

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.38 of 2014
and
O.A.No.63 of 2014

Thursday, the 08th day of January 2015

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)
AND
THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

O.A.No.38 of 2014:

Smt. Sartaj Begum
Mother of Late Sep. Rafivulla Baig
(Service No.2794123-F)
aged about 54 years
House No.7-454,
Sivalayam Bazar
(Near Police Station)
Village & Post-Kariapalam
Mandal & Tahasil-Bapatla
District-Guntur (A.P)
Pin-522 111.

... Applicant

By Legal Practitioners:
M/s. M.K. Sikdar & S.Biju

VS

1. The Adjutant General
Integrated HQ of MOD (Army)
Adjutant General Branch
Addl Dte Gen Personnel Services
New Delhi-110 011.

2. The Officer-in-Charge
Records, Maratha Light Infantry
Belgaum, Pin-590 009.

3. The Director Recruiting
Army Recruiting Office
Post-Pattabhipuram
Ravindra Nagar
Guntur (A.P), Pin-522 006.

4. Smt. Ishraad Begum
Widow of Late Sep. Rafivulla Baig
(Service No.2794123-F)
Wife of Shaik Jani Basha
House No.14-4-75, Pothurivarithota
4th Line, Post/Tehsil/District-Guntur (A.P)
Pin-522 001.

5. Union of India, through the Secretary
Government of India, Ministry of Defence
New Delhi-110 011.

6. The PCDA (P),
G-3 Section, Draupathi Ghat
Allahabad (UP), Pin-211 014.

...Respondents

Mr. S.Haja Mohideen Gisthi, SCGSC
For Respondents-1 to 3, 5 & 6.

Mr. M.Selvaraj,
Counsel for 4th respondent.

O.A.No.63 of 2014:

Smt. Ishraad Begum
Widow of Late Sep. Rafivulla Baig
(Service No.2794123-F)
House No.14-4-75, Pothurivarithota
4th Line, Post/Tehsil/District-Guntur (A.P)
Pin-522 001.

.. Applicant

By Legal Practitioner:
Mr. M. Selvaraj

vs.

1. Union of India
rep.by its Secretary,
Government of India
Ministry of Defence
New Delhi-110 011.

2. The Officer-in-Charge
Records, Maratha Light Infantry
Pin-900 499
C/o 56 APO.

3. The Director Recruiting
Army Recruiting Office
Post-Pattabhipuram
Ravindra Nagar
Guntur (A.P), Pin-522006.

4. Zilla Sainik Welfare Officer
Guntur (A.P)
Pin-522 006.

5. Smt. Sartaj Begum
Mother of Late Sep. Rafivulla Baig
(Service No.2794123-F)
House No.7-454,
Sivalayam Bazar
(Near Police Station)
Village & Post-Kariapalam
Mandal & Tahasil-Bapatla
District-Guntur (A.P)
Pin-522 111.

6. Principal Controller of Defence
Accounts (Pension) PCDA (P)
Draupathighat, Allahabad-211 014.

... Respondents

Mr. S.Haja Mohideen Gisthi, SCGSC
For respondents-1 to 4 and 6.

M/s. M.K. Sikdar & S.Biju
Counsel for 5th respondent.

COMMON ORDER

(Common Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiah, Member (Judicial))

O.A.No.38 of 2014:

1. The applicant files this application for a direction to quash the impugned order No.2794123F/RB/FP/Est, dated 21st October 2012 passed by the 3rd respondent and to direct 1st and 2nd respondents for division of Liberalized Family Pension between the applicant and the 4th respondent at 50% with effect from 1st June 2003 and at 100% with effect from 1st January 2010 with interest and costs.

2. The factual matrix of the case in the application would be as follows: The applicant's son Late Sep Rafivulla Baig (Service No.2794123-F) was enrolled in Indian Army on 01.11.1996. He died on 01.09.2002 while doing BPET practice in "OP PARAKRAM" and the casualty was declared as "Physical Casualty" for statistical purpose and "Battle Casualty" for financial purpose. Accordingly, the 4th respondent, viz., the widow of the applicant's son was granted "Liberalized Family Pension". Subsequent to the grant of the said pension, the 4th respondent was living with the applicant only for four months in 2003, i.e., till May 2003 and thereafter, she left for her parent's house in Guntur Town and stayed there permanently. The 4th respondent was enjoying the pensionary

