

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O A No. 158 OF 2012

WEDNESDAY, THE 13TH DAY OF MARCH, 2013/22ND PHALGUNA, 1934

CORAM:

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

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

APPLICANT:

L. DEVAKI AMMA, AGED 60 YEARS,
WIDOW OF JC NO.99999, EX. NB.SUB.
LATE V. SREEDHARAN NAIR, ASC,
RESIDING AT REDH VIHAR, CHENCHERY,
POST OFFICE – NALANCHIRA, THIRUVANANTHAPURAM,
KERALA STATE – 695 015.

BY ADV. SRI.RAMESH C.R.

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY
THE SECRETARY, MINISTRY OF DEFENCE (ARMY),
SOUTH BLOCK, NEW DELHI - 110001.
2. THE CHIEF OF ARMY STAFF, INTEGRATED HQRS.,
MINISTRY OF DEFENCE, SOUTH BLOCK,
NEW DELHI – 110 001.
3. THE PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSION),
DRAUPADI GHAT, ALLAHABAD, UTTARPRADESH, PIN 211 014,
4. THE OFFICER IN CHARGE, (RECORDS), ASC (SOUTH),
BANGALORE – 560 007.
5. THE SAINIK WELFARE OFFICER, ZILLA SAINIK WELFARE OFFICE,
VANCHIYOOR, TRIVANDRUM DISTRICT, KERALA – 695 035.

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

ORDER

Shri Kant Tripathi, Member (J):

Heard Mr. Ramesh C.R. for the applicant and Mr.S.

Krishnamoorthy for the respondents.

2. By the instant O.A. under Section 14 of the Armed Forces Tribunal Act, the applicant has prayed for a direction to the respondents to sanction and pay her family pension with regard to the service rendered by her husband in the Indian Army, in addition to the family pension being paid to her for the services rendered by her husband in the Life Insurance Corporation of India (hereinafter referred to as "LIC"). In other words, the present matter pertains to the grant of dual family pension, one from the LIC and the other from the Indian Army.

3. The applicant's husband, Nb.Subedar V.Sreedharan Nair, No.99999, joined the Indian Army on 22.3..1962 and was discharged therefrom on 20.10.1978. After the discharge, he joined the LIC on 20.3.1985 and retired on superannuation on 31.8.2001. The applicant's husband was in receipt of pension from the Army and also from the LIC till his death, which occurred on 15th September 2007. The applicant was sanctioned the family pension from the LIC and is still in receipt thereof. However, her claim for family pension from the Indian Army was denied by the respondents on the ground that she was not entitled to dual family pension.

4. A similar question had arisen before the Hon'ble High Court of Kerala in the case of **K.P.Rathna Latha vs. Union of India and others**, [W.P.(C) No.30124 of 2005], in which a learned Single Judge declared that the petitioner therein was entitled to get family pension from the respondents notwithstanding the receipt of family pension from the LIC. In that case too, the petitioner's husband was in the Army and after retirement from the Army joined the LIC and the question arose as to whether the widow was entitled to both Army as well as civil family pension. The Single Judge answered the question in the aforesaid manner. The Union of India and Others filed W.A.No.1629 of 2009 against the said judgment before a Division Bench. The Division Bench passed its order dated 5th August, 2009 holding that the LIC employment was not a government service and as such receipt of family pension from the LIC shall not come in the way of the petitioner therein receiving family pension from the Army. The Division Bench referred to another decision of the Kerala High Court in **Union of India vs. Elsy John**, (W.A.No.1946 of 2008) decided on 6th October, 2008, in which too, a similar view was taken.

5. The counsel for the respondents could not point out any contrary view either of any of the High Courts or of a larger Bench or of the Supreme Court. Therefore, we have no option except to decide the

present matter according to the aforesaid decision of the High Court of Kerala, which is squarely applicable to the facts of the instant case.

6. As discussed above, in our view, the claim for the family pension for the Armed Forces service of the applicant's husband is liable to be allowed, which shall be paid in addition to the civil family pension being paid to her by the LIC.

7. The Original Application is allowed. The respondents are directed to sanction and pay the military family pension to the applicant with effect from the date of death of her husband (Ex Naib Subedar V.Sreedharan Nair). The respondents are further directed to pay the arrears of the family pension positively within four months failing which the applicant will be entitled to 8% simple interest per annum on the unpaid amount, which shall be paid by the respondents to the applicant.

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

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

DK.

(True copy)

Prl. Private Secretary