

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

OA 3501/2023  
with  
MA 4703/2023

Smt Rashmi Devi Wd/o ..... Applicant  
Ex GDR Late Neeraj Singh  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. Ved Prakash, Advocate  
For Respondents : Ms. Sheetal Raghuvanshi, Advocate  
for R 1-4  
Mr. Shahrukh Khan, Advocate for R-5

CORAM

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

ORDER

MA 4703/2023

Keeping in view the averments made in this application and finding the same to be bona fide, in the light of the decision in the case of Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the instant application is allowed condoning the delay in filing the OA.

2. The MA stands disposed of.

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3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the

applicant who is the widow of Late GDR Neeraj Singh prays for grant of Family Pension to her w.e.f. the date of her husband's death and calls in question the tenability of the order dated 14.08.2021 passed by the Records Office rejecting her claim for grant of Family Pension.

4. Facts, in brief, indicate that Ex GDR Late Neeraj Singh was enrolled in the Army (The GRENADIERS Regiment) on 02.12.2002. After completing his military training, he was posted to 21 GRENADIERS and finally discharged from service on 31.12.2019 under Army Rule 13 (3) Item III (i) on fulfilling the conditions of enrollment. He had rendered 17 years and 30 days of service in the Army.

5. As per the records maintained by the GRENADIERS, Late Neeraj Singh was married to Smt. Rashmi Devi, the present applicant, and her name is entered in the service records as his wife. However, it seems that on account of certain personal differences and family disputes, the applicant's husband on 08.02.2019 executed a Will before his discharge and got it registered by way of an affidavit bequeathing on his demise all the pensionary benefits to his mother, i.e., respondent No.5, namely, Smt. Omvati Devi. It is also common ground that the applicant has filed petition

against her husband for divorce in the District Court, Meerut in January, 2020 and has made allegations of personal harassment and cruelty against him. She is also said to have refused to sign the pension papers at the time of discharge of her late husband. Records reveal that the pension papers were submitted by the Ex soldier without signature of his wife and he was granted service pension w.e.f. 01.01.2020 @ Rs.20,475/- vide Pension Payment Order No.160202000877 issued on 14.07.2020. The Late husband of the applicant expired in a road accident on 15.05.2021 and immediately after his death, the applicant raised claim for grant of pensionary benefits. Even though it is admitted by her that she was living separately from her husband, they have two minor children who are dependent upon the applicant. She has narrated the details of harassment meted out to her by her husband and his family. On the ground of her husband being a habitual drinker, cases of physical harassment, mental assault, domestic violence and maintenance are pending in Meerut Court since 2018 along with divorce proceedings initiated by the applicant in the Family Court at Meerut. It is the case of the applicant that her husband never appeared in divorce case and after her

husband's death, on 26.11.2021, the divorce case bearing No.27/2020 was dismissed. Documents with regards to the divorce proceedings have been filed as Annexure A-5. It is the case of the applicant that she has made representation to the Department for grant of Family Pension but the same has been rejected on the ground that as a Will executed by her late husband was still in existence and further as the divorce proceedings filed by her have not yet been disposed of, therefore, she is not entitled to Family Pension/enhanced rate of Family Pension in view of Regulation 64 (b) read with Regulation 66 of the Pension Regulations for the Army, Part-I (2008). It is her contention that so long as she is the legally wedded wife of the Late Neeraj Singh, she and her minor children are entitled to the pension as per the Army Pension Regulations and merely, because a Will was executed by her husband on 08.02.2019, the right available to her by the statutory regulation cannot be taken away.

6. The official respondents have simply stated that in view of the Will executed by the Late soldier Neeraj Singh, they have not settled the claim of the applicant and by the impugned order, they have intimated her that as she did not sign the Pension papers at the time of discharge of her late

husband in accordance with the statutory rules, she cannot be granted Family Pension. Now, in view of the Will, the respondents have denied the claim of the applicant. Respondent No.5, the mother of the deceased soldier claims the benefit by virtue of the Will executed by her late son and submitted that she was dependent upon her late son and, therefore, she is entitled to the benefit.

7. Learned counsel for the applicant invited our attention to an order passed under similar circumstances by the AFT, Regional Bench, Kochi, in the case of Mayavva AM @ Kanike M/O Late GNR (OPR) Sampathu AM Vs. Union of India and Ors., OA No.128/2016 wherein based on the statutory provisions in the Pension Regulation, namely, Pension Regulations 64, 66, 68 and 70 identical claim made by the wife of the deceased soldier has been allowed and the claim made by the mother of the soldier had been rejected.

8. We have heard learned counsel for the parties and perused the documents available on records. The only issue that needs to be decided is as to whether the applicant in view of the documents available on record and the statutory provisions can be denied the benefit claimed.

