

**T.A. No.189 of 2009
(arising out of CWP No.13080 of 2005)**

ORDER

JUSTICE GHANSHYAM PRASAD

In view of the prevailing Rules and Regulations with regard to grant of family pension, the widow of Parshotam Lal was granted family pension. However, later on, on 20-01-2004, the widow of late Shri Parshotam Lal remarried with one Shri Kuldeep Singh. Thereafter in terms of para 98 of the Pension Regulations For the Army, 1961, the

family pension which was granted to the widow of late Shri Parshotam Lal, was stopped w.e.f. 20-01-2004 vide Annexure P-4. Thereafter the mother of the deceased Pashotam Lal filed a petition before Military Authorities for grant of family pension on the basis of the instructions of the Government of India, Ministry of Defence, dated 26-8-1998 (Annexure P-2) issued vide letter bearing No. B/32807/AG/PS 4(b)/931/B/D(Pens/Serv). However, the prayer of the petitioner was rejected by the authority vide Annexures P-3 and P-7 dated 20-01-2004 and 27th July, 2005 respectively.

The submission of the learned counsel for the petitioner is that in view of the amendment made in the year 1998 the parents have also been included in the definition of family for the purpose of grant of family pension. It is further submitted by the learned counsel for the petitioner that in view of para 78 of the Pension Regulations For The Army, 1961, in absence of son and daughter of the deceased soldier, the petitioner being the mother of the deceased soldier, is entitled to get family pension after discontinuation of family pension to the widow of the deceased.

On the other hand, learned counsel for the Central Government of India has vehemently opposed the prayer of the petitioner and submitted that he family pension is granted to only one person and thereafter no other family member is entitled to get family pension. Since the family pension originally granted to the widow of the deceased soldier was discontinued as a result of remarriage of the widow, the petitioner is not entitled to get family pension.

Considered the submissions of the learned counsel for both the parties. In view of paras 78 and 98 of the Pension Regulations For The Army, 1961 coupled with instructions of Ministry of Defence, 1998 it is quite apparent that in absence of any children of the deceased soldier the mother is entitled to get family pension in place of widow of the deceased subject to the condition mentioned in para 2 of the instructions (Annexure P-2) with regard to income.

Thus having regard to the facts and circumstances of the case, this application is allowed. Respondents are directed to release family pension in favour of the petitioner from the date of discontinuation of the family pension to widow of the deceased after verifying the income of the petitioner, within a period of three months from the date of receipt of this order or certified copy thereof. The petitioner is also entitled to arrears with interest of 10% per annum.

Our experience is that the orders passed by the High Courts or the Tribunal are not promptly complied with by the respondents on some pretexts. It is made clear if the authority concerned does not comply with the above order within the period mentioned above, the petitioner shall have liberty to file one page application for revival of the case. In that event, the person responsible for delay in releasing the family pension shall be suitably dealt with in accordance with law.

(Justice Ghanshyam Prasad)

(Lt Gen H S Panag(Retd)

01-02-2010
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