

COURT No.2  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

B..

OA 450/2016 with MA 3005/2023 & 4728/2023

Ms Man Kumari Thapa ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. V S Kadian, Advocate  
For Respondents : Mr. Neeraj, Sr. CGSC

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER  
06.02.2024

Vide our detailed order of even date we have allowed the OA 450/2016. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court.

After hearing learned counsel for the respondents and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)  
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)  
MEMBER (A)

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**OA No. 450/2016 with MA No.4728/2023**

**Ms Man Kumari Thapa**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. VS Kadian , Advocate**

**For Respondents : Ms. Neeraj, Sr CGSC**

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

**MA 4728 OF 2023:**

This is an application on behalf of the respondents for condonation of delay in 31 days in filing the counter affidavit. In view of the reasons explained and in the interest of justice, the delay in filing the counter affidavit is condoned. The MA is disposed of accordingly.

**OA No. 450/2016:**

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has filed this O.A and the reliefs claimed in Para 8 - read as under:

“

- a) Direct respondents to publish dependent Part-II of the applicant and grant her dependent family pension with effect from the date of death of her mother and/or under the provisions of Govt. of India, Ministry OF Defence letter No. A/49601/AG/PS-4 €/3363/B/D/(Pen/Ser) dated 27.08.1987 modified vide Ministry's letter No. 906/A/D/(Pen/Ser) /05 dated 13.08.2008, 02 (3)/2010-D (Pen/Policy) dated 17.01.2013 and 1(7)/2013-D (Pension/Policy dated 15.05.2015.**
- b) Direct respondents to pay the due arrears of her entitled pension with interest @12% p.a. with effect from the date she is entitled.**
- c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”**

### **BRIEF FACTS**

2. The father of the applicant, i.e. the deceased ESM, was enrolled in the Indian Army in 5 GR (regiment of Indian Army) on 12.04.1957 and was discharged from service with effect from

12.04.1972 under Army Rule 13 (3) III (i) of Army Rule, 1954.

The applicant herein was born on 18.12.1968, as physically handicapped. The deceased ESM could not notify her birth in the service records. The father of the applicant died on 14.12.1982 and soon after the death of applicant's father, i.e. the deceased ESM, the claim for the grant of ordinary family pension (OFP) in favour of Krishna Kumari, w/o of the deceased ESM was processed by PCDA (P), Allahabad vide Gorkha Record Office Kunraghat, Gorakhpur letter number 5436334/5 GR/6-III dated 11.03.1983 which was granted and notified vide PCDA (P) PPO number F/NA/2948/83 dated 11.09.1983. The wife of the deceased ESM expired on 03.02.1998 and the ordinary family pension was stopped thereafter.

3. The applicant forwarded first representation vide letter No. Man kumari Thapa/Pen/2012/01 dated 03.10.2012 for the grant of OFP which was received by Record Office Indian Embassy, Kathmandu (Nepal) PPO, vide Pokhara letter No. 23 (93)/5 GR/81 (P)/8372 dated 29.10.2012 and a reply to this effect was forwarded by the respondents to PPO, Pokhara, Nepal stating that the 'name of claimant is not found to be recorded in kindred roll portion (KRP) in sheet roll of the deceased vide

letter No. 5436334/OFP/5 GR dated 20.11.2012. Thereafter, the applicant again submitted a representation to Record Officer vide letter No. Man Kumari thapa/Pen/2012/03 dated 07.02.2013 which was received by Record Office Indian Embassy, Kathmandu (Nepal) for which the reply was forwarded to the applicant herein vide Record Office Indian Embassy, Kathmandu (Nepal) letter No. 5436334/MOFP/5 GR dated 12.03.2013 stating that 'her name not found in service document of the deceased soldier and as the deceased soldier never notified the occurrence of her birth during his lifetime, hence, the applicant herein is not entitled for the grant of family pension'.

4. The PCDA (P) Allahabad referred the case of the applicant to Record Office Indian Embassy, Kathmandu (Nepal) vide letter No. G-4/VII/PGO/P-185/2013 dated 05.03.2013 and the reply to the same was forwarded to PCDA (P), Allahabad vide Record Office Indian Embassy, Kathmandu (Nepal) letter No. 5436334/MOFP/5 GR dated 15.05.2013. The PCDA (P), Allahabad replied to the applicant herein vide letter No. G-4/VII/PGO/P-940/2013 dated 24.10.2013.

