themselves and without which they may not be able to maintain themselves. Depending on the family pension to maintain themselves and the financial insecurity are the most relevant factors which have to be kept in mind while evaluating a welfare scheme and in our considered view in the case in hand, looking to the material that has come on record, we see no reason to extend the benefit of such a scheme to the applicant who, we find, is financially and professionally sustainable enough to maintain herself and her children. That apart, the contention of the applicant that the ceiling limit of Rs.9,000/- fixed by the respondents should be calculated after deducting the expenditure of the applicant and then hold that her income is less than Rs.9,000/- is not acceptable, does not look logical, practical or feasible in any manner whatsoever. Expenditure of an individual cannot be a criteria for assessing the resources which are required to maintain herself and not fixing a monetary ceiling limit for grant of such pension. This

argument advanced before us seems to be wholly misconceived and unacceptable.

19. Taking note of the totality of the circumstances, we see no reason to interfere and accordingly dismiss this OA with no order as to costs.

20. Pending application(s), if any, also stands closed.

Pronounced in open Court on this 20th day of October, 2023.

(RAJENDRA MENON)
CHAIRPERSON

(C.P. MOHANTY)
MEMBER (A)

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