

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O.A.No.50 of 2011

WEDNESDAY, THE 22nd DAY OF FEBRUARY, 2012/3rd PHALGUNA, 1934

CORAM:

HON'BLE MR. JUSTICE A.C.ARUMUGAPERUMAL ADITYAN, MEMBER (J)
HON'BLE LT. GEN. THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

ALEYAMMA JOSEPH, AGED 61 YEARS,
W/O EX. SGT. MAMMAN T. JOSEPH,
No.269546 'T' OF INDIAN AIR FORCE,
THURUTHEL HOUSE, MULAKKULAM NORTH P.O
ERNAKUJLAM DISTRICT, KERALA.

APPLICANT

BY ADV. SRI.V.K.SATHYANATHAN.

VERSUS

1. UNION OF INDIA, REPRESENTED
BY ITS SECRETARY,
MINISTRY OF DEFENCE, SOUTH BLOCK
NEW DELHI – 110 011.

RESPONDENTS

2. PRINCIPAL CONTROLLER OF DEFENCE
ACCOUNTS (PENSIONS)
OFFICE OF THE P.C.D.A (P)
DRAUPADI GHAT, ALLAHABAD,
U.P – 211 014.
3. THE AIR OFFICER COMMANDING
AIR FORCE RECORD OFFICE,
SUBROTO PARK,
NEW DELHI -110 010.

BY ADV. SMT.E.V.MOLY, CENTRAL GOVT. COUNSEL.

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

This application is filed by a widow of Ex-Sergeant Mamman T. Joseph No.269546 'T' of Indian Air Force. According to the applicant, her husband Sri.Mamman T. Joseph joined Indian Air Force on 24/3/1964 and was discharged from service on 31/3/1982 with all terminal benefits including monthly pension. After his retirement Sri. Mamman T. Joseph was re-employed with the New India Assurance Company Ltd and was in service till he expired on 26/3/1999. Till his death Sri.Mamman T. Joseph was receiving monthly pension from the defence. After her husband's demise the applicant was receiving family pension from the New India Assurance Co. Ltd as well as from the defence side. The applicant had informed the death of her husband to the Zilla Sainik Welfare Office. The said office had directed the applicant to contact DPDO Ernakulam for sanctioning of family pension from the defence. Accordingly, the applicant had contacted the DPDO Ernakulam and explained the fact, who in turn, intimated the applicant that as per the policy in vogue the applicant is not entitled to family pension because she is in receipt of family pension from the re-employer. The applicant had received letter No.Air HQ/27943/2/GIS/Accts dated 17/8/2005 (Annexure-A1), under which a nomination form was required to be filled up by the applicant's

husband. On receipt of Annexure-A1 the applicant intimated the AFGIS about the death of her husband. AFGIS released the entitled benefit to the applicant. Thereafter the applicant had received a letter from the 3rd respondent along with a set of family pension claim forms (Annexure-A2). After the receipt of Annexure-A2 letter the applicant came to know that the defence authorities have decided to grant family pension to her since the relevant rules have been modified. Immediately, the applicant made a representation to the New India Assurance Co. Ltd., the re-employer of her husband and obtained a re-employment certificate. Thereafter the applicant had approached the 3rd respondent for family pension from the defence, but the same was rejected on the ground that the re-employer of the applicant's husband will not come under the ambit of Family Pension Scheme, 1971 or Employees Pension Scheme, 1995. After exhausting all the statutory remedies available to her the applicant has approached this Tribunal.

