

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

B.

OA 72/2017 with MA 85/2018 & 86/2018

Vikram Singh & Ors. Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Ms. Sangeeta Tomar , Advocate
For Respondents : Mr. Arvind Patel , Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT. GEN C.P. MOHANTY, MEMBER (A)

ORDER
11.01.2024

Vide our detailed order of even date we have allowed the OA 72/2017. 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)

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

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

OA No 72/2017

WITH

MA 85/2018 AND MA 86/2018

Vikram Singh & Ors.

... Applicant

Versus

Union of India and Ors.

... Respondents

For Applicant : Ms. Sangeeta Tomar, Advocate

For Respondents : Mr. Arvind Patel, Advocate with
Major Sridhar J, OIC, Legal

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE LT GEN C.P.MOHANTY, MEMBER (A)

ORDER

MA 85/2018 AND MA 86/2018

In view of the order dated 22.09.2023 in MA 1336/2018, these applications, i.e., MA 85/2018 and MA 86/2018 call for no further action and are disposed of accordingly.

OA No 72/2017

2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the mother of the present applicants Smt Saraswati Thapa (earlier applicant) had filed this OA praying for following reliefs claimed in Para 8 read as under :-

“(a) That this Hon’ble Tribunal may kindly be pleased to direct the Respondents to grant Family Pension from applicant’s husband’s date of martyrdom i.e. 05.11.1971 with interest @ 12% p.a. on the arrears of accumulated pension as granted by this Hon’ble Court in the matter of Veena Pant v. UoI in OA 116 of 2012 vide order dated 31.10.2012.

(b) The applicant be granted any other relief which this Hon’ble Tribunal may deem appropriate, just and proper in the interest of justice and in facts and circumstances of the case.”

3. While this case was pending for adjudication, the mother of the present applicants (earlier applicant) passed away on 21.09.2017, and the legal representatives of the deceased mother were substituted as applicants in place of deceased earlier applicant, their mother, the NoK of the deceased Wd/o Late Ex Hav Pritma Singh Thapa vide order of this Tribunal dated 22.09.2023 in MA 1336/2018.

BRIEF FACTS

4. Ex Hav (Late) Pritam Singh Thapa, (hereinafter referred to as ‘Individual’) husband of Smt. Saraswati Thapa was enrolled in the Indian Army in 8 Gorkha Rifles Regiment on 01.08.1946, and after successful completion of the probation period, he was transferred to Army Physical Training Corps with effect from 14.08.1949 and was promoted to the rank of Havildar with effect from the same date. He was discharged from the Indian Army

with effect from 31.07.1967 (AN) on completion of terms and engagement under Army Rule 13(3) Item III (i), and he was granted service pension with effect from 01.08.1967 for life.

5. After discharge from the Indian Army, the individual was re-enrolled in Border Security Forces (BSF) and attained martyrdom in the Indo-Pak War on 05.11.1971. Widow of the individual Smt. Saraswati Thapa was granted Family Pension from BSF Service, which was subsequently revised as Extra Ordinary Family Pension w.e.f. from 01.04.1996. However, claiming that she is entitled for Ordinary Family Pension for the service in Army rendered by his late husband, she approached this Tribunal in the present OA. In the interest of justice, we take up the OA in accordance with Section 21(1) of the Armed Forces Tribunal Act, 2007 for consideration.

CONTENTION OF THE PARTIES

6. Relying on the judgment dated 31.10.2012 passed by this Tribunal in **OA 116/2012** titled '**Veena Pant v. Union of India & Ors.**' (placed as Annexure A-10), Learned Counsel for the applicant submits that widow of the individual is entitled for grant of two family pensions for the services rendered by her husband, each in the Army and in the BSF, and that the liberalised family

pension has been granted to her in lieu of her husband's services in BSF, but she was not granted Family Pension in lieu of her husband's services in Army.

7. Per Contra, Learned Counsel for the Respondents submits that as per the Govt of India, Min of Defence Letter No. 01(05)/2010-D/Pen/Policy dated 17.01.2013 and Principal Controller of Defence Accounts (Pension), Allahabad Circular No. 504 dated 17.01.2013, dual family pension is applicable to those family of Armed Forces personnel who got re-employment in Central Civil Department or State Government after getting retired/discharged from Military side, who are in receipt of Family Pension (Ordinary) from Military side, but since the widow of the individual was already getting Extra Ordinary Pension from BSF which is equivalent to Special Family Pension, she is not eligible for dual family pension as per the ibid order.

8. We have heard learned counsel for the parties and perused the material placed on record. On the careful perusal of the materials available on record and also the submissions made on behalf of the parties, the pertinent point for consideration remains whether the applicant is entitled to get relief as sought for in the above mentioned OA for the reasons and grounds stated in

the said Original Application?

