

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR**

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TA 535 of 2010 (arising out of CS 614 of 2008)

Poonam Devi	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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Coram: Justice Rajesh Chandra, Judicial Member.
Lt Gen (Retd) H.S. Panag, Administrative Member.

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For the Petitioner (s) : Mr. Mukesh Yadav, Advocate

For the Respondent(s) : Mr. Suveer Sheokand, CGC for Resp Nos. 1 to 5,7
& 8
Brig (Retd) PS Ghuman for Resp No 6

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Judgment
30 - 10-2012

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JUSTICE RAJESH CHANDRA

Initially Civil Suit No. 614 of 2008 was filed in the Court of Civil Judge (Senior Division), Narnaul, which was transferred to this Tribunal and has been registered as TA No. 535/2010.

In brief, the facts of the case are that the petitioner Smt. Poonam Devi filed the above noted suit No. 614 of 2008 alleging that she was married to Sepoy Anil Kumar as per Hindu rites and ceremonies and started living in the matrimonial home. Her husband was born in the wedlock of Preet Singh (respondent No.10) and Smt. Inderawati Devi. After the death of Smt. Inderawati Devi, the respondent No. 10 contracted second marriage with Bhateri Devi (respondent No.11). Anil Kumar died on 21-03-2007 while in service in the Army. After the death of her husband, the petitioner Poonam Devi was turned out of the marital home along with her daughter aged about

one and a half years. It has further been alleged that after the death of her husband the petitioner alone is entitled for grant of entire consequential service benefits, AGI claim, pensionary benefits, GIS, DCRG and all other specially allowed benefits from respondents Nos. 1 to 9. The petitioner has alleged that she was surprised on coming to know that some of the payable benefits due to the death of Anil Kumar have been apportioned between the petitioner on the one hand and respondents No. 10 and 11 on the other hand. Respondent No.11 Bhateri Devi is step mother of Anil Kumar and as such she is not entitled to any benefits, whereas respondent No. 10 Preet Singh himself being an Ex-service man is not entitled to get any benefits after the death of Anil Kumar.

The further contention of the petitioner is that respondents No. 1 to 9 in collusion with respondents No. 10 and 11 are bent upon to make the division of death benefits and consequential service benefits without having any legal right to do so. The petitioner has accordingly prayed for a declaration that she is alone entitled for grant of all consequential service benefits and death benefits along with other legally admissible grants and dues and life insurance claim on account of death of Anil Kumar, who died during service on 21-03-2007. It has further been requested that respondents Nos. 1 to 9 be prohibited from making any apportionment or division of the above said benefits in favour of respondents Nos. 10 and 11.

The respondents No. 10 and 11 filed their joint written statement in which it has been alleged that the petitioner is wife of Anil Kumar and that respondent No. 11 (Bhateri Devi) is second wife of respondent No. 10

(PreetSingh). It has also been admitted that the first wife of Preet Singh was Smt. Inderawati Devi and Anil Kumar was born in the wedlock of Preet Singh and Smt. Inderawati Devi. It has also been admitted that respondent No.10 (Preet Singh) is an Ex-service man and is getting pension. However, the case of these respondents is that the pension and the earnings from the ancestral land are not sufficient for the maintenance of respondents Nos. 10 and 11. They have also alleged that the petitioner instead of supporting these respondents have contracted second marriage and left the daughter Khushi with them.

Further contention is that the petitioner, after having contracted second marriage, has voluntarily relinquished her entitlement for grant of entire consequential service benefits etc., and as such the respondents Nos. 1 to 9 are performing their duties as per procedure provided in the law.

The other respondents filed their separate written statement and alleged that Anil Kumar was posted to 19 JAT w.e.f. 28-03-2003 and was married to the petitioner Smt. Poonam Devi. He had executed nomination forms for Family Pension, Special Family Pension, Provident Fund and Death-cum Retirement Gratuity in favour of his wife, whereas nomination for payment of Army Group Insurance was executed at the ratio of 75% and 25% in favour of his wife Smt. Poonam Devi and father Preet Singh respectively. Anil Kumar had died in a road accident and the death was declared as attributable to military service. The terminal benefits have been paid to the petitioner, but the Special Family Pension was divided at the ratio of 60% and 40% between the petitioner and Preet Singh, father of the deceased Anil