9. Before averting to consider the factual aspect of the matter, it is appropriate to take note of the provisions of Regulation 68 and 70 of the Army Regulation which are reproduced herein under:

**“68. Ordinary Family Pension to only one member of a family.**

*(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/her absence or in the event of his/her 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/her 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.*

**70. Ordinary Family Pension to Parents**

*Parents who were wholly dependent on the service personnel when he was alive, provided the deceased had left behind neither a widow nor child may be granted ordinary family pension for life at normal*

*rate as admissible under Regulation 64(a) of these Regulations subject to the condition that their earning is not more than Rs.3500/- + D.R. per month from all sources including pay, pension or self employment."*

10. From the aforesaid statutory provisions as contained in the Pension Regulations for the Army, Part-I, 2008, it is clear that a Family Pension due to a military personnel is payable only to the spouse so long as she is alive at the time of the death of the military personnel. Regulation 68 specifically stipulates that Family Pension can be paid only to one member of the family and the first preference is given to the surviving spouse of the military personnel. Regulation 70 only stipulates that Ordinary Family Pension can be granted to the parents who are wholly dependent on the service personnel when he was alive provided that the deceased, namely, the service personnel had left behind neither a widow nor a child. It is, therefore, clear that so long as the deceased employee leaves behind a widow or a child, parents of the deceased employee under statutory regulation are not entitled to the Family Pension.

11. After taking note of all these provisions, the AFT, Regional Bench at Kochi in the case of Mayavva AM @ Kanike M/O Late GNR (OPR) Sampathu AM (supra) has rejected the claim of the mother of deceased soldier on

the ground that the statutory regulation particularly Regulation 64, 68 and 70 read together specifically provide that it is only the surviving spouse and the children who were entitled to Family Pension of a deceased military personnel and nobody else. Once for the purpose of payment of Family Pension a statutory regulation is in place and it clearly contemplates the manner in which the claim for Family Pension has to be settled, a statutory Tribunal cannot ignore the regulation and issue any direction contrary thereto. As far as the claim of respondent No.5 based on the Will and the action of the official respondents in denying the benefit to the applicant on the ground that she did not sign the Family Pension papers along with her husband at the time of discharge and now because of the Will it cannot be granted to her is concerned, we are of the considered view that in the matter of payment of Family Pension to the spouse and children of a deceased soldier when a statutory regulation framed under the Army Act and the Rules provides specific provision, mandatory in nature for settlement of the claim nothing can be done in violation to or contrary to the rules and regulations. The Will in question may raise a dispute in sharing the property/estate of the deceased employee,

however, if certain part of the benefit which is payable after the death of the soldier to his dependent is governed by statutory rules and regulation, this Tribunal, in ignorance of the same, cannot pass an order rejecting the claim of the applicant when the statute mandates payment of the Family Pension in a particular manner. Respondent No.5 may have a claim based on the Will but the same has to be settled in accordance to the personal law applicable in the matter and the law governing succession of property or its inheritance based on a Will. This is a dispute beyond the jurisdiction of this Tribunal and this Tribunal does not propose to go into this aspect of the matter. The benefits and liabilities of the parties, in exercise of the powers available to this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, cannot be adjudicated based on the personal law when specific regulations statutory in nature are available for settlement of claims for pension which comes within the purview of service disputes as defined in Section 3(o) of the Armed Forces Tribunal Act, 2007, and the power conferred upon the Tribunal to adjudicate such a dispute under Section 14 mandates settlement of the claim in accordance with the statutory rules and regulations governing the service

of a soldier who is subjected to the Army Act and the Army Rules framed in this regard.

12. Apart from the aforesaid reasons indicated by us, the issue raised in this OA has been settled by the AFT, Regional Bench at Kochi wherein it has been clearly upheld, after considering the provisions of the Pension Regulations for the Army; Part-I, 2008, that so long as the spouse of the deceased soldier and his children are alive, they are only entitled to post retiral benefits like Family Pension and once the rules are specific in nature, the claim of the applicant cannot be rejected on the grounds canvassed before this Tribunal. Respondent No.5 has made her claim primarily on the ground that the applicant left her husband and started living separately; therefore, she is not entitled to the same. On the contrary, the applicant has made out a case in the year 2018 two years prior to the death of her husband indicating harassment, cruelty and behavior of the respondent in the matter of treating her and the proceedings initiated by her in the form of family dispute before the appropriate Court at Meerut. The family dispute did not result in divorce/dissolution of the marriage as it was dismissed after the death of the employee and so long as the applicant

continues to be the legally wedded wife of the deceased soldier, her claim based on the statutory regulation cannot be rejected.

13. Accordingly, in the facts and circumstances of the case, we allow this OA, quash the impugned order dated 20.10.2021 and direct that the Family Pension which was liable to be paid in accordance with the regulation and also the enhanced rate of pension be paid to the applicant w.e.f. the date of the death of her husband, i.e., 15.05.2021 and her entire claim be settled within a period of three months.

14. Accordingly, the OA stands disposed of.

15. No order as to costs.

16. Pending miscellaneous application(s), if any, stands closed.

Pronounced in open Court on this 14 day of January, 2025.

  
[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

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