

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

A.

OA 1280/2018

Ms. Amrita Rana Gaha Applicant
Versus
Union of India & Ors. Respondents
For Applicant : Mr. I S Singh/Abhishek Singh, Advocate
For Respondents : Ms. Barkha Babbar, Advocate

CORAM

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

ORDER
29.07.2024

Vide separate detailed order passed today. OA stands allowed.

Learned counsel appearing for the respondents makes an oral prayer for grant of leave to appeal to appeal for impugning the aforesaid order before the Hon'ble Supreme Court. However, there being no point of law, much less any point of law of general public importance involved in the order, which warrants grant of leave to appeal, the oral prayer is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/sm/

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

O.A. No. 1280 of 2018

In the matter of :

Ms Amrita Rana Gaha
D/o Late Rfn Dhan Bahadur Thapa ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri I.S. Singh, Advocate

For Respondents : Ms. Barkha Babbar, Advocate

CORAM :

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

ORDER

Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under :

- (i) **Direct the respondents to grant family-pension to the Applicant w.e.f. 10.12.2004, i.e. after the death of her mother who received the family pension until her death on 09.12.2004;**

- (b) *Direct the respondents to pay interest @ 10% on the arrears of the family pension w.e.f. 10.12.2004 until same are paid to her; and*
- iii) *Pass any other order as this Hon'ble Tribunal deems fit in the interest of justice.*

2. The father of the applicant i.e. a Gorkha of Nepali domicile, was enrolled in 8 Gorkha Rifles of Indian Army on 22.02.1943 and was invalidated out of service on 08.08.1945 due to the injury sustained in action during the II World War and he was granted service pension w.e.f. 09.08 1945 till his demise on 27.02.1996. The applicant herein was born on 21.08.1967. However, her father could not notify her birth in the service records as he had already invalicied out of the Army service in the year 1945. The father of the applicant died on 27.02.1996 and, therefore, the widow of the deceased Ex-Serviceman (ESM) i.e. applicant's mother, was granted family pension with effect from 28.02.1996. It is the case of the applicant that after her birth, her mother submitted a complete list of her children to the PPO, Indian Embassy,

Pokhara, Nepal by way of an affidavit dated 04.06.1996, which included the name of the applicant. Thereafter, the applicant's mother i.e. widow of the deceased ESM expired on 09.12.2004.

3. The learned counsel submitted that after the death of her mother, the applicant submitted her mother's Pension Patta to the PPO Indian Embassy Pokhara, Nepal claiming the arrears of family pension which were due to her mother before death. The PPO, Indian Embassy, Pokhara, after verification of the applicant's claim to be the eligible heir of her parents, paid a sum of Rs.23,296/- to the applicant on 17.01.2005. Thereafter, on coming to know that being a disabled and unmarried daughter of the deceased ESM, she is entitled to grant of family pension after her mother's death since all her siblings had attained the age of majority and were married. It has been submitted that the applicant approached the concerned authority i.e. Indian Embassy, Kathmandu several times and then in April, 2011 she was informed that her name was not appearing in the official record of the deceased ESM and thus she was not entitled to the relief.

4. Aggrieved by this, the applicant sent a communication dated 26.04.2011 to the Army HQ, New Delhi and she was informed by the Indian Embassy, Kathmandu vide letter dated 05.05.2011 that the service record of the late father of the applicant was being obtained from the parent record office of the deceased ESM i.e. The Records GR. It is the case of the applicant that several applications were sent by her to the Army HQ as well as the Records GR for grant of family pension, but no response was received in this regard.

5. 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.

6. The learned counsel for the applicant contended that the applicant is a handicap child and is entitled for the grant of family pension after the death of her mother who was beneficiary for the pensionary benefits of the applicant's

father i.e. the deceased ESM. The learned counsel for the applicant submitted that all supporting documents in respect of the claim made by the applicant such as the communications received from various authorities, copy of Identity card issued by the Social Welfare Officer, District Administration Syngja, Handicap Certificate dated 15.05.2005 in respect of the applicant issued by the Medical Superintendent, Western Regional Hospital, Pokhara, Nepal, Citizenship Card dated 18.05.1999 issued by District Administration Syngja etc.

7. The learned counsel also referred to Regulations 62 to 69 of the Pension Regulations for the Army, 2008 and submitted that as the applicant being a disabled and unmarried daughter and fully dependent on her parents as she has no source of income, and also no other surviving children of the deceased ESM are eligible to receive family pension, the applicant is entitled to the grant of family pension. The learned counsel further submitted that the respondents have granted family pension earlier on similar circumstances to the disabled/unmarried daughters of the

deceased soldiers and, therefore, the present OA may be allowed.

