

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

**O.A. No. 738 of 2022 with MA 954 of 2022**

**In the matter of :**

**Smt Surji D/o Late Nk Kheta Ram** ..... **Applicant**

**Versus**

**Union of India & Ors.** ..... **Respondents**

**For Applicant** : Shri Navjeet Singh, Advocate

**For Respondents** : Gp Capt Karan Singh Bhati, Sr. CGSC

**CORAM:**

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

**ORDER**

**MA 954 of 2022**

Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. MA stands disposed of.

**O.A. No. 738 of 2022**

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

- (a) *Direct respondents to grant family pension with effect from 31.12.2008, the next date of death of her mother on 30.12.2008 under the provision of Govt. Of India, Ministry of personnel, Public Grievances and Pensions, Department of Pensions and Pensioners Welfare OM No. 1/19/03-P&PW(E) dated 06.09.2007, Govt. Of India, Ministry of Defence letter No. 1(03)/2007-D/(Pen/Policy) dated 25.10.2007, 2(2)/2012/D(Pen/PoI) dated 14.12.2012 and PCDA Allahabad circular No. 492 dated 24.01.2013.*
- (b) *Direct the respondents to pay the due arrears of service pension/service element and disability pension with interest @12% p.a. with effect from 31.12.2008, the next day of death of her mother Smt Dhani alias Chhano Devi on 30.12.2008 with all other consequential benefits as applicable from time to time.*
- (c) *Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."*

### **BRIEF FACTS**

4. The facts of the case in brief are that the applicant (Smt Surji) is the widowed daughter of an Indian Army Veteran (Late Nk Kheta Ram). The applicant's father is stated to have been enrolled in the Indian Army on 15.12.1932 and was discharged from service on 18.04.1946 as reflected in HRA-013718/27-7-99 (i.e. for use in substitution of a lost discharged certificate (IAFY-1964)), placed as Annexure A-2 on the records. Upon his discharge, he was sanctioned a mustering-out pension on 25.07.1946 vide PC No. 595 Pt II, HO No. 14230. The father of the applicant expired on 29.09.1997. After the demise of applicant's father, applicant's mother (Smt. Dhanni Devi alias Channo Devi) was in receipt of the

pension as reflected in Pension Certificate filed by the applicant annexure A-7 at page 34 on record. It is the case of the applicant that as she was born on 20.12.1954, after her father had already been discharged from service, which resulted in her birth details not being recorded in his official military records. The applicant is a widowed and unemployed daughter of a deceased soldier, seeking ordinary family pension after her mother's death on 30.12.2008. The applicant submitted an application dated 20.12.2019 to Record Incharge; thereafter, the applicant submitted another application dated 23.12.2020 seeking same relief and then a legal notice dated 16.11.2021 was sent to the respondents. Although in the counter affidavit, the respondents stated that the applicant's representations dated 20.12.2019, 23.12.2020 and legal notice dated 16.11.2021 were replied to vide their letters Nos. RNE/FP/DAR/14230 dated 04.06.2020, RNE/FP/DAR/14230 dated 17.03.2021 and legal notice vide letter No. RNE/FP/DAR/14230 dated 04.01.2022 respectively, stating that requisite documents have not been received and on receipt of the said documents, family pension claim will be processed. However, the applicant states that as she has not received any response to her representations or legal notice till the date of filing the present OA,

she has filed instant Original Application for grant of family pension. In the interest of justice it is considered appropriate to take up the present OA for consideration.

### **CONTENTIONS OF THE PARTIES**

5. The learned counsel for the applicant submitted that the father of the applicant who was in receipt of service pension died on 29.09.1997 and thereafter, her mother was sanctioned family pension and was in receipt thereof, however, the applicant's mother also expired on 30.12.2008. It was further submitted that the applicant being dependent and widowed daughter is entitled for the grant of family pension after death of her mother. It is further submitted by the learned counsel for the applicant that the applicant's father could not notify the applicant's birth details in his service records because she was born on 20.12.1954 i.e. much after his discharge from service on 18.04.1946 and also submitted in relation to non-availability of applicant's records with respondents that office of the respondents is wholly responsible for maintenance of the service records/long roll as they are bound to upkeep all records of employees at all times.

6. The learned counsel further submitted that the applicant had submitted various/representation to the respondents for consideration

of her case for grant of family pension. The counsel further submitted that she did not receive any reply from the respondents as the same were sent to wrong address and it is after receiving the copies of the replies to applicant's representations through counter reply, the desired documents have been submitted to the respondent's office vide application dated 12.07.2023, however, the application was denied to be countersigned by Zila Sainik Board on the pretext that they have neither been addressed/endorsed the subject letter dated 04.06.2020 nor it has been received by them.

7. It is further submitted by the counsel for the applicant that due to lack of knowledge the applicant could not approach the concerned office immediately after death of her mother and despite, meeting the eligibility criteria being above the age of 25, dependent and widowed, she has not been granted family pension and she requests for fair consideration emphasizing that technical discrepancies should not deprive her of her rightful pension under existing rules.

8. *Per contra*, the learned counsel for the respondents contended that the date of enrolment of Late NK Kheta Ram and date of birth of the applicant is not found recorded in the Long Roll and his service records have been destroyed by burning after expiry of its stipulated

retention period under the provision of Para 595 of Regulation for the Army 1987 (Revision Edition).