benefits and never bothered about the applicant who is in financial crisis, since the applicant's other two sons or her husband are not taking care of the applicant. The applicant's representation before the 2nd respondent for division of the Liberalized Family Pension between the applicant and the 4th respondent was not answered and it is still pending. The 4th respondent and the applicant's son had no issues. After living with her parents till 2009, the 4th respondent got remarried to one Shaik Jani Basha on 31st December 2009 by changing her name as Shaik Shabirunnisa and now she got two children. The Applicant requested the 1st and 2nd respondents to stop the Liberalized Family Pension to the 4th respondent since the 4th respondent got remarried. Subsequently, on a representation made to the 2nd respondent, the 3rd respondent was directed to investigate the matter as per Para 228 (a) of Pension Regulation for the Army 1961 (Part-I) and accordingly, both the parties were called and the investigation was concluded on 11th November 2011. Since there was no improvement, the applicant approached the respondents-1, 2 and 3 with further representations, but there was no reply. Then the applicant filed O.A.No.24 of 2013 before this Tribunal and a counter-affidavit was filed by the 1st to 3rd respondents on 4th June 2013. It was stated in the said counter-affidavit that the applicant

and the 4th respondent could divide the Liberalized Family Pension at 30% and 70% respectively, in order to avoid injustice. The applicant submits that the 4th respondent is no longer a dependent or a family member of the deceased applicant's son because of her remarriage. Apart from that, her second husband is a high earning person and is able to take care of his wife and children. The applicant submits that the respondents have not divided the Liberalized Family Pension between the applicant and the 4th respondent till date and are depriving the applicant from getting the benefits of Liberalized Family Pension. Therefore, the applicant requests this Tribunal to allow this application.

3. The respondents-1 to 3, 5 and 6 in O.A.No.38 of 2014 filed a reply-statement which would be as follows: The facts that the applicant's son was enrolled in the Army on 01st November 1996, that he died on 01st September 2002 due to "Exertional Head Stroke with Acute Renal Failure while he was posted in "OP Parakram", that the applicant's deceased son was married to Smt. Ishraad Begum (4th respondent), that the applicant's son executed a Will in favour of 4th respondent as his NoK to receive benefits from Armed Forces Personnel Provident Fund, Special Family Pension, Death-cum-Retirement Gratuity and Army Group Insurance Death benefits and that therefore, the 4th respondent

was sanctioned and paid all the dues for which she was eligible admissible besides Liberalized Family Pension by issuance of a PPO dated 14th February 2003, are not denied by the respondents. The respondents however submit that the applicant was paid 50% share in Army Group Insurance Death benefits and maturity benefits. The respondents submit that as per Pension Regulations, if the recipient of Special Family Pension refuses to contribute proportionally towards the support of other eligible heirs in the family who were dependent on the deceased or if the pension is in the name of a child, but is not devoted to the interest of the family, generally, a competent authority may, on the basis of the verification/investigation report rendered by the Zila Sainik Board/Recruiting Organization or Centre Commandant/Sub Area Commander and attested or countersigned by any one, i.e., Village Sarpanch, Gazetted Officer, Sub Postmaster, Patwari, Police Sub Inspector, A Member of Municipal Corporation, Panchayat President or Member of Parliament/Member of Legislative Assembly/Member of Legislative Counsel, divide at his discretion, the Special Family Pension among the eligible heirs of the deceased soldier. A complaint was made to respondent No.2 dated 08th October 2010 for division of Liberalized Family Pension, it was referred to Zila Sainik Welfare

Office, Guntur who in turn referred the same to Respondent No.3, the competent authority to investigate into the matter. Respondent No.3 after investigation intimated by way of a report dated 21st October 2012 with a request to take action at the office of the respondent No.2 with a recommendation to share and thus for division of Liberalized Family Pension between the applicant and the 4th respondent. The respondents submit that the respondents-1 to 3 had never denied or rejected the request of the applicant for division of Liberalized Family Pension. But before the decision taken by the respondents, the applicant filed O.A.No.24 of 2013 before this Tribunal which was dismissed as withdrawn with liberty to file a fresh O.A. The respondents submit that OIC Records, the competent authority recommended for the division of Family Pension in favour of the applicant at 20% and at 80% for the 4th respondent respectively, but the applicant has not yet completed the family pension claim forms. The respondents further submit that the widow of the deceased soldier is entitled to continue to receive share of Special Family Pension even after re-marriage as per Circular No.282 and therefore, the contention of the applicant regarding non-entitlement of Special Family Pension or its share by respondent No.4 and to grant of 100% share to her is not sustainable and is denied. Therefore,

the respondents pray that the application may be dismissed as devoid of any merit.

