

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O A No.104 of 2010

FRIDAY, THE 8TH DAY OF MARCH, 2013/17TH PHALGUNA, 1934

CORAM:

HON'BLE MR. JUSTICE SHRI KANT TRIPATHI, MEMBER (J)

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

APPLICANT:

SALEENA FERNANDEZ, AGED 48 YEARS,
M/O. LATE TERENCE. J., CFN NO.14666681 F,
RESIDING AT MOLLASSERIL HOUSE, PANMANA,
CHAVARA P.O., KOLLAM.

BY ADV. SRI. B. HARISH KUMAR

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY
SECRETARY TO GOVERNMENT (DEFENCE),
MINISTRY OF DEFENCE, NEW DELHI.
2. THE SENIOR RECORD OFFICER,
EME RECORDS, SECUNDERABAD – 21.
3. THE DIRECTOR GENERAL,
CONTROLLER OF DEFENCE ACCOUNTS (PENSION),
ALLAHABAD, U.P..
4. THE MANAGING DIRECTOR, AGI FUND BHAVAN,
RAO TULA RAM MARG, POST BAG NO.14,
VASANT VIHAR, NEW DELHI – 57.
5. JOSEPH GEORGE, AGED 59 YEARS, S/O.GEORGE,
JOSE MANDIRAM, RAJAGIRI COLONY,
MANAKKARA, SASTHANCOTTA P.O., KOLLAM – 690521.

R1 TO R3 BY ADV. SRI.S.KRISHNAMOORTHY, SR. PANEL COUNSEL
R4 BY ADV. SRI. MOHAN IDICULA ABRAHAM

ORDER

Shri Kant Tripathi, Member (J):

1. Heard Mr.Harish Kumar for the applicant, Mr.Mohan Idikula Abraham for respondent No.4 and Senior Government Counsel for respondents 1 to 3, and perused the record.

2. The applicant, Saleena Fernandez, mother of late Terence.J., CFN.No.14666681 F, has filed the instant O.A. for the family pension with effect from the date of death of her son and also for the benefit admissible under the Army Group Insurance Scheme.

3. The relevant facts are that, late soldier CFN.Terence.J., was enrolled in the Indian Army on 29.12.2003 and he died on 25th August, 2009 in a motor accident. He was a bachelor but had not nominated either the father or the mother, as recipient of family pension. He had also become a member of the AGI Scheme, in which he had nominated his father as the first recipient and in his absence either due to death or otherwise, the applicant (mother), as the second recipient of the benefit payable under the said scheme (vide Annexure R6 annexed to the reply filed on behalf of 4th respondent). The father and mother of late soldier Terence J. developed strained relations and consequently

they separated each other in the year 1988 and since then they are living separately. The applicant (mother) claims that respondent No.5, the father of the deceased, is gainfully employed in Kerala Water Authority as a plumber, therefore, he was not entitled to family pension. The contention on behalf of the applicant with regard to the benefit available under the Army Group Insurance Scheme was that father was not eligible to receive the money in view of the fact that he was not a dependant on the deceased and has also not turned up to contest the matter.

4. The respondents 1 to 3 and respondent No.4 have filed separate reply statements. The respondent No.4 has taken up the stand that the amount payable under the Army Group Insurance Scheme has already been divided into two equal shares, one share has been deposited in the name of the applicant and the other in the name of the father, i.e. respondent No.5. Learned counsel for respondent No.4 has no objection to pay the benefit under the scheme to the person entitled in law, subject to production of succession certificate.

5. The other respondents 1 to 3 have not disputed the claim of the applicant. Their officers had called the applicant, respondent No.5

and their relatives for resolving the dispute, but at that time, respondent No.5 did not turn up, therefore, the respondents recommended the case of the applicant mainly on the ground that she was fully dependant on the deceased and had two more children to be maintained. Another stand of the respondents is that the mother is entitled to preference over the father, as per the present scheme of the Government of India.

6. It is significant to mention that the respondent No.5 was given due notice by the Tribunal, but he did not turn up to contest the matter. So far as the question of family pension is concerned, the father, who is already employed, is not entitled to the family pension for the reason that he was not dependent on the deceased soldier. Secondly, he did not show his willingness to set up his claim for family pension nor turned up before the Tribunal nor the authorities of the respondent No.1. In this connection, reference was made to Regulation 219 of the Pension Regulations for the Army, 1961. Regulation 219 provides that the relatives specified in Regulation 216 shall be eligible for grant of pension provided he or she is not employed under the Government or he or she is not in receipt of another pension from the Government. In view of the fact that the respondent No.5 is employed in the Kerala Water Authority, a public sector undertaking run by the State Government of Kerala, he was not entitled to receive family pension.

The applicant, Saleena Fernandez, the mother of the deceased soldier, was not only dependent on the deceased at the time of his death, but is also maintaining two more children, and has no sufficient means of livelihood, therefore, her claim for family pension is liable to be allowed.

7. So far as the benefit under the Army Group Insurance Scheme is concerned, Mr.Harish Kumar, the counsel appearing for the applicant submitted that the applicant may be permitted to withdraw the claim pertaining to the benefits under the Army Group Insurance Scheme with the liberty to institute appropriate legal proceedings before the competent court as the question with regard to the benefits under the AGI scheme is to be decided according to the law of succession, and that question does not come within the purview of the Tribunal. Keeping in view the facts and circumstances of the case and the submission of the learned counsel for the applicant, we permit the applicant to withdraw the claim regarding the benefit under the aforesaid Scheme with liberty to file appropriate case before the competent court.

8. The Original Application is disposed of with the direction to the respondents 1 to 3 to sanction and pay the family pension to the applicant with effect from 25.8.2009, being the date of death of late

CFN. Terence J., within four months from today. In case the arrears of family pension are not paid within the four months, the unpaid amount will carry a simple interest at 8% payable to the applicant by the respondents 1 to 3. As regards the claim for the benefit under Army Group Insurance Scheme is concerned, the applicant is at liberty to agitate the matter in a different judicial proceedings before the competent court as per the observations made in the previous paragraph.

9. There will be no order as to costs.

10. Issue free copy of this order to both side.

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

Sd/-
JUSTICE SHRI KANT TRIPATHI,
MEMBER (J)

DK.

(True copy)

Prl. Private Secretary