2. The 1st and 3rd respondents filed their common reply statement. The 2nd respondent adopts the reply statement filed by respondents 1 and 3, whose contentions are as follows:- The husband of the applicant, late Ex-Sergeant (No.269546) M.T. Joseph was enrolled in Indian Air Force on 24/3/1964 and discharged from service on 31/3/1982 on fulfilling the conditions of his enrollment and was also granted service pension vide PPO No.AF/S/C/4975/82. After

discharge from IAF, the individual was re-employed in New India Assurance Company Ltd. As per long roll the applicant Smt.Aleyamma Joseph was recorded as legally wedded wife of the deceased. Air Force Group Insurance Society vide their letter No.Air HQ/2871/1/269546/Accts dated 19th December 2005 intimated to AFRO that the above named SNCO died on 26 March 1999. Thereafter AFRO vide their letter No.RO/2853/269546/14213 HD/P&WW(FP) dated 3rd February 2006 forwarded family pension claim forms to Smt. Aleyamma Joseph. In turn, the applicant vide her letter dated 28th June 2006 submitted the re-employer certificate indicating that she has been granted family pension from New India Assurance Company Ltd. Therefore, Air Force Record Office vide letter No.RO/2853/269546/14213HD/P&WW(FP) dated 4th September 2006 appraised the applicant regarding her ineligibility for grant of dual family pension as per policy in vogue. Para 195(a) of the Pension Regulation for the Air Force, 1961 does not contain the provision of dual family pension. The concept of dual family pension came into force on issue of Government of India MoD letter No.2/CC/B/D(Pen/Ser) dated 28th August 2001 read in conjunction with GOI P & PW'S office Notification No.1/19/96/P&PW(E) dated 27th July 2001. As per the said policy dual family pension from defence side in addition to the family pension from re-employer is allowed only to those family pensioners, who are invariably drawing family pension under Family Pension Scheme, 1971 or Employees Pension Scheme,

1995 through Regional Provident Fund Commissioner. Family Pension disbursed by New India Assurance Co. Ltd is not covered under any of the above mentioned schemes. Hence, the applicant is not eligible for the grant of dual family pension. Hence the application is liable to be dismissed.

3. We heard the learned counsel Sri.T.R.Jagadeesh who had represented Sri.V.K.Sathyanathan, the learned counsel appearing for the applicant and also Smt.E.V.Moly, learned Central Government Counsel for the respondents and considered their respective submissions.

4. The only point for consideration in this application is whether the applicant is entitled to the second family pension from defence as prayed for?

5. **The point:-** The only objection raised by the respondents in their reply statement is that the re-employer of the applicant's husband is not coming under the purview of Family Pension Scheme, 1971 or Employees Pension Scheme, 1995 and hence the benefits conferred under GOI MoD letter No.2/CC/B/D(Pen/Ser) dated 28th August 2001 read in conjunction with GOI P & PW'S office Notification No.1/19/96/P&PW(E) dated 27th July 2001 will not be applicable to the applicant. But from the material placed by the applicant, i.e.

Annexure-A4, a communication addressed to the applicant from Air Force Record Office, Subroto Park, New Delhi dated 4th September, 2006 itself it has been clearly admitted that the re-employer of the applicant's late husband comes within the purview of scheme General Insurance (Employees Pension Scheme, 1995). So it goes without saying that the re-employer of the late husband was covered under the Employees Pension Scheme, 1995 and as per the G.O. No. 2/CC/B/D(Pen/Ser) of Government of India, Ministry of Defence dated 28th August 2001 the Notification No.1/19/96/P&PW(E) dated 27th July 2001 was made 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. But the only rider attached to the said G.O is that the beneficiary, viz., the widow of the defence personnel will be entitled to the monetary benefits only from 27/7/2001, i.e. from the ibid Notification of DP & PW No.1/19/96/P & PW(E) of Government of India dated 27/7/2001. So it is clear from Annexure-A4 itself that the re-employer of the husband of the applicant is covered under the Employees Pension Scheme, 1995 and hence the applicant is entitled to the second family pension from the defence from 27/7/2001. The point is answered accordingly.

In fine, the application is allowed and the applicant is entitled to second family pension as per Government of India P & PW(E)'s office

Notification No.1/19/96/P&PW(E) dated 27/7/2001 read with GOI MoD letter No.2/CC/B/D(Pen/Ser) dated 28/8/2001 from 27/7/2001. Time for compliance – three months, in default, the applicant will be entitled to 9% P.A interest for the arrears. No costs.

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

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

mds/

(True copy)

Private Secretary