4. The 4th respondent filed a Memo stating that the contents of application filed in O.A.No.63 of 2014 may be treated as reply-statement in this case. The said Memo was recorded. Thus the averments stated by the 4th respondent as applicant in O.A.No.63 of 2014 are treated as objections of the 4th respondent.

O.A.No.63 of 2014:

5. The applicant files this application for a direction to quash the impugned order No.2794123-F/SR/DWS/FP, dated 13.01.2014 passed by the 2nd respondent.

6. The factual matrix of the case of the applicant herein would be as follows: The facts of the applicant's husband Late Sep Rafivulla Baig's enrolment in Indian Army and on his sudden death while doing BPET Practice in "OP PARAKRAM", the casualty was declared as Battle Casualty for financial purpose and that accordingly, the applicant was sanctioned with Liberalized Family Pension as narrated by the applicant in O.A.No.38 of 2014 are not denied by the applicant in this O.A. However, the applicant submits that the 5th respondent, i.e., mother of Late Sep Rafivulla Baig is living with her husband along with her two sons who are working and earning. The other benefits sanctioned to the

applicant which were deposited in the applicant's single account was withdrawn fraudulently and deposited in the Joint Account of the 5th respondent's husband and the applicant. The 5th respondent's husband withdrew the entire amount of Rs.11.5 lakhs within one month from the date of death of applicant's husband (i.e.) during customary mourning period observed for the deceased husband of the applicant. The applicant could recover a sum of Rs.4.10 lakhs only, after giving a police complaint. The applicant submits that the Liberalized Family Pension is not divisible either under Regulation 228(a) or by Government Order on remarriage of a widow. The applicant states that on facts also, the 5th respondent is not entitled to any portion of the Liberalized Family Pension since the 5th respondent was not a dependent on her deceased son for the reason that 5th respondent's husband is alive and her other two sons are maintaining her. The applicant submits that the 5th respondent is owning 4 acres of fertile agricultural land and is harvesting 120 bags of paddy per annum and is also having 1000 square yards of house site worth in crores consisting of 3 shops yielding rental income and has also recently constructed a new house and they are now residing there. The location of the said house and the shop is at Karlapalem-Ganapavaram Road which is just opposite

to the prime location of Mandal Revenue Office, Mandal Parishad Office and Police Station of Karlapalem. The sons of the 5th respondent are well placed and therefore, the 5th respondent is not eligible to claim any portion of Liberalized Family Pension sanctioned to the applicant even on the ground of sympathy. In the circumstances, the applicant prays that the division of Liberalized Family Pension as ordered by 2nd respondent be quashed and thus this application may be allowed.

7. The respondents-1 to 4 and 6 filed a reply-statement which would be as follows: The facts of enrolment, death and the claims of pension regarding the applicant's deceased husband are not denied by the respondents herein. The objections made in the reply-statement filed in O.A.No.38 of 2014 are reiterated in this reply-statement. The respondents submits that the respondent No.5 has already filed O.A.No.38 of 2014 before this Tribunal with a prayer to call upon the record and quash the letter dated 21st October 2012 and to direct the respondent Nos.1 and 2 for division of Liberalized Family Pension between the applicant and the respondent No.4 at 50% with effect from 01st June 2003 and 100% with effect from 01st January 2010 with interest, costs and all consequential monetary benefits as the applicant has been re-married to one Shaik Jani Basha on 31st December 2009

impleading the present applicant as Respondent No.4 which is still *sub judice* with this Tribunal. The respondents submit that if the applicant had any objections with regard to division of family pension between her and the respondent No.5, she should have filed a reply-statement in the above matter countering her part instead of filing the present O.A. In the above circumstances, the respondents request that O.A.No.63 of 2014 may be dismissed as devoid of any merit.

8. The 5th respondent filed a Memo praying to treat the averments made in O.A.No.38 of 2014 as the objections in the reply-statement of this case and it is recorded accordingly.