5. The applicant again submitted second representation to the Record Officer 5/8 Gorkha Rifles alongwith supporting documents for sanctioning family pension vide representation dated 27.12.2013 qua which the respondents replied vide letter dated 18.01.2014 by the ROIE, Kathmandu (Nepal) forwarded the service documents in respect of the applicant's father, i.e. the deceased ESM on 22.01.1993 being Nepal domiciled.

6. Another application of the applicant dated 29.04.2015 was received by Record Office Indian Embassy, Kathmandu (Nepal) to which the reply was forwarded to the applicant vide ROIE letter No. 5436334/MOFP/5 GR dated 31.07.2015, aggrieved by which the applicant has filed the instant O.A. and thus, in the interest of justice, in terms of Section 21(1) of the AFT Act, 2007, we take up the same for consideration.

### **CONTENTIONS OF THE PARTIES**

7. The learned counsel for the applicant submitted that the father of the applicant, i.e. deceased ESM, was in receipt of pensionary benefit and after his death, the wife of the deceased ESM was getting ordinary family pension. It is further submitted on behalf of the applicant that after the death of the wife of the deceased ESM, the child of the deceased ESM, who



is physically handicapped and unmarried is entitled for ordinary family pension.

8. The learned counsel for the applicant submitted that the applicant is a handicap child and is entitled for the grant of family pension after the death of her father i.e. the deceased ESM and her mother who was the beneficiary for the pensionary benefit of the deceased ESM. The learned counsel for the applicant submitted that as per the Government of India, Ministry of Defence letter No. 02 (03)/2010-D(Pen/Policy) dated 17.01.2013 and PCDA circular No.505 dated 17.01.2013 as amended vide Government of India, Ministry of Defence, vide letter No. 1(7)/2013-D(Pension/Policy) dated 15.05.2015 wherein the pension process for permanently disabled children /siblings and dependent parents was simplified and disabled children were included for availing the pensionary benefit of the deceased ex-servicemen.

9. Per Contra, the learned counsel for the respondents submitted that the deceased ESM never notified the occurrence of the birth of the applicant in the service records during his life time whilst in service. Hence, the applicant in the instant case is not entitled for the grant of family pension.

10. The learned counsel for the respondents further submitted that there is no record in the documents held with the respondents to show that the deceased ESM EX Rfn (late) Nar Bahadur Thapa is the father of the applicant. The Ld. Counsel further submitted that as per the Government of Nepal, documents produced by the petitioner's two children namely Hari Singh and Kishan Singh are reported as the deceased ESM children and their names are published in Part II order of the unit of the deceased ESM.

#### **ANALYSIS**

11. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, bring forth unrefutedly that the deceased ESM was enrolled in the Indian Army on 12.04.1957 and discharged from service on 12.04.1972 under Army Rule 13 (3) III (i) of the Army Rule, 1954. It is also not in dispute that the deceased ESM was in receipt of pensionary benefit and after his death the wife of the deceased ESM was in receipt of the ordinary family pension till her death on 03.02.1998. It is also not in dispute that as per the KRP sheet roll of the deceased ESM, name of two other children namely Hira Singh and Kishan Singh were notified in



the year 1981. However, the deceased ESM never notified the occurrence of the birth of the applicant herein in the service documents who was born before 1981 i.e. before the two children were notified which was adverted by respondents in Para 5.3 of the Counter affidavit filed on 03.11.2023 and verified by the Record Office, Indian Embassy, Kathmandu (Nepal) dated 08.05.2023 as submitted vide an application dated 09.07.2023, filed by the respondents vide MA 3005/2023.

12. It is pertinent to mention herein that the applicant was born on 18.12.1968 i.e whilst the applicant's father (deceased ESM) was in service as the deceased ESM was discharged on 12.04.1972. It is however relevant that the deceased ESM notified the birth of his other two children for inclusion of their names in service records and did not notify the occurrence of the birth of the applicant in the records.

13. It is however pertinent to mention herein that despite the fact that the deceased ESM i.e. the father of the applicant did not notify the occurrence of the birth of the applicant, it cannot be the sole ground for denial of family pension to the eligible children of the deceased ex-servicemen.