9. On a perusal of the documents on record, we find that the issue under consideration is no longer *res integra* in view of the Policy letter no. No. PC-2 (6)/2013/D(Pen/Pol) dated 08.07.2019 issued by Department of Ex-Servicemen Welfare, D(Pension/Policy), Ministry of Defence, Government of India with subject - "Clarification regarding grant of Dual Family Pension i.e. Ordinary Family Pension (OFP) from Military side as well as Special Family Pension (SFP)/Liberalized Family Pension (LFP) for re-employed service - reg." followed by a policy letter no. 5608/AT-P/F.P./Vol. XXXIX dated 24.07.2019 issued by Office of Controller General of Defence Accounts, Ulan Batar Road, Palam, Delhi Cantt-10 with the same subject, and subsequent clarification issued vide Circular no. 626 by Principal Controller of Defence Accounts (Pension), Allahabad Circular No. 504 dated 19.08.2019, reproduced as under:

"To,

The O/C
Records/PAOs (ORs)

Dated: 19/08/2019

Subject:- Implementation of the Government decision regarding grant of dual family pension i.e. Ordinary family pension (OFP) from Military service as well as Special family pension (SP)/Liberalised family pension (LFP) for re-employed military service-reg.

Reference:- This office Circular No. circular no. 284 dated 18.09.2001, circular no. 504 dated 17.01.2013, Circular no. 513 dated 19.07.2013

As per Gol, MoD letter No. 01(05)/2010-D (Pen/Policy) dated 17.01.2013 (Cir No. 504 dated 17.01.2013), it was decided that the families of Armed Forces Personnel who got re-employed in Civil Departments/PSUs/Autonomous Bodies/Local Funds of Central/State Governments after getting retired from military service and were in receipt of military pension till death, shall be allowed to draw Ordinary Family Pension we.f 24.09.2012 from military side in addition to the family pension, if any, authorized from the re-employed civil department subject to fulfillment of other prescribed conditions as hitherto.

2) It was further clarified vide Gol, MoD letter No. 10(17)/2012-D(Pen/Pol) dated 21.03.2013 (Cir No. 513 dated 19.07.2013) that the dual family pension is allowable irrespective of whether re-employment was in civil or military department and family pensioners of DSC/TA personnel are also covered in the ambit of the Gol, MoD letter No. 01(05)/2010-D(Pen/Policy) dated 17.01.2013.

3) The issue regarding extending the admissibility of SiPI.P as dual family pension in case of death attributable to military service is under consideration to Govt. It is now clarified vide **Govt. of India, Ministry of Defence letter No. PC-2(6)/2013-D (Pen/Pol) dated 08.07.2019** that the provision of two family pensions, one in respect of military/civil service and SFP/LFP for re employed military service is also applicable. SFP/LFP if any, would be admissible in terms of Gol, MoD) letter no. 1 (2)/97 /D(Pen-G) dated 31.01.2001 on death of a pension who was re-employed in military service and if his death is attributable to military service, in addition to ordinary family pension in respect of the previous military/civil service with following conditions.

a) Where, however, on death of the re-employed ex-serviceman if the family is eligible for SFP/LEP for first service family pension for second spell of service would be OFP.

b) Special family pension /Liberalised family pension shall be granted only in respect of one service and in no case, SFP/IFP will be granted for both the services.

4) The financial benefits in the past cases will accrue will effect from 21.09.2012.

5) 'This circular has been uploaded on this office website [www. pcdapension.nic.in](http://www.pcdapension.nic.in) for dissemination across the all concerned.

6) Please acknowledge receipt.

No.Gts/Tech/0114/XXXVIII
Dated: 19.08.2019

Sd/-
Yashasvi Kumar
DCDA (P)"

Dated: 24/07/2019

"To,

The PCDA (P),
Allahabad

Subject: Clarification regarding grant of Dual Family Pension i.e. Ordinary Family Pension (OFP) from Military side as well as Special Family Pension (SFP)/Liberalized Family Pension (LFP) for re-employed service - reg.

Government of India, Ministry of Defence, D(Pension/Policy) vide their letter No. PC - 2(6)/2013/ D(Pen/ Pol) dated 8th July, 2019 has issued orders on the above subject. The orders are available on the website of Deptt. of ESW. Copy of the above mentioned Government letter is forwarded herewith for circulation to all concerned alongwith your implementation instructions. The cops of the implementation instructions may also be uploaded on your website under intimation to this HQrs. Office.

Jt. CGDA (Pension) has seen.

Sd/-
(Mukesh Kumar)
Accounts Officer (AT-P)"

"No. PC-2(6)/2013/D(Pen/Pol)
Government of India/Bharat Sarkar
Ministry of Defence
Department of Ex-Servicemen Welfare
D(Pension-Policy)

To

Dated 8th July, 2019

The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff

Subject: Clarification regarding grant of Dual Family Pension i.e. Ordinary Family Pension (OFP) from Military Side as well as Special Family Pension (SFP)/Liberalised Family Pension (LFP) for re-employed Military service - reg.

Sir,

The undersigned is directed to state that references have been received seeking clarification as to whether Special Family

Pension (SP)/Liberalised Family Pension (LFP) is admissible on death of a military pensioner re-employed in military service, and his death is attributable to military service.