9. On the above pleadings, we find the following points emanated for consideration in both the cases:

(1) Whether the applicant in O.A.No.38 of 2014 is entitled for division of Liberalized Family Pension at 50% with effect from 01.06.2003 and at 100% with effect from 01.01.2010 granted due to the death of applicant's son Late Sepoy Rafivulla Baig?

(2) Whether the applicant in O.A.No.63 of 2014 could seek for quashment of the order of second respondent passed in No.2794123-F/SR/DWS/FP, dated 13.01.2014 directing for the division of Liberalized Family Pension at 80% in favour

of the applicant of O.A.No.63 of 2014 and at 20% in favour of the 5th respondent in O.A.No.63 of 2014?

(3) To what relief, the applicant in O.A.No.38 of 2014 is entitled for?

(4) To what relief, the applicant in O.A.No.63 of 2014 is entitled for?

10. Heard Mr. M.K. Sikdar, learned counsel for the applicant in O.A.No.38 of 2014 and 5th respondent in O.A.No.63 of 2014 and Mr. M.Selvaraj, learned counsel for the applicant in O.A.No.63 of 2014 and 4th respondent in O.A.No.38 of 2014. We also heard Mr. S.Haja Mohideen Gisthi, learned SCGSC assisted by Major Suchithra Chellappan, learned JAG Officer appearing for the respondents-1,3, 5 and 6 in O.A.No.38 of 2014 and for respondents-1 to 4 and 6 in O.A.No.63 of 2014. We have also perused the documents produced on either side. We have also given our anxious thoughts to the arguments advanced on either side.

11. **Point Nos.1 and 2:** The applicant in O.A.No.38 of 2014 is the 5th respondent in O.A.No.63 of 2014. The applicant in O.A.No.63 of 2014 is the 4th respondent in O.A.No.38 of 2014. Since the disputes in both the applications have arisen on the

same cause of action, both the applications are clubbed together for disposal. For the sake of convenience, the rank of parties in O.A.No.38 of 2014 is adopted and referred in this judgment.

12. The facts in respect of relationship of Sepoy Rafivulla Baig with parties that he was the son of the applicant and the husband of the 4th respondent are not disputed. Similarly, the facts that the said Late Sepoy Rafivulla Baig was enrolled in Indian Army on 01.11.1996 and died on 01.09.2002 due to "Exertional Head Stroke with Acute Renal Failure while he was posted in "OP Parakram" and he had nominated his wife the 4th respondent as his heir to his estate and Next of Kin to receive all the death benefits including family pension are also not disputed. The respondents-1 to 3, 5 and 6 found the 4th respondent eligible for the grant of Liberalized Family Pension caused due to the death of Late Sepoy Rafivulla Baig and a PPO was issued in No.F/BC/122/2003, dated 14.02.2003 in favour of 4th respondent and however 50% share in Army Group Insurance Death benefits and maturity benefits were given to the applicant have also not been disputed. Now, the present dispute arose on the requisition dated 08.10.2010 made by the applicant herein for the division the Special Family Pension ordered in favour of the 4th respondent. According to the applicant, the 4th respondent had

been living with the applicant only for four months after the death of Sepoy Rafivulla Baig and thereafter, she left the company of the applicant and elected to live with her parents and was separately living away from the applicant. The further case of the applicant would be that the 4th respondent became ineligible to receive the Special Family Pension since she remarried one Shaik Jani Basha after changing her name as Shaik Shabirunnisa, that despite several reminders, the respondents-1 to 3, 5 and 6 did not pass any order, especially in response to the requisition dated 08.10.2010 and therefore, the applicant sought for division of Family Pension at 50% with effect from 01.06.2003 and 100% with effect from 01.01.2010 in favour of the applicant. The said claim of the applicant was resisted by the respondents-1 to 3, 5 and 6 that the claim of the applicant was considered by referring the matter to Zila Sainik Welfare Office, Guntur for investigation and after verification of powers to do investigation, the 3rd respondent was directed to investigate the matter as a competent authority and the 3rd respondent also investigated the matter thoroughly and forwarded their report dated 21.10.2012 with recommendation to share percentage by division of Liberalized Family Pension between the applicant and the 4th respondent. Accordingly, the respondents-1 to 5 and 6 have recommended for

division of Special Family Pension between the applicant and the 4th respondent at 20% and at 80% respectively and therefore, the claim of the applicant that the requisition of the applicant dated 08.10.2010 was not considered by the respondents-1 to 3, 5 and 6. Reiterating the stand taken in the reply-statement, the learned SCGSC would submit in his argument that the claim of the applicant at 50% from 01.06.2003 and at 100% from 01.01.2010 is not sustainable since the 4th respondent is not disqualified to receive the Special Family Pension even if the allegation of re-marriage of the 4th respondent by changing her name is true. He would also submit that the widow is entitled to receive Special Family Pension even after remarriage as per Circular No.282 produced in Annexure R-IX. Therefore, he would request the Court to dismiss the claim of the applicant as infructuous and unsustainable.

