

**COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 25/2019 WITH MA 223/2023

**Ms Saba Naqvi D/o
Late Maj Humayun Haider Naqvi Applicant
VERSUS
Union of India and Ors. Respondents**

For Applicant : None
For Respondents : Mr. Satya Ranjan Swain for R 1-4
: R-5 - In-person and None for R-6

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14, the applicant has filed this application and the reliefs claimed in Para 8 read as under:

"A. Direct the respondents to grant family-pension to the Applicant in respect of her late father, including the arrears of Family, Pension, in the following ratio:-

IV. From 23.08.1996 to 20.05.2007:-One-third (1/3rd) of the Family Pension i.e 33.33% of the full family pension.

V. From 21.05.2007 to 20.05.2015:- One-half (1/2) of the Family Pension i.e 50% of the full family pension.

VI. From 21.05.2015 till date :- Full Family Pension i.e 100% of the family pension.

B. Direct the Respondents to continue to pay full family pension (i.e., 100% of the family pension) until she gets married or until her death, whichever is earlier."

2. The summary of the facts of the case are that the father of the applicant was commissioned in the Indian Army on 03.05.1964 and invalided out from service with all retiral benefits including service pension on 21.05.1985. He was married to Mrs Abida Naqvi on 23.01.1968 and divorced on 15.08.1980 after which he was married to Mrs Tasneem Fatima on 08.04.1981. After his demise on 23.08.1996 due to ongoing court case between his first wife and second wife, the family pension claim had not been settled by PCDA (P) Allahabad. Mrs Abida Naqvi passed away on 29.05.2013 and Mrs Tasneem Fatima also passed away on 11.05.2015 leaving behind following eligible legal heir as claimants to the family pension :-

| <i>Ser No</i> | <i>Name of Heir</i> | <i>Relationship</i> | <i>Date of Birth</i> | <i>Remarks</i> |
|---------------|-------------------------|--|-----------------------------|------------------|
| <i>(a)</i> | <i>Ms Salma Naqvi</i> | <i>Daughter of 2nd Wife</i> | <i>Aug 1984 Unmarried</i> | <i>R-5</i> |
| <i>(b)</i> | <i>Mrs Farida Naqvi</i> | <i>Daughter of 1st Wife</i> | <i>19.05.1969 Married</i> | <i>R-6</i> |
| <i>(c)</i> | <i>Ms Saba Naqvi</i> | <i>Daughter of 1st Wife</i> | <i>23.03.1973 Unmarried</i> | <i>Applicant</i> |

3. Since Mrs Farida Naqvi (R-6) was married on 04.10.1995, she was not eligible for grant of family pension;

thereby leaving behind two eligible claimants i.e the applicant and Ms Salma Naqvi (Respondent No 5) as per provision of Para 2 to 4 of Govt of India, MoD letter No 2(2)/2012/D(Pen/Pol) dated 14.12.2012; of which is extracted as under:-

"2. The above matter is considered by the Government and it has been decided in consultation with Department of P&PW that unmarried/widowed/divorced daughter shall also be eligible for grant of liberalised / special family pension beyond 25 years of age subject to fulfilment of other prescribed conditions as hitherto fore. It has also been decided that all unmarried/widowed/divorced daughters, who were earlier sanctioned or otherwise eligible for children allowance, shall also be sanctioned special / liberalised family pension subject to other conditions being fulfilled. The Children allowance, if being paid, shall be discontinued from the date special/liberalised family pension is sanctioned under these orders. The provisions contained in Regulations 230(c), 239 & 240 of Pension Regulation for the Army Part -1 (1961) and similar provisions in Pension Regulations for the Navy and Air Force shall stand modified to that extent.

3. The family person to unmarried/widowed divorced daughters above the age of 25 years shall be payable it all other eligible children below the age of 25 years have ceased to receive family pension and there is no disabled child to receive the family pension. Family pension shall be payable to unmarried/widowed/divorced daughter in order of their date of birth and younger of them shall not be eligible unless the next above has become ineligible for grant of family pension.

4. This order will take effect from 6.9.2007 i.e., the date from which Ordinary Family Pension was allowed to unmarried daughters by DoP&PW."

4. The fact that has not been disputed by the respondents is that w.e.f date of death of the pensioner on 24.08.1996 and until the death of Mrs Tasneem Fatima, the second wife on 11.05.2015, the entitlement of family pension is 50% in favour of Mrs Tasneem Fatima and 50% in favour of the applicant after which the applicant became eligible for 100% share of the family pension; as the daughter of second wife Ms Salma Naqvi (R-5) got married on 20.05.2007 and thus became ineligible for grant of family pension after death of her mother.

5. During the course of hearing on 06.09.2023 Ms Salma Naqvi (R-5) had deposed before this tribunal with declaration which read to the effect :-

"As per the terms of the settlement agreement executed several years ago, the 40% of my father's pension is to be paid to me and 60% of my father's pension is to be given to my sister Saba Naqvi. I have arrived at the settlement with my sister voluntarily of my own accord without any coercion from any quarter. The settlement is for all time."

and settlement agreement AW 1/3, Para 5 dated 07.12.2021 :-

"5. That the final sum disbursed towards the family pension shall be shared between the parties respectively as under:-

(i) Arrear alongwith Interest of Family Pension shall be given or distributed as 60% to the first Party and 40% to second party for a period 24.08.1996 till the date of signing of this Mutual Settlement Agreement i.e 07th December 2021.

(ii) Thereafter 100% of the Monthly Family Pension shall be given to the First Party from the date of Signing of this Mutual

Settlement Agreement ie 07th December 2021 till her entire life as First Party is an Unmarried Daughter of Late Humayun Haider Naqvi."

6. The above agreement reached between the parties notwithstanding, in light of the provision of MoD policy letter dated 14.12.2012 the applicant becomes the sole claimant to pensionary benefits of her deceased father since Mrs Salma Naqvi (R-5) has been married to Mr Shokat Ali Khan since 20.05.2007 and thus not entitled to grant of any pensionary benefits qua her father.

7. During the course of hearing on 23.04.2024 Ms Salma Naqvi, (R-5) appeared in person and submitted an affidavit on direction of this Tribunal to confirm the present marital status of applicant being "Unmarried" and the same is taken on record.

8. Therefore, it is our considered opinion that the agreement reached between R-5 and the applicant as two private parties regarding the share of the pension upto 07.12.2021 has no locus standi in this Tribunal and cannot be enforced by this Tribunal being a matter beyond the jurisdiction as per AFT Act and accordingly we refrain ourselves from taking the above aspect into our consideration.

9. In light of aforesaid, we conclude that the applicant is entitled to 50% of the family pension from next day of death of the pensioner i.e. 24.08.1996 with Mrs Tasneem Fatima being entitled to other 50% until her death on 11.05.2015 and thereafter the applicant is entitled to 100% of the family pension till her marriage or for life, if unmarried.

10. Accordingly, the respondents are directed to calculate and disburse family pension including the arrears to the applicant as stated above and to Mrs Salma Naqvi (R-5) who is the legal heir to Mrs Tasneem Fatima for the entitlement of 50% of family pension from 24.08.1996 to 11.05.2015.

11. No order as to costs.

12. Miscellaneous application, if any, pending stands disposed of.

Pronounced in the open Court on this ^{Handwritten initials} 30th day of April, 2024.

**(JUSTICE RAJENDRA MEMON)
CHAIRPERSON**

**(LT GEN C.P. MOHANTY)
MEMBER (A)**

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