COURT No. 3

ARMED FORCES TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

O.A. 1140 of 2019 with MA 1847/2019

Ms. Aparajita Mehta D/o

Flt Lt. Chandan Gupta ... **Applicant**

Versus

Union of India and Ors. ... **Respondents**

For Applicant : Mr. Ajay Bhalla, Mr. Satya Saharawat & Ms. Aditi Laxman

For Respondents : Mr.Anil Gautam, Sr CGSC

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)

HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

MA 1847/2019

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 232 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of ***UoI & Ors Vs Tarsem Singh*** 2009(1)AISLJ 371 and in ***Ex Sep Chain Singh Vs Union of India & Ors*** (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 1847/2019 is allowed despite opposition on behalf of the respondents and the delay of 232 days in filing the OA 139/2017 is thus condoned. The MA is disposed of accordingly.

O.A. 1140 of 2019

This application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, seeking following reliefs:-

A. Quash and set aside the Impugned Order dated 11.04.2018 and Impugned Order dated 28.05.2018.

B. Direct the respondents to divide the Special Family Pension between the applicant and her mother as being the Divorced daughter of Flt Lt Chandan Gupta, the applicant is not being financially supported by her mother in terms of Para 5.8 (a) of Guidelines for Special Family Pension on remarriage of Widow and the consent letter dated 02.11.2017 of respondent no. 3.

C. Pass any other order as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

BRIEF FACTS

1. The facts of the case, in brief, are that the applicant is the daughter of Late Flt Lt Chandan Gupta, who was commissioned in the Indian Air Force on 16.10.1965. The officer died on 18.11.1976 following a flying accident while in harness. Consequently, his widow, Respondent No. 3, was awarded Special Family Pension (SFP) effective July 1977, and a Special Child Allowance was issued for the applicant, who was then a minor.

2. Following the remarriage of Respondent No. 3 on 16.09.1977, her pension was discontinued. However, pursuant to a 2009 Government of India policy change regarding remarried widows, Respondent No. 3's SFP was restored. The applicant, who had married in 1989, subsequently obtained a decree of divorce by mutual consent on 31.05.2010.

3. In 2016, the applicant submitted a representation to the authorities seeking a division of the SFP, asserting a lack of financial support. While Respondent No. 3 provided written consent for the division of the pension on 02.11.2017, the

respondents rejected the request via an Order dated 11.04.2018. The respondents maintained that the applicant's eligibility for family pension would arise only upon the death or disqualification of the primary pensioner, Respondent No. 3. Aggrieved by this decision, the applicant has preferred the present Original Application.

SUBMISSIONS ON BEHALF OF THE APPLICANT

4. It is submitted by the applicant that immediately upon the death of her father in an aircraft accident while in harness, respondent no. 3, the mother of applicant (Mrs Serena Gupta, now Mrs Serena Christine Newbolt) was granted provisional Special Family Pension FP vide PPO No. M/1515/77 dated 19.07.1977, while the applicant who was then a wholly dependent minor aged 7 years 7 months received separate Child Allowance (Special) vide PPO No. M/1516/77. This bifurcated sanction from inception crystallised the applicant's independent entitlement as eligible next-of-kin, with child allowance serving as the foundational precursor to matured family pension rights under subsequent policy expansions.

5. It is further submitted by the applicant that respondent no. 3's remarried on 16.09.1977 and SFP was discontinued, however no continuance or transfer of the applicant's child allowance was effected despite her ongoing minority and total dependency on her mother. It is contended by applicant that Para 5.8(a) of GoI MoD letter No. 1(2)/97/D(Pen-C) dated 31.01.2001 mandates that remarried widows with children retain full SFP only where they continue supporting the children post-remarriage; failing which, the widow receives Ordinary Family Pension (30% of last emoluments) and eligible children receive 50% of SFP. Moroever the GoI MoD letter dated 25.08.2004, removing the 25-year age restriction on widowed/divorced daughters, expansively incorporates such daughters within the "children" class contemplated for this remedial division mechanism, applicable to ongoing scenarios of established non-support.

6. It is the case of the applicant that having married on 20.08.1989 and obtained divorce by mutual consent on 31.05.2010 due to irretrievable breakdown, repeatedly sought financial assistance from respondent no. 3 for herself and her minor daughter, only to face consistent refusal amid her medical ailments, inability to work gainfully, and resultant penury. Her representations dated 23.08.2016 and 15.02.2017, followed by reminders, explicitly invoked this post-divorce destitution, prompting DAV's letter dated 20.09.2017 seeking clarification. Respondent no. 3's unequivocal consent letter dated 02.11.2017 for division of SFP between herself and the applicant conclusively establishes non-support, perfectly activating the division contemplated under para 5.8(a) of the GoI MoD letter No. 1(2)/97/D(Pen-C) dated 31.01.2001.