9. It is further contended by the learned counsel for the respondents that name of the applicant i.e. Smt Surji, is not recorded in the long roll and therefore, respondents are unable to consider the claim of the applicant for the grant of dependent family pension. The learned counsel further submitted that while replying to representations of the applicant, the respondents had asked the applicant to submit certain documents as required for publication/notifying her name and other details, but the said documents have not been submitted by the applicant till the date of filing the counter affidavit. It is submitted by the counsel for the respondents that in such cases where employee records are not available along with such a long delay in filing an OA, no relief for pension and other benefits can be granted to the applicant and therefore, the applicant is not entitled to the grant of the family pension and the OA thus, deserved to be dismissed.

### ANALYSIS

10. We have heard the learned counsel for the parties and have perused the record produced before us. The only question that requires the consideration is whether the applicant in the instant case

is eligible for the grant of Ordinary Family Pension under the relevant rules of Army.

11. It is essential to observe that the reason why the respondents have not granted family pension to the applicant is due to her name and birth details not being recorded in her father's service record and due to non-submissions of requisite documents needed for the grant of family pension to the applicant and that the respondents have no record of the late ex-serviceman as the same have been destroyed after retaining for the requisite period of time of 25 years.

12. It is however pertinent to mention herein that that despite the applicant's father not notifying her name and date of birth details in his service records, it cannot be the sole ground for the denial of family pension to the eligible children of the deceased ex-servicemen.

13. It is relevant to mention that applicant vide the rejoinder to the counter affidavit filed by the applicant on 20.09.2023 has annexed various requisite documents which certify that the applicant is a widowed daughter of the late Ex-servicemen (Late Ex Nk Kheta Ram) and Late Mrs. Chhano Devi. Further, it is evident from the record that the husband of the applicant (Late Sh. Dula) died on 11.02.1989 and that since the demise of her husband the applicant

has not remarried nor have any child and she has no financial means to lead her life.

14. The applicant in this case became eligible for the grant of Ordinary Family Pension only after the demise of her mother on 31.12.2008, prior to which her mother was in receipt of the pension of her late husband, i.e., father of the applicant, Ex Nk Kehta Ram.

15. After the demise of the mother of the applicant in the year 2008 and thereafter being a widowed daughter, applicant's right to receive the pension of her late father accrues and the applicant being a widowed daughter became entitled to the Ordinary Family Pension of her late father Ex Nk. Kheta Ram.

16. It is essential to advert to Regulation 63 of the PRA 2008 (Part-1) which states to the effect: -

*63. Where Service personnel dies in the circumstances mentioned in the Category A of the Regulation 82 of these Regulations:*

*(i) Either while in service, provided he had been found fit after successful completion of the requisite training and medical examination for commission, or at the time of enrolment in the case of Personnel Below Officer Rank; or*

*(ii) After release/ retirement/discharge /invalidment with a pension of any kind under these Regulations, the family of the deceased shall be entitled to ordinary family pension under these Regulations."*

17. 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.*

xxx

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.*

xxx

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***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”*

*.....(emphasis supplied)*

18. Reliance is also placed on the Ministry of Defence circular

No.1/19/03-P&PW(E) dated 06.09.2007, which reads as under:-

*“The undersigned is directed to say that as per existing provisions under clauses (ii) and (iii) of sub-rule (6) of Rule 54 of the C.C. S. (Pension) Rules, 1972, read with of para 7.2 (b) of this Department's O.M. No. (45/86) / 97 - P&PW (A)-Part 1 dated the 27th October 1997, son/daughter including widowed/ divorced daughter is eligible for grant of family pension till he/she attains the age of 25 years or upto the date of his / her marriage/ remarriage, whichever is earlier subject to income criterion laid down in this Department's O.M. No. 45/51/97-P&PW(E) dated the 5th March 1998 which stipulates that a son/ daughter, including widowed/ divorced daughter, shall not have an income exceeding Rs. 2550/- per month from employment in Government, the private sector and self employment, etc., to be eligible for family pension. Orders were also issued vide this Department's O.M. No. (45/51) / 97 -P&rPW (E) (Vol.11) dated 25th July 2001 regarding eligibility of disabled divorced/ widowed daughter for family pension for life subject to conditions mentioned therein. Further, orders were issued for making the widowed/ divorced daughter eligible for family pension vide this Department's O.M. of even number dated 25th August, 2004.*

*2. The Staff Side of National Council (JCM) had raised the issue of extension of scope of family pension to daughters of the Government servants/Pensioners even after attaining the age of 25 years at par with the widowed/ divorced daughters, which has been agreed to in principle It has*

*accordingly, been decided that the unmarried daughters beyond 25 years of age shall also be eligible for family pension at par with the widowed/ divorced daughters subject to other conditions being fulfilled. Grant of family pension to unmarried/ widowed/ divorced daughters shall be payable in order of their date of birth and younger of them will not be eligible for family pension unless the next above her has become ineligible for grant of family pension. It is further clarified that family pension to unmarried/ widowed/ divorced daughters above the age of 25 years 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 that there is no disabled child to receive the family pension*

*3. This issues with the concurrence of the Ministry of Finance, Department of Expenditure vide their UO. No. 380/EV/2006 dated 05.01.2007.*

*4. These orders, in so far as their applicability relates to the employees of the Indian Audit and Accounts Department, are being issued in consultation with the Comptroller and Auditor General of India, vide their U.O. No. 56 Audit (Rules)/ 1 2-2007)dated 22.05.2007.”*

*(emphasis supplied....)*

thus, the applicant herein being the widowed daughter of the Ex servicemen Late Ex Nk Kheta Ram fulfils the eligibility criteria as provided under the above quoted regulations and MoD circular, hence the applicant is entitled for the grant of Ordinary Family Pension.

### CONCLUSION

19. In view of the considerations made and parameters referred to above, the OA 738/2022 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. 23.02.2022.

20. There is no order as to costs.

Pronounced in open Court on this 4<sup>th</sup> day of March, 2025.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

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