

**ARMED FORCES TRIBUNAL CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR**

O.A No. 40 of 2010

Smt. Krishna	...	Applicant
Vs		
Union of India and others	...	Respondents

ORDER
26.05.2010

Coram : Justice Ghanshyam Prasad, Judicial Member.

Lt Gen N S Brar (Retd), Administrative Member.

For the Petitioner(s) : Mr. Chanderhas Yadav, Advocate

For the respondent(s) : Mr. Mohit Garg, Advocate

Lt. Gen. N. S. Brar (Retd)

This application is taken up under Section 14 of the Armed Forces Tribunal Act 2007.

The husband of the petitioner, Subedar Krishan Kumar Meherania, was enrolled in the Army on 19.02.1980. The individual was invalided out from service on 08.02.2006 due to disability 'Carcinoma Gall Bladder with Metastasis'. The disability was assessed at 60 percent but neither attributable to nor aggravated by military service. The individual expired on 15.02.2006. The individual was granted service pension wef 08.02.2006 along with other retirement benefits as also joint notification for ordinary family pension vide PCDA (P) Allahabad PPO NO S/031993/2006(ARMY) dated 19.07.2006. The PPO included Death Cum

Retirement Gratuity (DCRG) and Capitalised Value of Pension (CVP) commuted wef 18.04.2006. As the individual had expired before receiving the first payment of pension and other benefits, PCDA (P) Allahabad issued fresh PPO No F/NA/CORR/248/2007 dated 17.05.2007 wherein the DCRG was re- authorised in favour of the widow of the individual, Smt Krishna, the petitioner. However, the CVP was withheld and denied on the grounds that the absolute date of commutation was 18.04.2006 and the husband of the petitioner had expired prior to this date and the CVP could not therefore be paid to the petitioner. Legal notice dated 25.11.2007 was rejected vide PCDA(P) Allahabad letter No G4/VII/EME/LC/08 dated 15.02.2008 on the same grounds (Annexure A8). The petitioner seeks payment of CVP.

Heard the learned counsels for the parties and perused the records.

The only grounds taken by the respondents to deny payment of CVP to the widow of the deceased are that the individual expired on 15.02.2006 and the absolute date of commutation was 18.04.2006. Extract of Para 116 of Pension Payment Instruction 2005 was relied upon to contend the same (Annexure R1). The extract is reproduced below:

Death of a pensioner before receiving payment of commuted value of pension

116.1 In case where an individual who applies for commutation of pension and Pension Payment Order (PPO) has been issued before his retirement and dies before his retirement, no payment on account of commuted value of pension will be authorized by PDA to anyone but the PPO/Corr PPPO will be returned to the Pension Sanctioning Authority for cancellation.

116.02 If a pensioner, however, dies on or after the date on which the commutation becomes absolute but before receiving the commuted value, the same will be authorized as per provisions contained in Para 115 for payment of arrears of pension or gratuity.

On the other hand the learned counsel for the petitioner stated that all papers for retirement benefits were submitted by the husband of the petitioner before his date of retirement. Notwithstanding the time taken by the authorities to finalise the dues, these become effective and the pensioner is eligible for these benefits from the date of retirement which in this case is 08.02.2006. It was stated that the husband of the petitioner had been granted pension from the date of invalidment ie 08.02.2006 and upto the date of death ie 15.02.2006. The petitioner had been granted family pension thereafter. As the husband of the petitioner expired before receiving any payment – pension or otherwise – these had been paid to the petitioner. The pension sanctioned vide PPO dated 19.07.2006 had been reduced by the commuted value of pension (Annexure A4). Correspondingly, the commutation also becomes effective on the same date. Fixing a later date for the absolute date of commutation was arbitrary.

It is an accepted fact that all pension benefits become due from the date of retirement. It is also a settled matter that delay in finalising the dues after the claim has been submitted is attributable to the authorities and procedural or administrative delay cannot be the grounds for penalising the beneficiary. All dues if not paid to an individual become due to the nominee on his death. We have no hesitation in concluding that the commutation of pension should have been effective from the date of

retirement of the individual and accordingly the absolute date of commutation should also have been fixed on the same date. We accordingly allow this application and direct the authorities concerned to release the commuted value of pension as on 08.02.2006 to the petitioner along with interest at the rate of 10 percent per annum within three months of the date of receipt of copy of this order.

There shall be no order as to costs.

[Justice Ghanshyam Prasad]

[Lt Gen N. S. Brar (Retd)]

May 26, 2010
RS