

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

OA 1050/2018

Smt Chhoti Devi ... Applicant
W/o Late CHWM Kapur Singh Kadian
Versus
Union of India & Ors. ... Respondents

For Applicant : Mr. BP Vaishnav, Advocate
For Respondents : Cdr Rajat Gupta, Deptt. Rep.

CORAM :

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 for non-grant of dual family pension by the Respondents from the next date of death of the husband of the applicant.

2. The husband of the applicant, CHWM Kapur Singh Kadian was enrolled in the Indian Navy on 02.01.1960, as a Seaman and was discharged on 31.12.1982, receiving a service pension. Subsequently, he secured a position with the Education Department of the Government of Haryana on 01.10.1984, where he remained employed until his death on 19.12.1995. Although the applicant receives a family pension from the Government of Haryana, she has been unable to obtain family pension from the Navy. However, she

was granted a Pension Payment Order (PPO) for dual family pension effective 24.09.2012, issued by PCDA (P) Allahabad, in accordance with a GoI directive dated 17.01.2013. However, the applicant is seeking approval for the family pension from the Navy with effect from 20.12.1995, i.e., the next day of the death of her husband.

3. It is the contention of the applicant that the Respondent's failure to grant the applicant a dual family pension from the date of her husband's death is deemed arbitrary, and unjust as the issue has already been settled by Hon'ble Delhi High Court in the case of Suman Naruka Vs. Union of India & Others [W.P.(C) 4174/2012] following a comprehensive analysis of pension regulations, entitlement rules, provisions of respondents' letters, and relevant legal precedents.

4. As per respondents, it is important to note that prior to 24.09.2014, the Government of India's policy only allowed for one family pension, and the family pensioner could choose which pension was more beneficial to them individually. In this particular case, Ms. Chhoti Devi, the widow of the late applicant, stated in her representation dated 08.03.2013, that she opted for the civil side family pension due to its advantageous nature, and she has been receiving it since then.

It should be emphasized that the government approved dual family pension effective 24.09.2012, as per MOD letter No. 01(05)/2010-D (pen/policy) dated 17.01.2013. Consequently, she was granted dual family pension starting from 24.09.2012, as indicated in Pension Payment Order (PPO) No. F/NA/0569/2014 dated 10.11.2014.

5. We have considered the arguments presented by the counsels representing both parties and examined the relevant policy letters and court decisions cited by each party. It is important to take note of Government of India, Ministry of Personnel, Public Grievances, and Pensions, Department of Pensioners & Pensioner letter No 1/19/96-P&PW(E) dated 19.07.2002 which reads to the effect :-

*No. 1/19/96-P&PW(E)
Government of India
Ministry of Personnel, Public Grievances,
and Pensions Department of Pension and
Pensioner's Welfare*

*3rd Floor, Lok Nayak
Bhavan Khan Market, New Delhi-110003
Dated 19th July, 2002*

OFFICE MEMORANDUM

Subject: Grant of Family Pension under the Employees Pension Scheme, 1995 and the Family Pension Scheme, 1971 in addition to Family Pension under Rule 54 of the CCS (Pension) Rules, 1972.

The undersigned is directed to refer to this Department's Notification No. 1/19/96-P&PW (E),

the 27th July, 2001 published in the Gazette of India (Extraordinary) dated the 27th July, 2001, by which sub-rule (13-B) of Rule 54 of the Central Civil Services (Pension) Rules, 1972 was amended by insertion of the following proviso after the first proviso;

"Provided further that family pension, admissible under the Employees Pension Scheme, 1995 and the Family Pension Scheme, 1971, shall however, be allowed in addition to the family pension admissible under these rules."

2. The said amendment has come into force from the date of publication of the said notification i.e., the 27th July, 2001. Clarification has, however, been sought by some Ministries/ Departments as to (i) whether the said Notification is applicable only in respect of those persons who retired on or after 27.7.2001; (ii) whether the Notification would also apply in cases of family pensions which arose prior to 27.7.2001, i.e. where retirement/ death of a re-employed pensioner occurred before 27.7.2001; and (iii) in the event of the benefit being admissible in cases where retirement/ death of a re-employed pensioner occurred before 27.7.2001, whether the benefit is to be given w.e.f. 27.7.2001 only, i.e., the date from which the said Notification came into force.

3. It is clarified that the benefit of family pension under Family Pension Scheme, 1971 Employees Pension Scheme, 1995, in addition to the Family Pension under Rule 54 of the Central Civil Services (Pension) Rules, 1972, will be admissible in those cases also where retirement/ death of a re-employed Pensioner, who was covered by the Family Pension Scheme, 1971 or the Employees Pension Scheme, 1995, took place prior to 27.7.2001, besides covering those cases where retirement/ death of such a re-employed pensioner took place on or after 27.7.2001. The benefit of second family pension in cases of retirement/ death prior to 27.7.2001 of the re-employed pensioner covered by the Family Pension Scheme, 1971 or Employees Pension Scheme, 1995, will, however, be admissible only w.e.f. 27.7.2001, i.e., the

date from which the said Notification came into force.