13. However, the 4th respondent, the widow would claim that the applicant is not entitled to claim for division since the applicant is living with her husband and two sons, who are affluent. The further case of the 4th respondent would be that the benefits received after the death of her husband was fraudulently withdrawn by the applicant's husband and was deposited in the joint account along with the 4th respondent and her father-in-law

and he clandestinely withdrew the entire sum of Rs.11.5 lakhs and the 4th respondent could recover a sum of Rs.4.10 lakhs only from the applicant's husband by giving a police complaint. The learned counsel for the 4th respondent would submit that the 4th respondent was not contracting any remarriage and even otherwise, a remarried widow would be entitled to receive Special Family Pension as per the Government Order. He would also submit that the applicant is owning 4 acres of fertile agricultural land and she is harvesting 120 bags of paddy per annum and she had also leased three shops worth of several crores and was receiving rents out of them. The said properties of the applicant are located in main road opposite to Mandal Revenue Office, Mandal Parishad Office and Police Station of Karlapalem. The respondents-1 to 3, 5 and 6 have not considered the objections of 4th respondent before dividing the Liberalized Family Pension granted to 4th respondent. He would also submit that the Special Family Pension cannot be sanctioned to the applicant on the ground of sympathy when she is hiding her income. Therefore, he would submit that the claim of the applicant be dismissed and the application filed by the 4th respondent in O.A.No.68 of 2014 to set aside the order of division may be allowed.

14. We find from the submissions of either side that the representation made by the applicant on 08.10.2010 for division of Special Family Pension has been answered by the respondents-1 to 3, 5 and 6 by virtue of an order dated 13.01.2014. In the said letter containing the impugned order dated 13.01.2014, the second respondent had informed that the applicant be given 20% and the 4th respondent be given 80% of the Liberalized Family Pension, caused due to the death of Late Sepoy Rafivulla Baig. The said order was passed by the respondents-1 to 3, 5 and 6 during the pendency of the application in O.A.No.38 of 2014. By virtue of the order passed by the second respondent dated 13.01.2014, the claim of the applicant was answered. However, the applicant did not file any rejoinder in O.A.No.38 of 2014 to set aside the said order, in order to claim 50% of the Special Family Pension with effect from 01.06.2003 and 100% of Special Family Pension with effect from 01.01.2010 as made in the application. When the applicant failed to seek for setting aside the order dated 13.01.2014, the said order is without challenge from the applicant and it would be binding. However, the 4th respondent herein has filed an application in O.A.No.63 of 2014 challenging the said order in which the applicant herein was impleaded as 5th respondent. Even in the said application, the applicant herein

did not file any objection to the effect that the order passed by the respondents-1 to 3, 5 and 6, dated 13.01.2014 is liable to be set aside and the division ought to have been ordered in terms of the reliefs sought for by the applicant in O.A.No.38 of 2014. Therefore, the claim of the applicant for the grant of division of Family Pension became infructuous.

15. Since the 4th respondent had sought for setting aside the order passed by the respondents-1 to 3, 5 and 6 on 13.01.2014 and in the event of the order being set aside whether the claim of the applicant herein for the grant of division of 50% with effect from 01.06.2003 and 100% with effect from 01.01.2010 could be considered is the present question. In fact, the respondents-1 to 3, 5 and 6 have referred the representation of the applicant dated 08.10.2010 to Zila Sainik Welfare Officer, Guntur through a letter dated 03.11.2010 and on their intimation that such investigation should be done by 3rd respondent, the competent authority, it was again referred to 3rd respondent and accordingly, the 3rd respondent investigated the matter and forwarded a report dated 21.10.2010. On the basis of the Investigation Report and its recommendations, the Liberalized Family Pension was ordered to be divided at 20% in favour of the applicant and 80% in favour of the 4th respondent. According to the 4th respondent, the

applicant was having large properties and was getting an income of 120 bags of paddy per annum from the agricultural properties and was receiving rental income from three shops and that she is living with her husband and two sons and that therefore, there is no necessity for her to depend upon the Liberalized Family Pension which was granted to the 4th respondent and no division is imminently required.

