

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**

O.A.NO.118 OF 2010

WEDNESDAY, THE 22ND DAY OF FEBRUARY, 2012/3RD PHALGUNA, 1933

CORAM:

HON'BLE MR. JUSTICE A.C.ARUMUGAPERUMAL ADITYAN, MEMBER (J)

HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

JUBEDABEGAUM R. MULLA, AGED 48 YEARS,  
W/O. No.6355462 EX-SEPOY RAJESAB B.MULLA  
ASC (MT), VILL & POST OFFICE – SHINDALI,  
TEHSIL & DISTT: BELGAUM,  
KARNATAKA STATE – PIN 591 124.

**APPLICANT:**

BY ADV. SRI.RAMESH C.R.

**Versus**

1. THE UNION OF INDIA, THROUGH THE SECRETARY,  
MINISTRY OF DEFENCE (ARMY),  
SOUTH BLOCK, NEW DELHI – 110 011.

**RESPONDENTS**

2. THE CHIEF OF ARMY STAFF  
DHQ P.O., INTEGRATED HQRS,  
MINISTRY OF DEFENCE, SOUTH BLOCK  
NEW DELHI – 110 001.
3. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSION)  
DRAUPADI GHAT, ALLAHABAD, UTTARPRADESH.
4. THE OFFICER-IN-CHARGE (RECORDS)  
ASC RECORDS (SOUTH), AGRAM – POST,  
BANGALORE – 560 007.

BY ADV. SRI.S.KRISHNAMOORTHY, SR. PANEL COUNSEL.

**ORDER****A.C.A.Adityan, Member (J):**

This application is for second family pension. It is the admitted case of both sides that the applicant's late husband No.6355462, Ex.Sepoy Rajesab B. Mulla, ASC (MT) was discharged from the Army in November 1977 after earning the qualifying service for pension in defence and was consequently issued PPO No.S/37789/77 through the Treasury Officer, Belgaum with effect from December 1977 up to 5.8.1999, i.e. the date of his demise. After discharge from ASC (MT), Army Service, Ex-Sepoy Rajesab B.Mulla, the late husband of the applicant, was re-employed in the Life Insurance Corporation of India with effect from 14.3.1980 to 5.8.1999, i.e. till his date of death. Family Pension was granted by the Life Insurance Corporation of India to the applicant under Pension Order No.20/Eos/PC-660 dated 18.8.2000. The family pension granted by the LIC comes under "the Employees Pension Scheme 1995". A true copy of the Scheme Certificate issued by the LIC is Annexure A3. The Government of India, Department of Pension & PW vide OM No.04/10/2006-P&PW(D) dated 14.5.2007 clarified that in addition to family pension under Rule 54 of the CCS (Pension) Rules, 1972, the employees can be granted family pension under the Employees Pension Scheme 1995 and Family Pension Scheme 1971. True copy of the said Government Order is Annexure A4. A true copy of

the notification published in the Gazette dated 28.6.1995 is produced as Annexure A5. The applicant had forwarded to the competent authority all necessary documents for sanction of family pension from the defence. The ASC (South) Records, Bangalore 7 has forwarded a proposal to the PCDA (P), Allahabad for sanction of family pension to the applicant vide their office letter No.6357738/T-III/Sup/FP dated 8.2.2008. The PCDA(P), Allahabad rejected the family pension claim of the applicant stating that she is getting family pension from civil side in terms of LIC of India (Employees) Pension Rules, 1995, and hence the applicant is not entitled to family pension from the military side as the Employees Pension Scheme 1995 and LIC of India (Employees) Pension Rules, 1995 are not similar scheme, being Central Government autonomous body status of LIC. A true copy of letter No.6355462/T-III/Sup/FP dated 4.2.2008 issued by the ASC (South) Records, Bangalore is Annexure A8. A legal notice dated 24.4.2008 was sent to the respondents, which is produced as Annexure A9. Annexure A10 is the true copy of letter No.G4/VII/ASC(S)/CDA/594/08 dated 21.5.2008 issued by the Principal Controller of Defence Accounts (Pension). After exhausting all the statutory remedies, the applicant has come forward with this application for family pension.

