

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

102.

OA 476/2018 with MA 4566/2024

Smt Shanti Devi W/O Late Sigmn Ram Kwar Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. BP Vaishnav, Advocate with
Ms. Birjesh Sharma, Advocate
For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal u/s 14 of the Armed Forces Tribunal Act, 2007, applicant calls in question tenability of the action of the respondents in denying dual family pension to the applicant and rejecting her claim vide order dt 22.06.2016 (Annexure A-1). The prayer made in the application vide para 8 (A), (B) and (C) reads as under:

(a) To direct the respondents to grant the applicant with family pension from the next date of death of her husband i.e. 27.10.2003 in view of the judgements of this Hon'ble Tribunal in above mentioned cases.

(b) To direct the respondents to pay arrears from the date of family pension i.e. 27.10.2003 along with interest @ 12% per annum till its payment to the applicant.

(c) Pass any other or such further order or orders as deemed fit to this Hon'ble Tribunal in order to secure the ends of justice in favour of the applicant.

2. Facts in brief indicate that applicant's husband Late Sigmn Ram Kawar (No. 6320828) was enrolled in the Indian Army as Sepoy on 13.11.1963 in Signal Regiment. While in service he received awards like Raksha Medal etc. and was finally discharged from service on 16.06.1972, on being invalidated out by the Medical Board after serving for 8 years 7 months and 4 days. His invalidation was on medical grounds as he was found in Low Medical Category 'CEE'. After discharge from service he was drawing service pension, thereafter, got employed in the Irrigation Department with the Government of Haryana in 1974, and worked in the said department till his death on 26.10.2003. After death of her husband, the applicant applied for family pension from the Government of Haryana and also from the Army for grant of family pension. Even though the Government of Haryana granted family pension to the applicant, but the Army Authorities refused Family Pension. On 17.01.2013 the applicant got a PPO in the matter of grant of family pension from the PCDA(P), Allahabad, the family pension

was granted to her only from 24.09.2012 for the service rendered by her husband in the Army. The applicant sought family pension from the Army w.e.f. the date of death of her husband which was rejected by the Army Authorities and therefore, claiming family pension from the Army Authorities w.e.f. the date of death of her husband i.e. 26.10.2003, this application has been filed. It is the contention of the respondents that as per Government of India (GoI) policy letter dt 17.01.2013, applicant is entitled to family pension w.e.f. 24.09.2012 and not from the date of death of her husband, on the ground that the scheme for granting of dual family pension was introduced by the Government of India vide circular dt 17.01.2013 effective from 24.09.2012. In relation to this, the applicant places reliance on a judgment of Hon'ble Delhi High Court in the case of Suman Naruka Vs UOI & Ors. [O.A. No. 270 of 2011] (vii AD) decided on 16.07.2012 and orders passed by this Tribunal in various cases namely, Smt. Saveetri Devi Vs UOI & Ors. [O.A. 340 of 2013] decided on 03.03.2014 (Annexure A-5) and various other cases as detailed in para (d) of the pleadings. Further, reliance is placed on two recent

orders passed by this Tribunal in Smt Ram Rati Devi Vs Union of India & Ors. [OA 1054 of 2018] decided on 19.04.2024 and Smt Chhoti Devi Vs Union of India & Ors. [OA 1050 of 2018] decided on 31.05.2024 in support of her claim.

3. Respondents have refuted the aforesaid contention and it is their case that as per the Government of India policy letter dt 17.01.2013 and the PCDA(P), Prayagraj circular 504 dt 17.01.2013 Annexure R-XVIII and R-XIX, family pension to the personnels of the Armed Forces who get second employment in Central Government/State Government/PSU or Autonomous Bodies etc. can be granted w.e.f. 24.09.2012, i.e. the date when the dual family pension rules for the military came into force. It is the case of the respondents that the applicant is entitled only to family pension (dual family pension) w.e.f. 24.09.2012 and not before that. Respondents also contended that the interpretation of the judgment in the case of Suman Naruka Vs UOI & Ors. [O.A. No. 270 of 2011] decided on 16.07.2012 by the applicant is unsustainable in law.

4. The respondents also refuted the contention of the applicant on the ground that the Regional Bench, Kochi of this

Tribunal in the case of *Ammmini K.N. Vs UOI & Ors.* O.A. No. **51/2016 on 17.08.2016** has rejected an identical claim.

5. We have heard learned counsel for the parties at length, and we have considered the rival contention. The only issue requiring consideration is as to whether the applicant is entitled for dual family pension as paid to her from the date of issuance of circular only or w.e.f. the date of death of her husband. The Government of India, Ministry of Personnel Pension & Public Grievance, Department of Pension & Pensioners' Welfare Office Memo dt **23.05.2022** removed the restrictions in the matter of grant of dual family pension existing prior to 24.09.2012 as is evident from para 2 of the aforesaid circular. However, the issue of applicability of the said policy w.e.f the date of death of the employee concerned has been considered by the Hon'ble Delhi High Court in the case of *Suman Naruka Vs UOI & Ors.* (*Supra*). After comprehensively analysing the Pension Regulation Entitlement Rules and Provisions of various circulars, this Tribunal has also considered the said issue in various cases as detailed hereinabove.

6. It is appropriate to take note of the fact that prior to 24.09.2012, the policy of Government of India, was only to allow one family pension and the pensioner had an option to choose one of the pensions which was more beneficial to the individual. It was for the first time that the dual family pension scheme was made effective by the Government w.e.f. 24.09.2012 as per the MoD letter and circular dt 17.01.2013 and consequent thereof the applicant is being granted the dual family pension. At this stage, it would be appropriate to take note of the Government of India, Ministry of Personnel Pension & Public Grievance, Department of Pension & Pensioners' Welfare letter dt 19.07.2002 which reads as under:

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 Department's Notification No. 1/19/96-P&PW this (E), 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 1995 under the Employees Pension Scheme, 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 (1) 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.c.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, 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
(emphasis supplied)**

7. Based on all these facts, Coordinate Bench of this Tribunal considered all these facts in the case of *Smt Saveettri Devi Vs UOI OA 340/2013* and in the said case 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."*

8. The issue was considered by the Hon'ble Delhi High Court also in the case of *Suman Naruka Vs UOI & Ors.* and after taking note of various aspects of the matter in the case of *Suman Naruka Vs UOI & Ors.*, the issue has been dealt with in the following manner:

"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 local Funds 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."

9. It is after taking note of the aforesaid principle that the case of Saveetri Devi has also been decided by this Tribunal and following all these principles as indicated hereinabove, case of Smt Chhoti Devi and Smt. Ramrati Devi has been decided by the Coordinate Benches of this Tribunal and the decision rendered in the case of Ammini K.N. by the Regional Bench, Kochi has been distinguished by this Tribunal solely on the ground that the Regional Bench, Kochi has not considered the law laid down by the Hon'ble Delhi High Court in the case of Suman Naruka Vs UOI & Ors. [O.A. No. 270 of 2011] decided on 16.07.2012.

10. Taking note of the consistent view of this Tribunal as indicated in the three cases namely, Ram Rati Devi (Supra),

pension w.e.f date of death of her husband and in denying the said benefit to the applicant, the respondents have committed an error.

11. Keeping in view the aforesaid, we allow this application and direct that the family pension accruing to the applicant shall be paid to her from the date of death of her husband i.e. 27.10.2003 within a period of three months, if the same is not paid, the sum shall carry interest @ 6%. With the aforesaid, the application stands allowed and disposed of.

12. Pending application/s, if any, also stands disposed of.

13. No order as to costs.

Pronounced in the open Court on ^H15 day of April, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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