

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

107.

OA 433/2024 with MA 499/2024

Smt Maheshwari Devi M/O

Spr (Late) Ashok Singh

..... Applicant

Versus

Union of India & Ors.

..... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Ms. Jyotsna Kaushik, Advocate

CORAM

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

ORDER
20.05.2025

MA 499/2024

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.

MA stands disposed of.

OA 433/2024

Invoking the jurisdiction of this Tribunal under Sec. 14 of the Armed Forces Tribunal Act, 2007, the applicant has called in question the tenability of the Annexure A1 order dated 17.06.2019 passed by the office of the PCDA (P), Allahabad rejecting her claim for ordinary family pension. In Para 2 of the said order the claim for ordinary family pension has been rejected on the following grounds:

"In the instant case, as joint income certificate attached with the claim joint income of parents is higher (Rs. 2,46,000/- annual) than the minimum prescribed amount. Therefore, Ordinary Family Pension is not admissible to NoK, however, DCRG is being granted vide PPO No. 156201901014-3200.

2. The applicant's son Sep Surender Pal Negi was enrolled in the Indian Army on 02.05.2015 and was posted at 383 FD Coy since May 2017 and was performing administrative duties when he was granted 30 days annual leave in the year 2018, from 07.12.2018 to 05.01.2019. The applicant's son left home on 04.01.2019 but he did not report for duty. As he had not reported for duty, On 25.03.2019 a Court of Inquiry (CoI) was conducted with regard to the death of the applicant's son on 25.03.2019 and on subsequent dates. In the meanwhile, on 13.04.2019 a letter was forwarded by the competent authority to the PCDA recommending grant of ordinary family pension to the applicant on account of the death of her son, being the mother of late Hav Surender Pal Negi. In the recommendations made with regard to grant of ordinary family pension the competent officers on 05.09.2019 clearly recommended for grant of ordinary family pension. The sanctioning authority of OIC Records sanctioned the ordinary family pension to the applicant on 14.07.2019 and the Record Office forwarded the claim of the applicant for issuance of PPO for grant of family pension vide Annexure A3 communication dated 05.09.2019 and in Para 2 of the said communication, the following directions were issued:

"2. Family pension claim submitted to PCDA (P) Allahabad for issue of PPO duly notified family pension vide our letter No. FM-11174/R/FP/06/Pen dated 13 Apr 2019 has been rejected as the income shows in

combine income certificate is more than the eligibility criteria."

The documents were thereafter forwarded to the competent authority and finally by the impugned order on the ground that the annual joint income of the parents is higher than Rs.2,46,000 the claim of the applicant for ordinary family pension has been rejected and only DCRG was granted to the applicant. Claiming grant of ordinary family pension and challenging the order passed by the PCDA (P), Allahabad refusing ordinary family pension to the applicant, she has invoked the jurisdiction of this Tribunal. Shri Ajit Kakkar, learned counsel for the applicant, placing reliance on the Army Instruction No. 51/1980, stated that merely on income criteria ordinary family pension cannot be denied to the applicant. The relevant portion of the said Army Instruction is reproduced as under:

"In suppression of all existing orders on the subject, the family pensionary benefits, as detailed in paragraph 2 and subsequent paras will be admissible to the families of the Armed Forces personnel (excluding families of reservists), who were in service on 1.1.1964 or who joined/join service thereafter and who died/dies while in service or after retirement with a retiring, disability or invalid pension/special pension on account of causes which are neither attributable to nor aggravated by service.

Further Clause 13 of the said Army Instruction is reproduced hereunder:

"Clause 13 of Army Instruction 51 of 1980, which is also relevant, further says that "families of individuals who have committed or commit suicide will also be eligible for pensionary benefits detailed in this instruction."