Kumar, based on the recommendations of ARO, Rohtak vide letter No. D/505/158 dated 15th of December, 2007. It has further been alleged that Preet Singh, respondent No. 10 has served the Regiment of Artillery and is drawing at least Rs. 5506/- per month as pension (service pension + disability pension). Referring to the Govt of India, Ministry of Defence letter No. 1(3)/99/D (Pension/Services) dated 24th November, 1999, the respondents have alleged that the parents are also entitled to family pension subject to production of income certificate, which should not exceed Rs. 2550/- per month. They have further alleged that the pension, which the respondent No. 10 (Preet Singh) is getting, exceeds the ceiling limit of Rs. 2550/- per month. It has further been contended in the written statement that the ARO, Rohtak did not take cognizance of this fact that Preet Singh is a pensioner and drawing pension exceeding ceiling fixed for entitlement for division of Special Family Pension

The respondents have admitted that the division of family pension as carried out is against the laid down policy and that the Special Family Pension to the extent of 100% be restored in favour of the petitioner, who is wife of the deceased Anil Kumar. Regarding the AGI's benefits, it has been alleged that as per the policy in vogue, the AGI's death benefits be divided in the ratio of 75% and 25% between the wife and father of the deceased respectively as per nomination executed by the deceased.

We have heard the learned counsel for the petitioner as well as the respondents. The respondents Nos. 10 and 11 were not present on the date of hearing i.e. 19-09-2012 nor their Counsel appeared to make any submission.

From the petition and the written statement filed by respondent Nos. 10 and 11 in the case, it is clear that the petitioner's husband Anil Kumar was born in the wedlock of Preet Singh and Smt. Inderawati Devi. After the death of Smt. Inderwati Devi, Preet Singh married to respondent No.11 Bhateri Devi.

It is also an admitted fact that the petitioner is the wife of Anil Kumar. Since the respondent No.11 Bhateri Devi is step mother of Anil Kumar, she is not entitled to any kind of pension after the death of Anil Kumar.

Now the question remains is as to whether respondent No. 10 who is father of the deceased Anil Kumar, is entitled to any special family pension. In this regard, section 228 (a) of Pension Regulations for the Army, 1961 is important which says that if the recipient of special family pension refuses to contribute proportionately towards the support of other **eligible heirs** in the family who were **dependent** on the deceased a competent authority may divide at his discretion, the special family pension among the eligible heirs of the deceased.

Naturally, the question arises whether the respondent No.10 Preet Singh is eligible for getting any family pension. The petitioner has alleged that the respondent No. 10 Preet Singh himself is an Ex-serviceman and is not entitled to get any benefits after the death of Anil Kumar. The respondent Nos. 1 to 9 have also admitted in their written statement that Preet Singh is

getting an amount of Rs. 5506/- per month as pension (service pension + disability pension) and was not dependent upon his son Anil Kumar . He was getting pension as Ex. serviceman, & as such he is not entitled to any kind of special family pension.

The bone of contention is the letter No.D/505/158 dated 15th of December 2007 issued by ARO, Rothak (Exhibit 3 and 4 filed as paper No. 20 with the written statement) in which a recommendation has been made to the Records The JAT Regiment, Bareilly for the division of family pension. Various other documents have also been enclosed with this letter dated 15th of December, 2007 and a perusal of these papers indicates that in her application the petitioner Poonam Devi had mentioned at page 2 that her father-in-law is an Ex- serviceman and is getting pension. In spite of this assertion, the ARO did not care to ascertain this fact from the record and recommended for the division of special family pension although the father of Anil Kumar was not at all entitled to receive the same. The petitioner is not only the wife of the deceased Anil Kumar, but she is also nominated in the form of family pension/special family pension etc.

In view of the entire above discussion we have no hesitation in holding that the said letter dated 15th of December, 2007 has wrongly been issued by the ARO, Rohtak and because of this letter the petitioner has unnecessarily been dragged into litigation and to bear its expenses.

The aforesaid letter of ARO is accordingly quashed and the respondents respondent No. 1 to 9 are directed to restore the entire special

family pension in favour of the petitioner without any delay.

So far as the Army group Insurance money is concerned, that controversy is not cognizable by this Tribunal and as such no decision is being given in that regard.

Before parting with the judgment, we direct that the counsel for the respondents will ensure that a copy of this judgment is sent to the authority concerned to look into the conduct of ARO, Rothak, who without making proper inquiry about the eligibility of Preet Singh, recommended the division of the special family pension between the petitioner and her father-in-law Preet Singh in the ratio of 60:40% and if necessary, disciplinary action be taken against the ARO concerned.

(Justice Rajesh Chandra)

[Lt Gen (Retd) H.S. Panag]

30.10.2012

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