

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**

T.A.NO.16 OF 2010

[WP(C) NO. 37855 OF 2007 OF THE HIGH COURT OF KERALA)

THURSDAY, THIS THE 20TH DAY OF MAY, 2010/30TH VAISAKHA, 1932

CORAM:

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

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

APPLICANT/PETITIONER:

SOBHANA KUMARI, W/O.LATE EX.SGT.P.M.SIVASANKARAN NAIR,  
"RESHMI", KOHINOOR, CALICUT UNIVERSITY P.O.,  
MALAPPURAM DISTRICT.

BY ADV. SHRI V.K.SATHYANATHAN.

RESPONDENTS/RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY ITS SECRETARY,  
MINISTRY OF DEFENCE, NEW DELHI.
2. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS),  
DRAUPADIGHAT, ALLAHABAD.
3. AIR OFFICER COMMANDING,  
AIR FORCE RECORD OFFICE,  
SUBROTO PARK, NEW DELHI.

BY A.S.G.I. SRI. T.P.M.IBRAHIM KHAN.

THIS TRANSFERRED APPLICATION HAVING BEEN FINALLY HEARD ON  
20.5.2010, THE TRIBUNAL ON THE SAME DAY PASSED THE FOLLOWING

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

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**T.A. No. 16 of 2010**  
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**Thursday, this the 20th day of May, 2010**

**ORDER**

**PADMANABHAN NAIR, MEMBER (J).**

Petitioner is the widow of late Ex.Sgt.P.M.Sivasankaran Nair. He was enrolled in the Indian Air Force on 6.4.1966 and discharged on 30.4.1981 with all non-effective benefits including monthly pension. Subsequently, late Sri.Sivasankaran Nair was re-employed in the Canara Bank. He died in harness while in the service of Canara Bank on 7.2.2006. While he was in the service of Canara Bank, he was receiving monthly pension from Air Force till the date of his death. Thereafter, petitioner staked claim for family pension. The third respondent forwarded necessary forms for claiming ordinary family pension to the petitioner. She filled up the same and submitted it along with the required certificates. The claim for family pension was rejected by the third respondent on the sole ground that she is getting family pension from the Canara Bank, which is not under the scheme of Family Pension Scheme, 1971 or Employees Pension Scheme, 1995. Hence, the petitioner has filed this application as Writ Petition (C) No.37855 of 2007 before the Honourable High Court of Kerala to quash

the order rejecting the claim for family pension and for a direction to the respondents to grant family pension. Consequent to the formation of this Tribunal, the Writ Petition has been transferred to this Tribunal for hearing and disposal.

2. In the petition it is averred that the service rendered by late Sri.P.M.Sivasankaran Nair was not taken into account by the Canara Bank for fixing his salary or for the grant of family pension to the petitioner. It is further averred that under the Pension Regulations for the Air Force, 1961, there is no provision which disentitles petitioner from getting two family pensions at a time. It is also averred that family pension she is getting from the Canara Bank is not paid out of the Consolidated Fund of India. Petitioner has placed reliance on the judgment of the learned Single Judge in W.P.(C) No.22963 of 2007 and also the Division Bench judgment in W.A.No.2155 of 2008 and also the decision reported in **Union of India v. Visalakshy** (1998 (2) KLT 797).

3. The respondents have filed a counter affidavit admitting that late Sri.Sivasankaran Nair was enrolled in the Air Force on 6.4.1966 and was discharged from service on 30.4.1981. It is also admitted that he was receiving service pension and the name of the petitioner is entered as the person who is entitled to get family pension. It is also admitted

that late Sri.Sivasankaran Nair was re-employed in the Canara Bank on 13.10.1983 until 7.2.2006, the date on which he died and on receipt of the intimation of death, a set of family pension claim forms were forwarded to the petitioner for completion and early submission along with the required documents/certificates. It is averred that a perusal of the forms submitted by the petitioner revealed that petitioner has been drawing family pension from the Canara Bank under the Canara Bank (Employees') Pension Scheme 1995. It is contended that a person can receive family pension from the Air Force in addition to the family pension of the re-employer only in case the family pension of the re-employer is disbursed either under the Family Pension Scheme, 1971 or Employees' Pension Scheme, 1995. It is further contended that family pension disbursed by the Canara Bank is not covered under any of the family pension schemes mentioned above. Hence, her claim for family pension from the Air Force was rejected. It is also contended that under Regulation 195(a) of the Pension Regulations for Air Force, 1961, Part I, two family pension at a time is not permitted. Hence, they prayed for dismissal of the application.

4. The point arising for consideration in this Transferred Application is whether the petitioner is eligible to get family pension

simultaneously from the Indian Air Force and from the Canara Bank. The stand taken by the respondents is that she is not entitled to get two family pensions simultaneously. Reliance is placed by the respondents on Regulation 195(a) of the Pension Regulations for the Air Force, 1961, Part I. The relevant portion of Regulation 195 (a) reads as follows:

"195. A relative specified in regulation 192 shall be eligible for the grant of family pension, provided -

(a) he or she is not in receipt of another pension from Government;"

By no stretch of imagination, the pension received from the Canara Bank can be treated as a pension received from the Government. So, there is absolutely no merit on the contention that she is not entitled to get pension from the Air Force in view of the prohibition contained in Regulation 195(a). It is also to be noted that Canara Bank is a statutory body incorporated under the provisions of the Banking Regulation Act. Its funds are not part of Government funds. There is nothing on record that Canara Bank is making any contribution to the provident fund of the employees. There is no justification in denying family pension to the petitioner on the ground that Canara Bank is paying family pension to the petitioner. It is argued that, petitioner can claim pension from the Air Force if she is receiving family pension under Family Pension Scheme,

1971 or Employees Pension Scheme 1995. In paragraph 4 of the counter affidavit, there is an unequivocal admission that petitioner is receiving family pension from the Canara Bank under the Canara Bank Employees Pension Scheme, 1995.

5. In W.P.(C) No.22963 of 2007 a learned Single Judge of the High Court of Kerala has held that widow of a re-employed Air Force personnel is entitled to get family pension from the Air Force notwithstanding the receipt of family pension under the Employees Family Pension Scheme from the re-employer. The said judgment was upheld by the Division Bench in W.A.No.2155 of 2008, following the decision of another Division Bench reported in **Union of India v, Visalakshy** (1998 (2) KLT 797. The Special Leave Petition preferred against the judgment in W.A.No.2155 of 2008, was also dismissed by the Honourable Supreme Court, by order dated 4.9.2009. Thus, the stand of the respondents that petitioner is not entitled to get two family pensions simultaneously is illegal and unsustainable.

In the result, the Transferred Application is disposed of in the following manner:-

Ext.P2 is set aside. It is declared that petitioner is entitled to get family pension as the next of kin and nominee of late

Sgt.P.M.Sivasankaran Nair from the Indian Air Force consequent to the death of her late husband as per the rules. The family pension shall be disbursed within three months from the date of receipt of a copy of this order, failing which it would carry interest at the rate of 9% per annum.

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.ˆ

(True copy)

Sd/-

Prl. Private Secretary.