16. Considering the submissions, we could see that the Liberalized Family being a Special Family Pension is made for the benefit of the family of the deceased soldier which would normally be in the name of the NoK nominated by the said soldier. However, the division of such Special Family Pension should be made whenever the circumstances necessitate as per the provisions of Regulation 228 and the competent authority may after investigation pass an order of division. For better appreciation, Para-228 of Pension Regulations for the Army 1961 is extracted as follows:-

Division of family pension between eligible heirs

228.(a) 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 or if the pension is in the name of a child but is not devoted to the interest of the family generally a competent authority may, on the basis of the verification/investigation report rendered by the Zila Sainik Board Recruiting Organization and attested or countersigned by any one of the under mentioned local civil authorities divide at his discretion the special family pension among the eligible heirs of the deceased :-

- (a) Sarpanch of a village*
- (b) Any serving or retired Gazetted Officer civil or military including a JCO*
- (c) Sub Postmaster*
- (d) Qanungo or Patwari*
- (e) Sub Inspector of Police*
- (f) A member of Municipal Corporation or committee or Zilla Parishad/District Board.*
- (g) Panchayat President/Village Munsif/Patel/Village Officer/Panchayat Executive Officer.*
- (h) M.P./M.L.A./Member of Legislative Council*
- (i) Oath Commissioner/Notary Public*

Note1: The competent authority may order similar division of family pension at the time of initial investigation of a claim it is found that the nominated heir is not living a

communal life with other eligible heirs or he/she is not willing to contribute proportionately towards their support.

Note2: In the event of a division of family pension, the widow's share shall not be less than the normal rate of ordinary family pension that would have been admissible to her had the death not been held as attributable to service.

(b) This division shall hold good only for the period during which the pension is payable to the original recipient under the regulations governing its grant. If during this period one of the parties to the division (other than the original recipient) is disqualified or dies, his or her share shall be restored to the original recipient if he or she is the only one living or shall be divided among the remaining recipients, if there are more than one."

As per the above provision, the division can be effected among eligible heirs listed in Para 216 of Pension Regulations for the Army 1961, Part-I. The applicant being the mother is also shown as one of the eligible family members for the receipt of Special Family Pension and therefore, the steps taken by the respondents-1 to 3 and 6 for making a division of the Liberalized Family Pension granted in favour of the 4th respondent is sound. The respondents-1 to 3, 5 and 6 have produced the

correspondence for holding the investigation towards the division of Liberalized Family Pension granted to the 4th respondent through their letters produced in Annexures-R-III, R-IV, R-V and R-VI. A final order has been passed on 13.01.2014 towards the division of Liberalized Family Pension in favour of the applicant at 20% and at 80% in favour of the 4th respondent. Nothing was argued on the side of the applicant to assail the opinion reached by the respondents-1 to 3, 5 and 6 or to claim more percentage in favour of the applicant. The only thing insisted on the side of the applicant was that the 4th respondent remarried one Shaik Jani Basha by changing her name as Shaik Shabirunnisa. A card of invitation has been produced by the applicant to which no supporting documents have been produced to show that the bride Shabirunnisa referred in the invitation is the 4th respondent herein. However, two Adhaar cards, one in the name of Shaik Jani Basha and another in the name of Shabirunnisa along with original marriage invitation have been produced by the applicant at the time of arguments. Those are the Adhaar cards of one Shabirunnisa and her alleged husband Shaik Jani Basha. No doubt the name of the 4th respondent has not been mentioned anywhere in the records or in this application as Shabirunnisa. Per contra, she is referred and named as Ishraad Begum only in