7. It is submitted that respondent no. 3's restoration of SFP vide her letter dated 24.02.2009 (forwarded by Air HQ on 06.03.2009) resulted in corrigendum PPO No. M/F/66/2009 dated 16.07.2009 granting SFP @ Rs.13,560/- p.m. under GoI MoD letter No. 1(1)/2001/D(Pen/Pol) dated 20.01.2009. This restoration operates holistically, necessarily engaging the 2001 division framework alongside revival of SFP; the respondents' rejection vide MoD UO dated 11.04.2018 (conveyed by Air HQ on 28.05.2018), insisting on eligibility only post-death/disqualification of the mother, disregards the mother's consent, the applicant's evidenced dependency, and policy intent, rendering the order arbitrary, unreasoned, and violative of Article 14.

8. It is submitted that as the sole and only child of deceased, the applicant qualifies seamlessly under the cascade of policy extensions, i.e. the MoD letter dated 27.10.1997 (extending benefits to divorced/widowed daughters till age 25 or remarriage); letter dated 25.08.2004 (perpetual eligibility sans age cap); GoI MoD No. 2(2)/2012/D(Pen/Pol) dated 14.12.2012 read with PCDA(P) Circular No. 492 dated 24.01.2013 (SFP/Liberalised Family Pension to divorced daughters beyond 25 years upon cessation of prior claims, with specific continuance for prior child allowance recipients); and No. 1(9)/2013-D(Pen/Policy) dated 17.11.2017 (clarifying divorce decree finality even if proceedings spanned the

pensioner's lifetime). With no other eligible children below 25 years, bifurcation follows forthwith: 50% SFP to applicant and Ordinary Family Pension to mother, operative from date of divorce (31.05.2010) or first representation (23.08.2016).

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

9. The respondents submits that with the issuance of Ministry of Defence letter dated 20 January 2009 providing for restoration of SFP to remarried widows in specified circumstances, Smt Serena Gupta became eligible for such restoration and, after due verification, her SFP was restored with effect from that date by a fresh PPO. This establishes, as on date, that Smt Serena Gupta (now Serena Christine Newbolt) is the recognised primary family pensioner in receipt of SFP, and under the defence family pension scheme the spouse so recognised stands first in the order of eligibility, while children, including widowed/divorced daughters, fall in a subsequent category whose entitlement arises only on their turn after cessation of the spouse's eligibility and subject to dependency and other conditions.

10. The respondents submit that the applicant seeks, in substance, division or diversion of a part of the restored SFP on the plea that, after her divorce in May 2010, her mother did not support her financially and they rely on the specific scheme governing SFP on remarriage of a widow, which provides that if, after remarriage, the widow continues to support the child/children, she continues to draw the full SFP, but if she does not support them, her entitlement is reduced to ordinary family pension and the balance of SFP is sanctioned to eligible children.

11. The respondents emphasise that the applicant, having married in 1989 and obtained a decree of divorce in May 2010, falls, if at all, within the category of "divorced daughter" created by subsequent Office Memoranda and MoD clarifications that extend family pension to widowed/divorced daughters beyond 25 years, subject to strict conditions. These instruments require, first, that the divorce must have taken place within the lifetime of at least one parent, and

second, that the divorced daughter must be dependent at the time when her turn for family pension arises, i.e. upon the death or disqualification of the spouse and earlier beneficiaries.

12. The respondents further submit that the applicant seeks to rely upon and reinterpret the Government of India letter dated 31 January 2001 to contend that where a widow does not support her child "after the daughter's divorce", division of SFP is permissible. According to the respondents, this is a clear misreading of the policy: the letter in question deals with the situation where, **after the widow's remarriage**, she does not support the children, in which event only the widow's SFP may be reduced and the balance sanctioned to the child/children.

13. Moreover the respondents contend that even on the applicant's own showing, her right as a divorced daughter is at best inchoate and contingent, because (a) her mother, the primary family pensioner, is alive, in receipt of SFP and has not been disqualified; and (b) the question whether the applicant was in fact dependent at the relevant point of accrual of entitlement can only arise when the pension is to devolve upon her, that is, upon cessation of the mother's eligibility. The applicant's representations have been duly considered; clarifications have been obtained from the competent authorities and communicated, and there is no policy or regulation which authorises the division or concurrent sharing of the same Special Family Pension between the remarried widow and her divorced daughter on the mere plea of non-support after the daughter's divorce.

CONSIDERATION

14. The applicant's primary contention rests on the premise that the grant of Special Child Allowance vide PPO No. M/1516/77 in 1977, concomitant with her mother's provisional Special Family Pension (SFP) under PPO No. M/1515/77, crystallised an independent and vested entitlement in her favour to claim a share of SFP concurrently with respondent no. 3 during the latter's lifetime. This proposition is untenable. Under the defence pension scheme

prevailing at the material time, child allowance was merely a derivative and provisional adjunct to the widow's primary SFP, designed to cater to minor dependants without conferring any autonomous or perpetual line of succession. Upon discontinuation of the mother's SFP following her remarriage on 16.09.1977, no separate family pension devolved upon or was sanctioned to the applicant, thereby precluding any crystallisation of vested rights that could override the statutory order of eligibility decades later. Subsequent liberalising policies, such as those extending benefits to widowed/divorced daughters, does not elevate a lapsed child allowance available to a minor into a divisible SFP share.