3. It is the case of the learned counsel for the applicant that the applicant is entitled to ordinary family pension and to justify his contention, the learned counsel for the applicant invites our attention to

the judgment rendered by a Coordinate Bench of this Tribunal in Smt. Santosh Devi v. UoI (OA 418/2017 decided on 27.05.2019) wherein based on the Army Instruction in question ordinary family pension had been granted rejecting the objection raised against grant of ordinary family pension to the applicant in the said ^{Case B} solely on the ground that the total income of the parents was more than the stipulated earning per year. Further, a Bench of this Tribunal for granting the benefit has relied upon the judgments of the Punjab & Haryana High Court in Kartar Kaur & Another v. UoI and others (CWP 19665/2009 decided on 26.08.2014) and placed reliance on another judgment of the Chandigarh Bench of this Tribunal in Balwinder Kaur & Another v. UoI & Ors. (OA 2215/2013 decided on 26.08.2014). Placing reliance on the aforesaid judgments, Shri Kakkar, learned counsel for the applicant submits that the claim of the applicant should be allowed.

4. The respondents, on the other hand, submit that the claim of the applicant was forwarded to the competent pension authority. They also admit the fact that the son of the applicant late Ashok Singh was enrolled in the Army on 02.05.2015 and he was found dead on 08.01.2019 at AD Guest House, near Fatehpuri Masjid, Chandni Chowk, Delhi. He is said to have committed suicide. They also admit that the applicant is the mother of the late soldier and even though the department had sanctioned the applicant ordinary family pension, the PCDA (P), Allahabad rejected it on the grounds as indicated in the impugned order. The respondents further submit that the PCDA (P), Allahabad had given various reasons for not granting the ordinary family pension and as the PCDA (P), Allahabad which is the pension payment authority has rejected the claim, the respondents support the

claim made by the PCDA (P), Allahabad and refute the claim of the applicant.

5. Having heard the learned counsel for the parties and on perusal of the records we find that in the case of Santosh Devi (supra) a Coordinate Bench of this Tribunal had taken note of identical issue and after considering orders passed by the Punjab & Haryana High Court in the case of Kartar Kaur (supra) and the order passed by the Chandigarh Bench of this Tribunal in the case of Balwinder Kaur(supra), in Para 11 the High Court had taken note of the judgments and in Para 12 has decided the issue in the following manner:

“12 In the instant case also, except for mentioning in the counter affidavit that the combined income of the parents was more than the prescribed limit set by the Government, it is not specifically mentioned as to whether the mother had any source of income or what was the income of the father of the deceased. That being so, in view of the judgments referred to above, rejection of even the claim for grant of ordinary family pension by the respondents, cannot be sustained”

(Emphasis Supplied)

In the present case also except for mentioning that the combined income of the parents was more than the minimum prescribed nothing is brought to our notice as to why based on the judgments referred to herein above the benefit cannot be granted to the applicant. That apart, we find that the Punjab & Haryana High Court in the case of Iswanti Devi v. UoI (CWP No. 11462/2006) has held that imposing condition of financial limit of income only in the case of ordinary family pension is not sustainable in law and similar objections have been rejected. Taking note of the principles of law as laid down by the High Court of Punjab & Haryana as detailed herein above and by the Coordinate Benches of this Tribunal in the case of Balwinder Kaur and Santosh

Devi (supra) we see no reason to take a different view from the one already taken by the Punjab & Haryana High Court and the Coordinate Benches of this Tribunal.

6. Accordingly we allow this application directing the respondents to grant ordinary family pension to the applicant w.e.f., 09.01.2019. However, arrears are ~~however~~³ restricted to three years prior to filing of the petition i.e., 29.01.2024.

7. The respondents are directed to make necessary calculation and make payment to the petitioner within a period of four months from the date of receipt of copy of this order failing which, the same shall carry interest @ 8% from the date of order. OA stands disposed of accordingly.

8. However, in case any other benefit like DCRG has already been granted to the applicant which cannot be granted in view of the grant of ordinary family pension, the same shall be adjusted.

9. No order as to costs.

10. Pending Miscellaneous Application(s), if any, stands closed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)