

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

T.A.NO.150 OF 2010

(WP(C) NO. 26302 OF 2009 OF THE HIGH COURT OF KERALA)

MONDAY, THIS THE 28TH DAY OF JULY, 2010/6TH SRAVANA, 1932

CORAM:

HON'BLE MR. JUSTICE K.PADMANABHAN NAIR, MEMBER (J)

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

APPLICANT/PETITIONER:

RADHAMONY AMMA,
W/O.LATE C. GOPALAKMRISHNAN PILLAI,
KRISHNAVILASAM, KURIPUZHA,
PERINAD P.O., KOLLAM DISTRICT.

BY ADVS. M/S. M.V. THAMBAN AND V.K. SATHYANATHAN.

RESPONDENTS/RESPONDENTS:

1. **UNION OF INDIA, REPRESENTED BY THE SECRETARY,**
MINISTRY OF DEFENCE, NEW DELHI.
2. CHIEF OF ARMY STAFF, ARMY HEADQUARTERS,
NEW DELHI.
3. THE CHIEF RECORD OFFICE,
SIGNAL RECORDS, POST BAG NO.5,
JABALPUR (M.P.).
4. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS, (PENSION),
ALLAHABAD.
5. STATE BANK OF INDIA,
KOLLAM MAIN BRANCH, KOLLAM.

R1 TO R4 BY SR. PANEL COUNSEL SRI. S. KRISHNAMOORTHY.

THIS TRANSFERRED APPLICATION HAVING BEEN FINALLY HEARD ON
28.7.2010, THE TRIBUNAL ON THE SAME DAY PASSED THE FOLLOWING

**JUSTICE K. PADMANABHAN NAIR, MEMBER (J)
&
LT. GEN. THOMAS MATHEW, PVSM, AVSM, MEMBER (A)**

T.A. No. 150 of 2010

Wednesday, this the 28th day of July, 2010

ORDER

PADMANABHAN NAIR, MEMBER (J).

The petitioner is the widow of late C.Gopalakrishna Pillai, an ex-serviceman. Late Sri.Gopalakrishna Pillai was enrolled in the Signal Corps on 20.4.1966. He was discharged from service on 30.4.1983 under Army Rule 13 (3) III (i) on fulfilling his terms and conditions of engagement. He had rendered 17 years and 11 days service in the Army and he was getting service pension. After retirement, Gopalakrishna Pillai was re-employed in the State Bank of India, Kollam as a Head Armed Guard and while in the service he died on 17.8.2004. The petitioner was granted family pension by the State Bank authorities. According to the petitioner, she is entitled to get family pension from respondents 1 to 4 also. She filed number of applications. Finally, under Ext.P5, the third respondent informed her that he has received an intimation from the 4th respondent, P.C.D.A.(P) to the effect that petitioner is not entitled to get family pension from the Army side, as she

is receiving family pension from the State Bank of India. It is specifically averred that petitioner is getting a pension from a trust fund set up by the Bank and the pension is not paid from any public fund at all. According to the petitioner, since she is getting family pension from a trust fund set up by the Bank, she is entitled to get family pension from the Army also. Hence, the petitioner has filed this proceedings as a Writ Petition before the Honourable High Court of Kerala, which was transferred to this Tribunal consequent to its formation. The prayer in this T.A. is for quashing Ext.P5 and also for a direction to the respondents to grant her family pension from Army.

2. The claim for family pension from respondents 1 to 4 is resisted only on the ground that the husband of the petitioner was not re-employed in an organization wherein Employees Pension Scheme, 1995 and Family Pension Scheme, 1991 are in force and as such, the petitioner is not entitled to get pension from respondents 1 to 4. The only question arising for consideration is whether the denial of family pension by the 4th respondent, on the ground that petitioner is getting family pension from the State Bank of India, is legal and proper.

3. The petitioner has produced Ext.P6, a judgment of the learned Single Judge of the High Court of Kerala in W.P.(C) No.5589 of 2006, in

which a widow of an ex-serviceman, who was discharged from Air Force and re-employed in State Bank of India, has claimed family pension from the Air Force authorities also. An identical contention was raised by the respondent in that case also. Overruling that contention, the learned Single Judge of the High Court took the view that pension paid by the Bank is not from any Government fund, but it is from a Trust Scheme maintained by the Bank for its employees and as such, the widow is entitled to get family pension from the Air Force also. The Union of India filed an appeal, W.A.No.2911 of 2007 challenging that judgment. The appeal was dismissed by the Division Bench on 12.12.2007. In T.A.No.16 of 2010, which was disposed of by this Tribunal on 20.5.2010, the widow of an Ex-Sergeant who was discharged from Air Force has filed a petition claiming family pension from the Air Force, as the same was denied by the respondents. In W.P.(C) No.5589 of 2006 as well as in the decision reported in **Union of India v. Vishalakshy** (1998 (2) KLT 797), and also the decision in W.A.No.2155 of 2008, it was held that the widow of service personnel re-employed in nationalised bank is entitled to get family pension from the armed forces. The Special Leave Petition preferred against the judgment in W.A.No.2155 of 2008 was dismissed by the Honourable Supreme Court on 4.9.2009. In spite of all these decisions, the Principal Controller of Defence Accounts (Pension) is unreasonably rejecting the claim for family pension filed by the widows

of service personnel re-employed by the Banks. In this petition, it is specifically averred that the State Bank of India is paying the pension and for paying pension to the employees, a separate Trust Fund was set up as a welfare measure and the same is not a government fund. It is averred that pension is paid from the Trust Fund which is maintained mainly from the contributions of the employees of the Bank. These averments are not denied. So, there is absolutely no justification in rejecting the claim of the petitioner. We are of the considered view that Ext.P5 is to be set aside and that petitioner is entitled to get ordinary military family pension from 18.8.2004.

In the result, the Transferred Application is allowed. Ext.P5 is set aside. There will be a direction to respondents 1 to 4 to process the application already submitted by the petitioner as expeditiously as possible, at any rate within three months from the date of receipt of a copy of this order and disburse the Ordinary Family Pension to the petitioner with effect from 18.8.2004.

No costs.

Issue free copies of the order to both sides.

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

Sd/-
JUSTICE K.PADMANABHAN NAIR,
MEMBER (J)

DK.

(True copy)

Prl. Private Secretary