2. Prior to 17.01.2013, the NOKs of Armed Force Pensioner who got re-employed in Civil Department/PSUs/Autonomous bodies/Local Fund of Central/State Governments after getting retired from military service were authorized to draw Ordinary Family Pension (OFP) either from military side or from civil side whichever was beneficial to them in terms of Gol, MoD letter No. 10 (6) /92/D (Pens/Sers) dated 28.09.1992 and regulation 78 of Pension Regulation Part-1, 2008. Subsequently, vide Gol, MoD letter No. 01(05)/2010-D(Pen/Policy) dated 17.01.2013, two family pensions were allowed w.e.f. 24.09.2012 in the event of death of a re-employed military pensioner.

3. It was further clarified that dual Family pension is admissible irrespective of the fact whether the re-employment was in civil or military department vide Gol, MoD letter No. 10(17)/2012-D (Pen/Pol) dated 21.03.2013. Hence, the family pensioners of military personnel re-employed in military e.g. Territorial Army/Defence Security Corps (TA/DSC) are also covered in the ambit of the Gol, MoD letter No. 01(05) /2010-D(Pen/Policy) dated 17.01.2013 for grant of dual family pension w.e.f. 24.09.2012. However, the admissibility of dual family pension was restricted to ordinary family pension (OFP).

4. Department of Pension and Pensioners' Welfare vide their OM No. 1/3/2016- P&PW(P) dated 24.01.2019 has clarified that the provisions of two family pensions, one in respect of military/civil service and the other for civil service after re-employment, as available in terms of CCS(Pension) Rules, is also applicable under CCS(EOP) Rules.

5. The matter regarding extending the admissibility of Special Family Pension (SFP)/liberalised Family Pension (LFP) in cases of death attributable to military service in terms of Gol, MoD letter No. 1 (21/97 /D/Pen-C) dated 31.01.2001 in the case of dual family pension has been examined. It has been decided that Department of Pension and Pensioners' Welfare OM No. 1/3/2016-P&PW(F) dated 24.01.2019 would apply mutatis-mutandis to military/civil pensioners re-employed in military service and it is clarified that the provision of two family pensions, one in respect of military/civil service and Special Family Pension (SFP)/Liberalised Family Pension (LFP) for re-employed military service is also applicable, Special Family Pension (SFP)/Liberalised Family Pension (LFP) if any, would be admissible in terms of Gol, MoD letter No. 1(2)/97 /D(Pen-C) dated 31.01.2001 on death of a pensioner who was re-employed in military

service and if his death is attributable to military service, in addition to Ordinary Family Pension in respect of the previous military /civil service.

6. Where, however, on death of the re-employed ex-serviceman if the family is eligible for Special Family Pension (SP)/Liberalised Family Pension (LFP) for first service, family pension for second spell of service would be Ordinary Family Pension.

7. Special Family Pension (SP)/Liberalised Family Pension (LFP) shall be granted only in respect of one service and in no case, Special Family Pension (SP)/Liberalised Family Pension (LFP) will be granted for both the services.

8. The financial benefits in the past cases will accrue with effect from 24.09.2012.

9. Pension Regulation of the three Services shall be amended in due course.

10. This issues with the concurrence of the Finance Division of this Ministry vide their ID No. 10(02)/2017/FIN/PEN dated 21.06.2019.

11. Hindi version will follow.

Yours faithfully,

*Sd/-
(A K Agrawal)
Deputy Secretary to the
Govt. of India*

10. An analysis of the aforesaid circular and policy letters makes it clear that the provision of two family pensions, one in respect of Military/Civil service and Special Family Pension (SFP)/Liberalised Family Pension (LFP) for re-employed military service is also applicable. Special Family Pension (SFP)/Liberalised Family Pension (LFP) if any, would be admissible in terms of Col, MoD letter No. 1(2)/97 /D(Pen-C) dated 31.01.2001 on death of a pensioner who was re-employed in military service and if his death is attributable to military service, in addition to the Ordinary Family Pension in

respect of the previous military/civil service. It is further clarified that where on death of the re-employed ex-serviceman if the family is eligible for Special Family Pension (SFP)/Liberalised Family Pension (LFP) for first service, family pension for second spell of service would be Ordinary Family Pension.


11. In the instant case, it is well clear that the late widow of the individual was drawing Extra Ordinary Family Pension (equivalent to Special Family Pension) from the civil side in lieu of the second spell of service rendered by her husband in BSF, and therefore, in terms of aforesaid policies, she is entitled for Ordinary Family Pension from the military side in lieu of the first spell of service rendered by her husband in Army. However, since it has been further clarified in the policy letter that the financial benefits in the past cases will accrue with effect from 24.09.2012, the widow of the individual Smt Saraswati Thapa is held entitled for the Ordinary Family Pension w.e.f. 24.09.2012 till her demise.

12. The arrears shall be disbursed to the substituted Legal Representatives of the Widow (earlier applicant) within three months of the date of receipt of this order, failing which it shall earn interest @ 6% p.a. till the actual date of payment.

13. In view of the aforesaid analysis, this OA 72/2017 is allowed to the extent directed hereinabove.

14. No order as to costs.

Pronounced in the open Court on 11 day of January, 2024.


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


(JUSTICE ANU MALHOTRA)
MEMBER (J)

/akc/