8. *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 and whilst in service and never applied for publication of Daily Part II Order regarding the birth and disability of his daughter; that the date of birth of the applicant mentioned in the Nagrikta Praman Patra does not match with the Govt. of Nepal documents produced earlier; and that in terms of 174(f) of Regulations for the Army 1987 (Revised Edition) and Para 90 of Pension Regulations for the Army, 2008, her case could not be processed and her case was closed in August, 2011 itself.

9. On behalf of the respondents, the learned counsel referred to GoI Ministry of Personnel, PG & Pension Department of Pension & Pensioner's Welfare letter No. 1/13/09-P&PW(E) dated 11.09.2013 to submit that the family pension is payable to children as they are considered to be dependent on the Government Servant, pensioner or his/her spouse' and in this case the name of the applicant

was not notified in the record of the deceased ESM and the applicant had approached the authority in December, 2010 after a considerable delay from the death of her mother in December, 2004. Hence, the applicant in the instant case is not entitled for the grant of family pension and, therefore, the OA deserves to be dismissed.

ANALYSIS

10. We have heard the learned counsel for the parties and have also gone through the record and documents produced before us.

11. It is brought forth from the record that the deceased ESM was enrolled in the 58 Gorkha Rifles of Indian Army on 22.02.1943 and was invalided out of service on 08.08.1945 due to the injury sustained in action during the World War II. It is not in dispute that the deceased ESM was in receipt of pensionary benefit and after his death on 27.02.1996, the wife of the deceased ESM was in receipt of the ordinary family pension till her death on 09.12.2004. It is also not in dispute that as per the KRP sheet roll of the deceased ESM, he did not notify the occurrence of the birth of the applicant herein in the service documents who was born on

21.08.1967. It is however pertinent to mention herein that despite the fact that the deceased ESM i.e. the father of the applicant did not inform about 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.

12. It is relevant to mention that the applicant's Identity Card, Citizenship Card and other documents annexed to the OA by the applicant establish the fact that the applicant is the daughter of the deceased ESM i.e. Dhan Bahadur Thapa (Rfn No. 90238) and the same have been issued by the Govt. of Nepal. Further, regarding applicant's disablement, the applicant has filed Annexure A-11 to the OA which is a certificate issued by the Medical Superintendent of Ministry of Health, Nepal Government to the effect that the applicant had been suffering from Theracic Kyphosis due to spinal injury sustained in her childhood with the disability @ 60%. The applicant has also filed a certificate issued by the District Administration Office, Syangja Ministry of Health, Govt. of Nepal stating that Amrita and Amrita Gaha Rana (the name recorded in the Army documents) are one person and daughter of late Dhan Bahadur Thapa, Ex-serviceman. The

proof of verification by Government of Nepal was received by the Bhartiya Rajdutas Abhilekh Karyalaya, Record Office, Indian Embassy, Kathmandu (Nepal) dated 12.09.2023 has been filed pursuant to the communication dated 29.06.2023 made by the respondents with the issuing authorities of Govt. of Nepal. The same reads as under :-

"1. Ref your letter No. C/6052/NE/Gen/Legal dt 08.08.2023.

2. It is intimated that Ms. Amrita Rana Gaha is disabled, unemployed and unmarried daughter of No. 90238 Ex Rfn (Late) Dhan Bahadur Thapa recd vide District Soldier Board, Waling Letter No. DSB/W/130/20 dt 31 Aug 2023 is fwd herewith in original alongwith its encl.

3. For info and necessary action pl.

13. The above communication was taken note of by the Tribunal also in the order dated 04.04.2024, when the OIC Legal Cell present in the court indicated doubt about the authenticity of the above document as no record was available and two weeks' time was granted and the matter was directed to listed on 06.05.2024. The OIC Legal cell failed to prove that there is lack of authenticity in the document.

14. Further, we may refer to the various provisions of the Pension Regulations for the Army, 1961 (2008) related to the

definition of family, period and eligibility for grant of family pension to the children etc., which read as under :

"DEFINITION OF FAMILY

66. Family for the purpose of Regulations in this Section shall consist of the following:

(i) and (ii) xxx xxx
(iii) Unmarried daughters/unmarried sons (including those legally adopted), widowed/divorced daughters.

(iv) xxx xxx
Notes: 1- Eligible son/daughter includes a posthumous child.

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xxx

PERIOD FOR WHICH ORDINARY FAMILY PENSION PAYABLE

67. The period for which ordinary family pension is payable shall be as follows:

(i), (ii) xxx

(iii) In the case of eligible daughter, till she attains the age of 25 years or upto the date of her marriage, whichever is earlier and subject to income criteria is given in Note-2 below :

Provided that an unmarried daughter above the age of 25 years, a widowed/divorced daughter irrespective of her age and son or daughter who is suffering from any disorder or disability of mind including mentally retarded or 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 family pension shall be payable to such son or daughter for life.