2. The respondents in their reply statement would contend that the applicant vide her letter dated 4.4.2007 intimated that her husband,

Ex-Sepoy Rajesab B.Mulla died on 5.8.1999 and requested for family pension. Her claim for second family pension was rejected by the Principal Controller of Defence Accounts (Pension), Allahabad vide their letter No.G-4/II/Audit/9184908 dated 27.2.2008 stating that Smt.Jubeda,, Wife of No.6355462 late Sep.Rajesahed Mulla is getting family pension from civil side in terms of LIC of India (Employees) Pension Rules, 1995 and hence she is not entitled for family pension from military side as the Employees Pension Scheme 1995 and LIC of India (Employees) Pension Rules 1995 are not similar scheme, being Central Government Autonomous Body status of LIC. The same was also intimated to the applicant vide letter No.6355462/T-III/Sup/FP dated 4.4.2008 (Annexure R1). The applicant had issued legal notice dated 24.4.2008 which was also suitably replied, conveying that Principal Controller of Defence Accounts (Pensions) Allahabad vide their letter No.G4-VII/ASC(S)/CDA/594/08 dated 21.5.2008 have rejected her claim for second family pension. Since the re-employer of the late husband of the applicant is not covered under the Family Pension Scheme 1971 or Employees Pension Scheme, 1995, the applicant is not eligible for family pension from the Army. Hence this application is liable to be dismissed.

3. We heard the learned counsel appearing for the applicant and also

the learned Senior Panel Counsel Sri.S.Krishnamoorthy, and considered their respective submissions. The learned counsel appearing for the applicant requested for further time to produce necessary certificate to clarify that LIC of India (Employees) Pension Rules 1995 and the Employees Pension Scheme 1995 are one and the same. Only for that purpose this case has been adjourned to various dates from 16.11.2011. Hence, the Tribunal is not inclined to give any further adjournment on that score, since no useful purpose will be served.

4. The point for determination is, whether the applicant is entitled for second family pension?

5. The point:- The relevant Government Orders on the point of second family pension are G.O.No.2/CC/B/D (Pen/Sers)2001 dated 28<sup>th</sup> August, 2001 and Office Notification NO.1/19/96/P&PW (E) dated 27<sup>th</sup> July, 2001. As per G.O.No.2/CC/B/D (Pen/Sers)2001 dated 28<sup>th</sup> August, 2001, only if the re-employer of the applicant's husband comes under the ambit of Employees Pension Scheme 1995 and Family Pension Scheme 1971, the applicant would be entitled to family pension. The impugned GO dated 28<sup>th</sup> August, 2001 reads as follows:

"Grant of Family Pension under the Employees Pension Scheme, 1995 and Family Pension Scheme, 1971 in addition to Family Pension from military side".

I am directed to forward a copy of DP & PW's Office Notification No.1/19/96/P&PW(E) dated 27.07.2001. This will be applicable mutatis/mutandis to

Armed Forces Personnel who were re-employed in the Organisations/Establishments where Employees Pension Scheme, 1995 and Family Pension Scheme, 1971 are in force. This will come into force on the date the ibid notification dated 27.07.2001 of DP&PW is published in the Official Gazette, i.e. 27.07.2001.

2. Corresponding regulations of Pension Regulations for Army/Air Force/Navy will be amended accordingly in due course.

3. This has concurrence of Defence (Fin/Pension)."

G.O. No.1/19/96-P&PW(E) of Government of India dated 27<sup>th</sup> July2001

reads as follows:-

"S.O.....(E) In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution and after consultation with the Comptroller and Auditor General of India in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules further to amend the Central Civil Services (Pension) Rules, 1972, namely:-

(1) These rules may be called the Central Civil Services (Pension) Amendment Rules, 2001.

(2) They shall come into force on the date of their publication in the official Gazette.

In the Central Civil Services (Pension) Rules, 1972, in rule 54 sub rule (13B), after the first proviso, the following proviso shall be inserted, namely:-

Provided further that family pension admissible under the Employees Pension Scheme, 1995, and the Family Pension Scheme, 1971, shall, however, be allowed in addition to the family pension admissible under these rules."