15. Turning to para 5.8(a) of Government of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31.01.2001, the applicant seeks to invoke it as a remedial mechanism for division of SFP on the ground of non-support post her divorce in 2010. This constitutes a misreading of the provision and its contextual ambit. Para 5.8(a) explicitly regulates the widow's SFP entitlement in the specific scenario of her remarriage: where she continues to support the child/children thereafter, she is eligible to draw full SFP; conversely, where she does not, her pension stands reduced to Ordinary Family Pension (OFP, reckoned at 30% of last emoluments) with the balance (50% of SFP) sanctioned to eligible children. The temporal anchor "*after remarriage*" and reference to "the child/children" unmistakably target contemporaneous dependency of minors or then-eligible dependants immediately following the remarriage event, not remote contingencies such as an adult daughter divorced over three decades later. To extend para 5.8(a) so as to recalibrate SFP a married adult daughter aged about 56 years (now divorced) due to the fact that she is not being supported would amount to judicial legislation, distorting a narrowly crafted administrative instruction into an open-ended welfare dispensation. Apart from this, respondent no. 3's consent letter dated 02.11.2017, while evidencing acquiescence, cannot validate such division, for family pension is a creature of statute and executive

policy, not amenable to private contractual apportionment or waiver of sequential entitlements.

16. The applicant's eligibility as a divorced daughter must be evaluated against the cascade of policy extensions culminating in MoD letter No. 2(2)/2012/D(Pen/Pol) dated 14.12.2012 read with PCDA(P) Circular No. 492 dated 24.01.2013, alongside clarificatory instructions such as No. 1(9)/2013-D(Pen/Policy) dated 17.11.2017. These instruments liberalise family pension (including SFP/Liberalised Family Pension) to divorced daughters beyond 25 years, subject to twin conditions: (i) the divorce must have materialised during the lifetime of at least one parent, and (ii) dependency must subsist when the daughter's "turn" accrues in the order of succession. Thus, divorced daughters who are dependant occupy a posterior slot—after the spouse (widow) and any eligible children below 25 years or disabled children—meaning thereby that the entitlement activates only upon cessation of the widowed mother's eligibility with fresh assessment of dependency criteria at that devolutionary juncture. The restoration of SFP to respondent no. 3 vide MoD letter No. 1(1)/2001/D(Pen/Pol) dated 20.01.2009 and corrigendum PPO No. M/F/66/2009 dated 16.07.2009 re-affirmed her as the primary pensioner without unsettling this hierarchy. The applicant's divorce by mutual consent on 31.05.2010, though during her mother's lifetime, merely positions her prospectively in the queue; no present, accrued right to concurrent or divided SFP arises while respondent no. 3 remains eligible and alive. In the absence any other eligible children below 25, her claim would, if at all, devolve solely upon the mother's future disqualification on account of death, but remains inchoate and contingent today. Moreso, the applicant's contention w.r.t Para 5.8(a) of the 2001 letter, it is relevant to clarify that the concept of Special Family pension is like a species i.e. it's eligibility criteria is more particular and specific since it is given to those widow who lost her husband in action/harness and only thereafter to the next eligible persons in the order of succession as mentioned in the Govt. Orders. It is quite clear that no division concept is applied in case of SFPs. Even in

case of applicability of Para 5.8(a) to SFP in the 2001 letter where the same is to be apportioned to minor children for reasons indicated, therefore, the widow's entitlement of SFP is changed to Ordinary family pension.

17. In the view of the above facts, the challenge to the impugned MoD UO dated 11.04.2018 (conveyed by Air HQ on 28.05.2018) as arbitrary and violative of Article 14 of the Constitution is devoid of merit. The order ibid is in the line with the various orders issued on the subject at various occasions and has been issued post 23.08.2016, 15.02.2017 et al., and DAV's query etc. and cannot be stigmatised as unreasoned or hostile merely because it does not resolve the individual hardship of the applicant. The respondents' reasoned rejection thus withstands judicial scrutiny.

18. In light of the above analysis, this Tribunal holds that;

I. No independent or vested right to SFP division or concurrent drawal accrues to the applicant from the 1977 child allowance or any subsequent policy;

II. Para 5.8(a) of MoD letter dated 31.01.2001 does not in any way support SFP bifurcation between a remarried widow and adult divorced daughter even though unsupported by the widowed mother.

19. In view of the above analysis, we find that the case for Division of Special Family Pension between the applicant and her mother ex facie does not exist . Thus the O.A. deserves to be dismissed being devoid of merit and is accordingly dismissed.

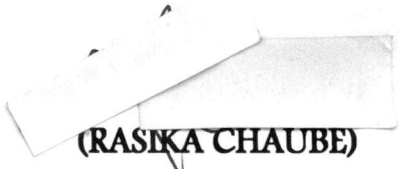
20. Consequently, the connected and pending miscellaneous application(s), if any, also stands disposed of.

21. No order as to costs.

Pronounced in the open court on this 13th day of January, 2026.

(JUSTICE NANDITA DUBEY)

MEMBER (J)



(RASIKA CHAUBE)

MEMBER (A)