

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

T.A No. 205 of 2010  
(Arising out of CA No. 49 of 2009)

Union of India and others	...	Petitioners
v.		
Pohlu Ram (deceased) through LRs	...	Respondents

ORDER  
15.09.2010

**Coram : Justice N. P. Gupta, Judicial Member**

**Lt Gen. H. S. Panag (Retd), Administrative Member**

For the Petitioner	...	Mr. Sandeep Bansal, CGC
For the Respondents	...	None

Nobody appears for the respondents.

This is a transferred matter having been filed as Appeal in the Court of District Judge, Bhiwani, seeking to challenge the judgment and decree of learned Additional Civil Judge, Senior Division, Bhiwani dated 11.05.2009 decreeing the plaintiff's suit, and granting service element of disability pension from three years and two months preceding the date of filing of the suit, till death of the individual, i.e. 07.07.2006 and family pension thereafter for life, along with interest @ 9% p.a.

The facts, as appear from the record are that the individual was discharged and was awarded disability pension. However, since the disability fell below 20%, the disability pension was discontinued. Relying upon the provisions of Regulations 186 (1)

and (2) of Pension Regulations for the Army, 1961, the suit has been filed. Various objections have been taken regarding necessary parties and delay and so on, but the learned trial Court, after appreciating the evidence on record, found that even if the disability fell below 20%, the plaintiff was very much entitled to the service element in terms of Regulation 186 and for that relied upon several judgments of Punjab and Haryana High Court and Delhi High Court as well, and since during the pendency of the plaint, the plaintiff died, his legal representatives were substituted and they were held entitled to family pension since the date of death of the individual.

Arguing the matter, it is contended that since pension was discontinued from 1947 as at that time there was no provision for grant of service element, the learned Trial Court was in error in granting disability element.

The other submission is that the family pension has been decreed in favour of the legal representatives of the individual, who happen to be widow and son, while son is 50 years old and, therefore, is not entitled to family pension.

We have considered the submissions and find that since the suit was filed on 23.03.2006, and the plaintiff has not been awarded any service element for any period prior to 1961, he was rightly held entitled to service element as per provisions of Regulations prevailing at the time of filing of the suit.

So far as entitlement to family pension is concerned, the right to family pension did arise in favour of persons entitled to family pension, and according to Rules, plaintiff no.1, Smt. Kheta becomes very much entitled to family pension. The son was added only as a

legal representative, but then right to receive pension did not devolve upon him and, therefore, the decree would be deemed to be confined to entitling plaintiff no.1 to family pension, which obviously ceases on her death.

The petition is accordingly disposed of.

**[ Justice N. P. Gupta ]**

**[ Lt Gen H. S. Panag (Retd) ]**

September 15, 2010  
RS