Accordingly, CCS (Pension) Rule 54 sub rule (13-B) has been amended,

as below:-

"(13-B) Family Pension admissible under this rule shall not be granted to a person who is already in receipt

of Family Pension or is eligible therefor under any other rules of the Central Government or a State Government and/or Public Sector Undertaking/Autonomous Body/Local Fund under the Central or a State Government:

Provided that a person who is otherwise eligible for family pension under this rule may opt to receive family pension under this rule if he forgoes family pension admissible from any other source.

Provided further that family pension admissible under the Employees Pension Scheme, 1995, and the Family Pension Scheme, 1971, shall, however, be allowed in addition to the family pension admissible under these rules”.

The proviso has been inserted in accordance with the Government of India, Department of P & PW, Notification No.1/19/96-P&PW(E) dated 27<sup>th</sup> July 2001 referred to above (Published as S.O.No.717(E) in Gazette of India dated 27<sup>th</sup> July, 2001. After issuance of G.O.No.1/19/96-P & PW(3) dated 27<sup>th</sup> July 2001 the Government of India has extended the said benefit to the three forces, namely, Army, Navy and Air Force by way of issuing another G.O.No.2/CC/B/D (Pension/Services) 2001 dated 28<sup>th</sup> August 2001 referred to above.

6. It is the case of the applicant that her husband after retiring from Indian Army was re-employed in the Life Insurance Corporation of India . The applicant herself had produced Annexure A3 Scheme Certificate dated 6.7.2007 from her husband's reemployer, which runs as follows:

“This is to certify that Smt.Jubeda Begam R.Mulla, Wife of No.6355462

Rank Sepoy Name Sajesab B. Mulla who was re-employed in L.I.C. Of India with effect from 14.03.1980 to 05.08.1999 after discharge from Military Service, and after his death family pension has been granted to Smt. Jubeda Begam vide pension order No.20/EOS/PC-660100 dated 18.8.2000.

2. The family pension granted above comes under:

- (a) Employees Pension Scheme 1995 ✓
- (b) Employees Family Pension Scheme 1971 X
- (c) 113-B of Para 54 Civil Services Scheme (Pension) Rules-1972 X

There is a tick mark against Employees Pension Scheme 1995 and 'X' mark against the other two. Subsequently, the applicant had produced another certificate dated 3.12.2011 from the same re-employer of her late husband, which reads as follows:

"This is to certify that we are paying the monthly family pension out of our own funds as per Life Insurance Corporation of India Employees Pension Rules 1995 to Smt.Jubeda Begum R.Mulla, wife of Late Sri.R.B.Mulla (ex-employee). Family Pension I.D. NO.6600100056. The payment paid for the month of November 2011 was Rs.3,319/-

Sd/-  
Sr. Divisional Manager,  
LIC of India, DO, Belgaum"

So, it is clear from the certificate dated 3.12.2011 issued by the re-employer of the husband of the applicant that the re-employer of the husband of the



applicant will not come either under Employees Pension Scheme 1995 or Family Pension Scheme 1971 and hence, the applicant is not entitled to second family pension as per G.O.2/CC/B/D (Pen/Sers) 2001 dated 28<sup>th</sup> August, 2001 which was issued to benefit the defence forces after the issuance of G.O.No.1/19/96-P&PW(E) dated 27/7/2001. Under such circumstances, we are of the considered view that the impugned order need not be set aside and the applicant is not entitled to the second family pension as per the Government Orders referred to above. Point is answered accordingly.

In fine, the application is dismissed. No costs.

Sd/-  
LT. GEN. THOMAS MATHEW,  
MEMBER (A)

Sd/-  
JUSTICE A.C.A. ADITYAN,  
MEMBER (J)

DK.

(True copy)

Prl. Private Secretary

ARMED FORCES TRIBUNAL,  
REGIONAL BENCH, KOCHI.

O.A. No.118 of 2010

**ORDER**

DATED: 22.02.2012