the application. Even otherwise the allegations of the applicant that the 4th respondent married for the second time with the said Shaik Jani Basha are found true, such remarriage would not disentitle the 4th respondent from continuing to get the Liberalized Family Pension. The letter dated 31.01.2001 of the Government of India, Ministry of Defence in No.1(2)/97/I/D(Pen-C) would be relevant. The provisions in Para 6.6 (b) would govern the PBOR. As per the condition made therein coupled with the condition applicable for Commissioned Officer, a widow who has no children shall continue to receive the full Liberalized Family Pension. Therefore, even the remarriage of the 4th respondent as alleged by the applicant is considered as true, the grant of Liberalized Family Pension in favour of the 4th respondent would not be affected in any manner. However, the Special Family Pension being a divisible one as per the Rules contained in Para-228 of Pension Regulations for the Army 1961, Part-I was recommended for division. On a careful perusal of the correspondence and the communications produced in Annexure R-III to R-VI, we find that the investigation regarding the division of Liberalized Family Pension was promptly done by the respondents-1 to 3, 5 and 6 and the final recommendation was made at 20% in favour of the

applicant and at 80% in favour of the 4th respondent appears to be just.

17. The disputes regarding the sharing of other benefits like insurance have been compromised in between the 4th respondent on one side and the applicant's husband on the other side before the police personnel and the documents have been produced to that effect. The compromise in respect of other benefits would not in any way affect the procedure in dividing the Liberalized Family Pension granted in favour of the 4th respondent. Therefore, we find that the recommendations and the decision reached in the impugned letter dated 13.01.2014 granting division of Liberalized Family Pension at 20% in favour of the applicant and at 80% in favour of the 4th respondent are quite lawful and justifiable. Therefore, the claim of the applicant for the division of the Liberalized Family Pension at 50% with effect from 01.06.2003 and at 100% from 01.10.2010 onwards is not at all sustainable. Similarly, the claim of the 4th respondent that the order passed by the respondents on 13.01.2014 to divide Liberalized Family Pension is to be quashed as per Rules cannot be sustained. Therefore, we are of the considered view that the claim of the applicant for division of Liberalized Family Pension is not only infructuous, but also not sustainable since a division has

been promptly effected at 20% in favour of the applicant and at 80% in favour of the 4th respondent and thus the claim of the 4th respondent to quash the impugned order dated 13.01.2014 is also not sustainable. Both the points are decided accordingly.

18. **Point No.3:** In view of our findings reached in the above points, the application filed by the applicant for division of Liberalized Family Pension became infructuous and the claim of the applicant for the division of Liberalized Family Pension at 50% with effect from 01.06.2003 and at 100% with effect from 01.01.2010 are not sustainable and consequently, the application in O.A.No.38 of 2014 filed for that purpose is liable to be dismissed.

19. **Point No.4:** For the reasons discussed above, the claim of the 4th respondent to quash the impugned order dated 13.01.2014 in O.A.No.63 of 2014 is found unsustainable and therefore, the application in O.A.No.63 of 2014 is dismissed.

20. In fine, both the applications are dismissed. In the peculiar circumstances, there will be no order as to costs.

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

08.01.2015
(True copy)

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet : Yes/No

VS

To:

1. The Secretary,
Government of India,
Ministry of Defence,
New Delhi-110 011.
2. The Adjutant General,
Integrated HQ of MOD (Army)
Adjutant General Branch
Addl Dte Gen Personnel Services
New Delhi-110 011.
3. The Officer-in-Charge
Records, Maratha Light Infantry
Belgaum, Pin-590 009.
4. The Officer-in-Charge
Records, Maratha Light Infantry
Pin-900 499, C/o 56 APO.
5. The Director Recruiting
Army Recruiting Office
Post-Pattabhipuram,
Ravindra Nagar
Guntur (A.P),
Pin-522006.
6. Zilla Sainik Welfare Officer
Guntur (A.P),
Pin-522 006.
7. The PCDA (P), G-3 Section,
Draupathi Ghat
Allahabad (UP),
Pin-211 014.
8. M/s. M.K. Sikdar & S.Biju
For Applicant in O.A.38 of 2014
and R.5 in O.A.63 of 2014
9. Mr. M.Selvaraj,
For Applicant in O.A.63 of 2014
and R.4 in O.A.38 of 2014

10. Mr. S. Haja Mohideen Gisthi,
SCGSC

For RR. 1 to 3, 5 & 6 in
O.A.No.38 of 2014
& For RR-1 to 4 and 6
in O.A.No.63 of 2014

11. OIC, Legal Cell,
ATNK & K Area,
Chennai.

12. Library, AFT,
Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

O.A.No.38 of 2014
and
O.A.No.63 of 2014

Dt:08.01.2015