14. It is relevant to mention that the applicant's birth certificate establishing the birth of the applicant as the daughter of the deceased ESM i.e. Nar Bahadur Thapa was annexed as Annexure A-3 which was duly verified by the Government of Nepal. The proof of verification by Government of Nepal was received by the Bhartiya Rajdutas Abhilekh Karyalaya, Record Office, Indian Embassy, Kathmandu (Nepal) dated 08.05.2023 annexed as Annexure R-2 with the M.A. 3005/2023 which reads as under :-

*"1. Ref your letter No. C/6052/NE/Gen/Legal dt 05.04.2023.*

*2. Docu as sought vide your letter under ref are fwd herewith duly verified from issuing authority for your info and necessary action please."*

15. Reliance is placed on Para 2.1 of Government of India, Ministry of Defense letter No. 1(7)/2013/D(P/P)/Vol-I dated 28.09.2021, as adverted to by the respondents, which reads as under :-

*"....*

*2.1 Accordingly, a child /sibling of a deceased government servant/pensioner, who is suffering from*

*a mental or physical disability, shall be eligible for family pension for life, is he/she fulfills, among others, the following conditions:*

*(i) A disability certificate is issued by the competent authority.*

*(ii) the over-all income of the disabled child, from sources other than family pension, remains less than the entitled family pension at ordinary rate (i.e. 30% of the last pay drawn by the deceased Government servant/pensioner concerned) plus the dearness relief admissible thereon.*

*....”*

Therefore, it is evident from the material on record that applicant fulfills condition (i) of Para 2.1 of the above-mentioned letter which was not refuted by the respondents herein. Qua the condition (ii) of Para 2.1 is concerned, it is essential to observe that the respondents have not contended that the applicant does not fulfill the said condition (ii) of Para 2.1 of the above-mentioned letter. Thus, the applicant herein is clearly entitled to the grant of family pension in terms of

the said letter No. 1(7)/2013/D (P/P)/Vol-I dated 28.09.2021..

16. Reliance is also placed on the PCDA circular No.505 dated 17.01.2013 as amended vide Government of India, Ministry of Defense, vide letter No. 1(7)/2013-D(Pension/Policy) dated 15.05.2015 which reads as under :-

“ ....

*5. The name(s) of permanently disabled child / children/ siblings and/ old dependent parents may be added to the PPO issued to the retiring Armed Force Personnel if there is no other eligible prior claimant for family pension other than the spouse. No fresh PPO need to be issued in such cases and the family pension will be payable by the pension disbursing authority in the following order and the following manner:*

*i). **To the spouse-** on the death of the pensioner- on production of death certificate of pensioner. This family pension will continue till death or remarriage of spouse.*

*In the case of a childless widow, the family pension may continue even after her re- marriage as per rules.*

ii) **To the permanently disabled child/children** - on the death / re-marriage of spouse- on production of such death certificate! remarriage-intimation. Family pension to -the spouse will be discontinued and family pension would be allowed by the PDA for life for permanently disabled children in the order prescribed in AI 51 of 80.

iii) **To the dependent parents- first mother, then farther** - when claimants in (i) and (ii) die or become ineligible - on production of death certificate/ remarriage-intimation of spouse and/or death certificates of all permanently disabled children, family pension would be allowed by the PDA to dependent parents. This family pension would continue till death of the dependent parents.

iv) **To the permanently disabled siblings-** when family pension to all above ceases to be payable on account of death/re-marriage - on production of death certificates/ remarriage- intimation as applicable, the family pension will be allowed by PDA to the permanent disabled siblings.

..."

Thus, the applicant herein, is entitled to family pension as per clause 5 (ii) of the policy letter No. 1(7)/2013-D(Pension/Policy) dated 15.05.2015 of the Ministry of Defence, Government of India.

### CONCLUSION

17. Applying the above parameters to the case in hand, we are of the view that the applicant is entitled to family pension as per PCDA circular No.505 dated 17.01.2013 as amended vide Government of India, Ministry of Defence, vide letter No. 1(7)/2013-D(Pension/Policy) dated 15.05.2015.

18. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order and the amount of arrears shall be paid by the respondents, failing which the applicant will be entitled for interest @6% p.a. from the date of receipt of copy of the order by the respondents. However, as the applicant has approached the Tribunal after a considerable delay, in view of the law laid down in **Union of**



**India & Ors. Vs. Tarsem Singh 2009 (1) AISLJ 371**, arrears of family pension will be restricted to three years prior to the date of filing of O.A. 450/2016.

Pronounced in the open Court on this day of 6 February, 2024.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER(J)

/pranav/