

COURT NO.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
OA No.1333/2022

Smt. Jatinder Kaur Applicant
Versus Respondents
Union of India & Ors.

For Applicant : Mr. Deepak Zaid Mehta, Advocate
For Respondents : Ms. Jyotsana Kaushik, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

The applicant D/o Late Subedar Daya Singh, a retired employee in the Indian Army has invoked the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 and calls in question an order dated 26.10.2021 (Annexure A-1) by which after death of her parents, family pension has been denied to her even though she claims that she is dependent on her parents. Her husband has died and after death of her husband she is entitled to family pension which has been denied to her.

2. Facts in brief indicate that the applicant was daughter of late Retired Sub. Daya Singh who expired on 30.07.2016. Late Sub. Daya Ram had joined the Indian Army in the CORPS of Signals on 18.01.1949 after having served for about 28 years and retired as a Subedar on 31.01.1977. He was earning pension when he died on 30.07.2016. Wife of late Retd. Sub. Daya Singh, namely, Smt.

Mohinder Kaur, mother of the applicant also expired on 17.07.2000, as per the death certificate annexed as Annexure A-5 with the OA.

3. It is further the case of the applicant that she was married to Late Sardar Parvinder Singh @ Tara on 18.09.1983 and out of this wedlock, they had 2 children, both sons, namely, Rajbirender and Harpreet Singh born on 28.09.1984 and 06.06.1986 respectively. However, later Sardar Parvinder Singh, husband of the applicant went missing on 27.10.1994. Since his whereabouts were not known, therefore, an FIR was lodged on 09.11.1994 with the appropriate Police Station under Section 365 I.P.C. After disappearance of her husband, it is said that the applicant started living with her father Late Retd. Sub. Daya Singh. Applicant claims that she was not having any high educational qualification and was dependent upon her father. It is also stated that her father was maintaining herself and her two children. One of the sons of the applicant expired on 28.10.2019. The other son, namely, Harpreet Singh, is said to have moved to Nairobi and living with his paternal aunt and has not returned to India. It is the case of the applicant that during the life time of her father, he got her declared as a dependent and she was registered as a Member of the ECHS Scheme on 05.05.2014 and was issued with the ECHS Card and the Canteen Smart Card vide Annexure A-8 and A-9. As her husband

was missing and the police was unable to trace his whereabouts an 'Untraced Report' was submitted by the Police authorities on 23.02.2017 in the court of Additional Chief Metropolitan Magistrate, Tis Hazari Court, Delhi. The matter was taken up by the court and by a declaratory decree passed on 08.09.2020, the court declared that Shri Parvinder Singh who is missing since 27.10.1994 is dead vide declaratory decree dated 08.09.2020. The applicant now based on these facts claims family pension after death of both of her parents on the ground that she is dependent on her parents and is unable to maintain herself.

4. Respondents have filed a detailed counter affidavit and it is their contention that the Signals Records office forwarded the case of the applicant to the PCDA(P) Allahabad (UP) for processing along with the death certificate i.e. declaration decree issued in the matter. The PCDA(P), Prayagraj rejected the claim of the ordinary family pension of the applicant vide communication dated 01.02.2021 (Annexure R-9) on the ground that in accordance with the policies of the Govt. as annexed as Annexure R-10, dated 17.11.2017 "only those children (widowed/divorced daughter above 25 years of age) who are dependent and meet other conditions of eligibility as contemplated in the policy are entitled to the said benefit.

5. It is the case of the respondents that the applicant does not meet the criteria laid down in the said policy as in the instant case the applicant's father expired on 30.07.2016. Her mother expired on 17.07.2000 whereas the declaratory decree for her husband's death was passed much after that on 08.09.2020. It is the case of the respondents that the applicant became widow only after the decree was passed after death of her husband, thus as per the policy in vogue, she cannot be treated as a dependent of her parents at the time of their death. Accordingly, it is the contention of the respondents that the applicant does not meet the criteria and, therefore, her claim has been rejected.

6. As far as treating the applicant as dependent based on the Canteen Smart card and ECHS card is concerned, the respondents have refuted the aforesaid and it is explained by them that these documents are not proof of the applicant being dependent upon her parents. It is their contention in para 5 of the counter affidavit that the ECHS membership card was issued on the basis of approach made by her late father with the Chairman Arun Vihar Residents Welfare Association, Kalyan Kendra, Sector-37, Noida, without verification of the record and without verifying the right of dependency of the applicant in accordance with law. It is stated that for the purpose of grant of family pension when there

is specific policy dated 17.11.2017, the applicant cannot claim any benefit contrary to the said policy.

7. We have heard the learned counsel for the parties at length and perused the records.

8. The only issue warranting consideration in this application is as to whether the applicant can be treated to be eligible for grant of family pension after death of her parents. The issue has been considered and the principles have been laid down in the policy formulated by the Ministry of Defence, Department of Ex-Servicemen vide Policy (Annexure R-10) dated 17.11.2017. The policy pertains to eligibility of Widowed/divorced daughters for grant of family pension and clarification to the earlier policy in this regard. In para 2 of the said policy the following principles have been laid down:-

"2. It was clarified vide Government of India, Ministry of Personnel, P.G. & Pensions, Department of Pension & Pensioners Welfare OM No.1/13/09-P&PW (E) dated 11.09.2013 circulated vide MoD ID No.1(9)/2013/D(Pen/Pol) dated 16.09.2015, the family pension is payable to the children as they are considered to be dependent on the Government servant/pensioner or his/her spouse. A child who is not earning equal to or more than the sum of minimum family pension and dearness relief thereon is considered to be dependent on his/her parents. Therefore, only those children who are dependent and meet other conditions of eligibility for family pension at the time of death of the Government servant or his/her spouse, whichever is later, are eligible for family pension. If two or more children are eligible for family pension at that time, family pension will be payable to each child on his/her turn

provided he/she is still eligible for family pension when the turn come. Accordingly, divorced daughters who fulfil other conditions are eligible for family pension if a decree of divorce had been issued by the competent court during the life time of at least one of the parents.” (Emphasis supplied)

9. From the aforesaid policy it is clear that only those children who are dependent and meet the conditions for eligibility for family pension i.e. they are dependent of the Govt. servant at the time of death of the Govt. servant or his spouse who is in receipt of family pension after death of the Govt. servant or his/her spouse, whichever is later, are eligible for family pension. In this case, we find from the records that the applicant became a widow vide decree passed on 08.09.2020 and at that time both her parents were not alive. There was nothing to indicate that the applicant was dependent on her parents at the time of their death. The applicant was not a dependent as she became a widow much after death of her parents and, therefore, in accordance with the policy, the applicant was not entitled to the family pension and the respondents have rejected the claim of the applicant as she could not be considered as dependent on her parents as she became a widow after the death of both her parents.

10. Accordingly, finding the respondents to have evaluated the claim of the applicant in accordance with the policy laid down, no legal right exists in favour of the applicant for the purpose of

claiming of family pension. We see no reason to make any interference into the matter. The entitlement of the applicant to receive family pension is based on the policy dated 17.11.2017 placed at Annexure R-10 and as the applicant does not fulfill the criteria as laid down in the said policy, we see no reason to make indulgence into the matter. The OA is, therefore, dismissed.

11. No order as to costs.

12. Pending miscellaneous application(s), if any, stand closed.

Pronounced in the open court on ^{Hu} 29 day of November, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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