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xxx

ORDINARY FAMILY PENSION TO ONLY ONE MEMBER OF A FAMILY

68. (a) Except as provided in Regulation 71 below, the ordinary family pension shall not be payable to more than one member of the family at the same time.

(b) The ordinary family pension shall first be payable to the surviving spouse and in his absence or in the event of his disqualification or death, to the eligible child in the order of birth irrespective of the sex of the child and the younger of them will not be eligible for family pension unless the elder above him becomes ineligible for the grant of ordinary family pension.

(c) Where the ordinary family pension is payable to twin children, it shall be paid to such children in equal shares. Provided that when one such child ceases to be eligible, his share shall revert to the other child and when both of them cease to be eligible, the ordinary family pension shall be payable to the next eligible single child/twin children.

(d) Ordinary family pension to unmarried daughter above 25 years of age, widowed/divorced daughter, shall be payable only after the other eligible children below the age of 25 years have ceased to be eligible to receive family pension and there is no disabled child to receive the family pension."

ORDINARY FAMILY PENSION TO PHYSICALLY/MENTALLY HANDICAPPED CHILDREN

69. (a) If a son or daughter is suffering from any disorder or disability of mind including mentally retarded or is physically crippled or disabled so as to render him/her unable to earn a living even after attaining the age of 25 years, the ordinary family pension shall be payable to the child for life in the order as set out in Regulation 68 of these Regulations and also subject to the following conditions:

(i) The ordinary family pension shall be paid to such son or daughter through the guardian as if he or she was a minor except in the case of the physically crippled or disabled son/daughter who has attained the age of majority. However, in the case of a mentally retarded son or daughter, the family pension shall be payable to a person nominated by the service personnel/pensioner, as the case may be, and in case no such nomination has been furnished to the Army Head Quarters/Record Office by such service personnel or pensioner during his life time, to the person nominated by the spouse of such service personnel or family pensioner, as the case may be, later on.

xxx xxx
(b) Before allowing the ordinary family pension for life to any such son or daughter, the appointing authority shall satisfy himself that the handicap is of such a nature so as to prevent him/her from earning his livelihood and the same shall be evidenced by a certificate obtained from a Medical Board comprising of a Medical Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman and 2 other members, out of which at least one shall be a Specialist in the particular area of mental or physical disability including mental retardation, setting out as far as possible, the exact mental or physical condition of the child.

(c) The person receiving the ordinary family pension as a guardian of such son or daughter or such son or daughter not receiving the ordinary family pension through guardian, shall produce a certificate from a Medical Board of aforesaid composition, if the disability is permanent and if the disability is temporary, once in every 5 years, to the effect that he/she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled.

Note: A certificate of guardianship issued in respect of person with Autism, Cerebral Palsy, Mental retardation and multiple disabilities issued under National Trust Act by local level Committee is acceptable.

(d) If the marriage of the disabled daughter is legally annulled, she would be eligible for family pension for life from the date of her marriage stands annulled, subject to the following conditions:-

- (i) Divorce is valid in law.
- (ii) Divorced daughter shall not be required to come back to parent's home.
- (iii) Disability is certified by an appropriate authority as required under this Regulation.

(e) The disabled widowed daughter shall be eligible for ordinary family pension for life from the date of death of her husband even after attaining the age of 25 years of age subject to all other conditions prescribed in the case of son/daughter.

Explanations:

1. For the purpose of grant of ordinary family pension under this Regulation, the disability that manifests itself before or after the retirement or death of the service personnel shall be taken into account. This benefit will also be admissible to the eligible disabled children whether born before or after retirement.

2. A disable son/daughter shall become ineligible for ordinary family pension under this Regulation from the date he/she gets married.

3. Ordinary family pension payable under this Regulation shall be stopped from the date of earning more than Rs. 2550/- per month from any source. It shall be the duty of the guardian or son or daughter to furnish a certificate to the Pension Disbursing Authority, annually to the effect that:

- (i) he/she has not started earning his livelihood.
- (ii) he/she has not yet married.

4. The divorced/widowed daughter shall not be required to come back to parental home to become eligible."

15. Reliance is also placed on the 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 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 the aforesaid provisions contained in the Pension Regulations for the Army and also Clause 5 (ii) of the policy letter No. (7)/ 2013 - D(Pension/Policy) dated 15.05.2015 of the Ministry of Defence, Government of India.

CONCLUSION

16. In view of the considerations made and parameters referred to above, the OA 1280 of 2018 is allowed. Accordingly, the respondents are 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, taking note of the considerable

delay in filing the OA by the applicant, in view of the law laid down in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, arrears will be restricted to three years prior to the date of filing of the OA i.e. 19.07.2018.

17. There is no order as to costs.

Pronounced in open Court on this 29th day of July, 2024.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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