

ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI

O.A.No.110 of 2012

THURSDAY, THE 21ST DAY OF MARCH, 2013/30TH PHALGUNA, 1934

CORAM:

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

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

APPLICANT:

SHYLAJA, W/O.NO.2567159 LATE NK (TS),  
BALARAMAN, AGED 45 YEARS,  
CHERAKKAL HOUSE, ELATHUR.P.O.,  
KOZHIKODE DISTRICT, KERALA.

BY ADV.MR.AVM.SALAHUDEEN.

VERSUS

RESPONDENTS:

1. THE UNION OF INDIA,  
REPRESENTED BY THE SECRETARY,  
MINISTRY OF DEFENCE ,  
NEW DELHI - 110 011.
2. SENIOR ACCOUNTS OFFICER (PENSIONS),  
PCDA (PENSIONS), ALLAHABAD - 211 001.
3. OFFICER IN CHARGE, RECORDS,  
THE MADRAS REGIMENT, POST BAG NO.1,  
WELLINGTON (NILGIRIS) - 643 231.
4. BRANCH MANAGER, STATE BANK OF INDIA, QUILANDY - 673 305.

BY ADV.SRI.P.J.PHILIP, CENTRAL GOVT. COUNSEL

O R D E R

Shrikant Tripathi, Member (J):

1. The applicant shylaja, the widow of late Naik Balaraman No.2567159 has filed the instant original application for a direction to the respondents to sanction and disburse her family pension with effect from 16th November, 2011 regarding the services rendered by her husband in the Army.

2. The counsel for the respondents informed that in O.A.No.82 of 2011 decided on 5<sup>th</sup> of December, 2012, a similar question had been dealt with, therefore, he would press the points alleged in that matter instead of filing the reply statement. Accordingly we heard both the side.

3. The applicant's husband late Naik Balaraman No.2567159 was discharged from the military service on 31<sup>st</sup> of May 1985 and was accordingly sanctioned military pension which he used to draw till the date of his death. After the discharge from the military service he was re-employed in

the State Bank of India. The applicant further alleged that her husband died on 16<sup>th</sup> November 2011. So she was sanctioned family pension by the State Bank of India under the State Bank of India Pension Scheme, but the respondents rejected her claim for the family pension with regard to the services rendered by her husband in the military on the ground that dual family pension was not admissible.

4. In this connection the learned counsel for the applicant submitted that the Hon'ble High Court of Kerala vide its judgment rendered in O.P.No.32884 of 2001 very clearly held that the widow of an Ex-serviceman is entitled to get military family pension in addition to the State Bank of India family pension because the fund created for the State Bank of India family pension/pension is not a part of the Consolidated Fund of India. Therefore, according to the learned counsel for the applicant, the decision of the High Court of Kerala is squarely applicable to the facts of the present case.

5. In O.A.No.82 of 2011 and connected matters, this Bench had occasion to consider a similar question and rendered the order on 5<sup>th</sup> of December 2012 to the effect that the widow of the military pensioner was entitled to military family pension in addition to the family pension being paid by the State Bank of India and nationalized banks, therefore, the said decision rendered by the Bench is also applicable in the present matter.

6. In Writ Petition (C) No.5562 of 2006 (K), ***Grace Chacko vs. Union of India***, decided on 22<sup>nd</sup> June, 2007, the Kerala High Court allowed the benefit of family pension to the widow with regard to the services of her husband rendered in the Reserve Bank of India in addition to the family pension for the services of her late husband in the Air Force and held that the Reserve Bank of India could not be equated with the Central Government, and therefore, the widow was entitled to draw both military as well as civil family pension together. The judgment of the Kerala High Court in the aforesaid case is squarely applicable to the

facts of the instant case.

7. It is also significant to mention that the Principal Bench had occasion to consider the entitlement of family pension with regard to the Reserve Bank of India service in addition to the military service in O.A.No.116 of 2012, ***Smt.Veena Pant vs. Union of India and Ors***, decided on 31.10.2012 and opined that the widow was entitled to draw both Reserve Bank of India family pension and military family pension together.

8. It is also significant to state that the provisions of sub rules (13-A) and (13-B) of Rule 54 of the Central Civil Service (Pension) Rules 1972 have already been omitted vide GSR.No.938(E) (notification) dated 27<sup>th</sup> December 2012 published in the gazette of India dated December 28, 2012 which has been made applicable with effect from 21<sup>st</sup> September 2012. In this view of the matter the hurdle for granting dual family pension created by the aforesaid sub rules (134-A) and (13-B) no more survives from 21<sup>st</sup> September 2012. Taking into account the amendment as

also the decision of the Kerala High Court in WP(C).No.5562 of 2006-K, **Grace Chacko v. Union of India**, rendered on 22<sup>nd</sup> June, 2007, this Bench rendered order in O.A.No.28 of 2012 on 20<sup>th</sup> February 2013 in the matter of Reserve Bank of India vis-a-vis military family pension. The Bench held that the applicant therein was entitled to military family pension in addition to the Reserve Bank of India family pension.

9. The counsel for the respondents however tried to contend that the aforesaid amendment was not applicable in view of the fact that the actual benefit accruing on omission of the aforesaid sub-rules (13-A) and (13-B) has been made applicable with effect from 21.9.2012 with regard to past cases, therefore, the claim of the military family pension prior to the said date has no substance. Counsel for the respondents next submitted that the judgment of the Kerala High Court as also of the Principal Bench were not applicable in the present matter.

10. In our view, there has always been entitlement of the family pension to the widow of military pensioners with

regard to the services rendered by their husband in the military, in addition to the family pension payable by the Banks, as such the contention that the benefit became available only with effect from 21<sup>st</sup> September 2012 does not appear to be correct. Therefore, we do not agree with the submissions of the learned counsel for the respondents.

11. In view of the aforesaid, we consider it just and expedient to allow the claim set up by the applicant.

12. The Original Application is allowed. The respondents are directed to sanction and pay the military family pension to the applicant in addition to the family pension already being paid to her for the service of her husband rendered in the State Bank of India, with effect from the date of death of her husband. They are further directed to pay the entire arrears of military family pension to the applicant within four months from today. In case the arrears is not paid within the time so fixed, the applicant will be entitled to simple interest at the rate of 8% per annum on the unpaid amount which shall be paid by the respondents to

the applicant.

13. There will be no order as to costs.

14. Issue copy of the order to both side.

Sd/-

LT.GEN.THOMAS MATHEW  
MEMBER (A)

Sd/-

JUSTICE SHRIKANT TRIPATHI  
MEMBER (J)

(true copy)

an

Prl.Pvt.Secretary