*Sd/-
(Sujit Datta)
Director*

6. On a perusal of the aforesaid letter, we find that this letter leaves no ambiguity regarding the pension entitlements of the applicant, encompassing both the family pension and the second family pension in the case of retirement/death prior to 27.07.2001, thus sufficiently addressing the applicant's situation.

7. In the case of Smt Suman Naruka Vs. UoI & Ors (supra) dealing with the issue of grant of dual family pension, the Hon'ble Delhi High Court has observed as under :-

"2. The peculiar facts of the instant case require the petitioner to be paid family pension from a retrospective date on account of the reason there was an issue whether Air Force personnel, in receipt of service pension, on being re-employed in a civilian service, on their death; would or would not entitle the family to the family pension. We highlight that these persons were otherwise being paid pension by the Indian Air Force. Notwithstanding the Government of India issuing a notification dated July 27, 2001, the Air Force Authorities were not releasing the family pension till a clarificatory circular was issued on May 14, 2010 which reads as under:-

"In view of the amendment in the CCS(Pension) Rules, 1972 and in exercise of the authority vested, it is hereby notified that w.e.f. 27th July, 2001, the family Pension under the General Insurance (Employees) Pension Scheme, 1995 shall be allowable to a person even if he is already in receipt of family Pension under any other rules of Central/State Government or Public Sector Undertakings/Autonomous Bodies/Local Fund under the

Central/State Government or the Armed Forces of Union of India."

"It is further clarified that the benefit of such second Family Pension shall be admissible in those cases also where Retirement/Death of the re- employed Pensioner took place prior to 27th July, 2001 although the said benefit shall be available only for the period commencing from 27th July, 2001 i.e. the date of issuance of the aforesaid Notification amending the CCS(Pension) Rules, 1972."

3. Suffice would it be to state that in view of the clarificatory circular, the petitioner made a representation on February 20, 2011; and suffice would it be to further state that clarificatory circulars do not create a right inasmuch as they clarify on an existing right. The second paragraph of the circular dated May 14, 2010, clearly clarifies that family pension has to be paid with effect from July 27, 2001 i.e. the date on which the Government of India had issued the original notification. The petitioner made a representation only when the clarification was issued on May 14, 2010.

4. No other point is involved.

5. The petition stands disposed of modifying the direction issued by the Tribunal as per the order dated April 19, 2012 by directing the Air Force Authorities to grant family pension to the petitioner with effect from July 27, 2001."

8. We find that on the identical facts a Coordinate Bench of this Tribunal in the case of Smt Saveetri Devi Vs. UoI & Ors.

[OA 340/2013] observed as under:

"1. This is an original application of the applicant who is wife of late Nk Jagrup Singh who was discharged from service on 03.03 1971 after completion of 17 years one month and 28 days of colour service wef. 30 04 1988. After retirement, the petitioner's husband re- employed as Worker at Central Ordnance Depot (COD) Delhi Cantt New Delhi The petitioner's husband died on 16 03 2008 The petitioner has applied for family pension from COD and also from the Army for the service rendered by her late husband in COD and in Indian Army The COD, Delhi Cantt, sanctioned the family pension to the applicant but from Army the petitioner could not get the

family pension The question involved in this matter with respect to the entitlement of the dual family pension The said issue has already been decided by the Delhi High Court in the case of Suman Naruka Vs UOI & Others reported in 2012 (VI AD) (Delhi 24) and consistently followed by the Benches of the Tribunal including in CA 161/2013 in Smt Parmeswari Vs. UOI & Others decided by the Principal Bench of the Tribunal vide order dated 17.07.2013 and then in OA 338/2013 Smt Bacho Devi Vs UOI & Others vide order dated 16.01.2014.

2. In view of the above reason, this OA deserves to be allowed, hence allowed and it is held that the petitioner shall be entitled to family pension from military services from the date next to the date of death of her husband i.e. 16.03.2003 The petitioner shall also be entitled to interest over the arrears @ 12% per annum. The order may be implemented within a period of three months from the receipt of copy of this order.”

9. In view of the aforesaid analysis we are of the opinion that the applicant is entitled for grant of ordinary family pension from the Indian Navy w.e.f. 27.07.2021 in view of the judgment of Hon'ble Delhi High Court in Suman Naruka (supra) and therefore we direct the Respondents to grant the Ordinary Family Pension to the applicant starting from 27.07.2001. The arrears shall be credited within three months from the date of pronouncement of this order. No deductions shall be made from the applicant's pension, and any amount already deducted shall be reimbursed


to the applicant within three months from the date of pronouncement of this order.

10. Pending application(s), if any, stands disposed of.

11. No order as to costs.

Pronounced in the open Court on 31st day of May, 2024.


(JUSTICE RAJENDRA MENON)
CHAIRPERSON


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

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