

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.58 of 2013

Monday, the 11th day of November, 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN (RETD) ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

P. Meeramma,
Wife of Late 1227716 EX Gnr. P. Abraham,
Door No.6-2-122, Sumita Nagar,
Village-Madakalavaraipalli,
The- Gopavaran,
District-Kadappa (A.P.)
State-Andhra Pradesh.

... Applicant

By Legal Practitioner:
Mr. M. Selvaraj

Vs.

1. The Union of India,
Rep. by Ministry of Defence,
New Delhi.
2. The Officer in Charge Records,
Topkhana Abhilekh,
Artillery Records,
Nasik Road Camp – 422 102
APS PIN : 908 802.
3. Principal Controller of Defence Accounts (P),
PCDA-(P), Grant-4, Sec.III,
Allahabad, (U.P.)
4. Zila Sainik Welfare Office,
Kadapa, A.P.,
PIN :516 001.

5. The Commanding Officer,
16 Corps Engineering Signal Regiment,
C/O 56 APO.

... Respondents

By Mr. B. Shanthakumar, SPC

ORDER

(Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiah, Member-Judicial)

1. This application has been filed by the applicant for an order setting aside the impugned order of 2nd respondent dated 7.12.2011 and to sanction Military Service Pension with effect from 28.8.2001 to the date of death of applicant's husband on 28.4.2010, and Military Family Pension from 29.4.2010 till date and to pass such further and other orders this Tribunal may deem it fit.

2. The factual matrix of the applicant's case as stated in the application would be as follows :-

The applicant's husband Gunner P. Abraham enrolled as a Soldier in the army and was discharged as Havildar after serving pensionable service. Thereafter, he joined in civil service in the State of Andhra Pradesh. He worked as Chainman in the Office of Sidhout in Kadapa District of Andhra

Pradesh. He retired from civil service on 1.12.2003 on attainment of superannuation and opted to receive civil pension. Accordingly the applicant was receiving civil pension till his death took place on 28.4.2010. After the death of her husband, the applicant opted for Military Family Pension instead of Civil Family Pension as the Military Family Pension was more beneficial than the Civil Family Pension. There were inter correspondence between State Government and Army Record Office towards the sanction of Military Family Pension. However, the representation of the applicant was finally rejected by the 2nd respondent in the order dated 7.12.2011. In the said order, it was stated that the facility to opt for Military/Civil Family Pension by the family pensioner as provided in Government of India, Ministry of Defence Order No.10(6)/92/D(Pens/Sers) dated 28.9.1992 was one time measure and that facility would not be available after the cut off date. The said reason assigned by the 2nd respondent was incorrect and illegal. In the said order dated 28.9.1992, it was not mentioned anywhere that the benefit of option for the Military Family Pension is one time measure. Therefore, the applicant is entitled to seek for Military Family Pension within the stipulated period of two years from the date of death of her husband and on that aspect also, the rejection order passed by the 2nd respondent is not valid and not in conformity with the contents of the said letter. The applicant was receiving Civil Family Pension from the State of Andhra Pradesh since it was covered under Family Pension Scheme, 1971, apart from the reception of

Military Family Pension as per the amended provisions of Government of India, Ministry of Personnel, Public Grievances and Pensions letter No.1/19/96-P & PW (E) dated 27.7.2001 read with Government of India, Ministry of Defence letter No.2/CC/B/D (Pension/Services) 2001 dated 28.8.2001. The rejection of Military Family Pension from the date of death of the applicant's husband is in violation of the Government of India Order, MoD Order No.10(6)/92/D(Pens/Sers) dated 28.9.1992. Therefore, the impugned order passed by the 2nd respondent has to be set aside and consequently the 3rd respondent be directed to sanction Military Service Pension to the applicant's husband from 28.8.2001 till his death on 28.4.2010 and also Military Family Pension from 29.4.2010 till date and also to grant future Family Pension from military side and also to pass further and necessary orders and thus the application may be allowed.

3. The objections raised by the respondents in the Reply Statement would be as follows :-

The husband of the applicant late Gnr P. Abraham was enrolled in the Regiment of Artillery on 28.11.1963 and was discharged from service with effect from 1.12.1978. He was granted Service Pension vide Pension Payment Order No.S/13412/1979 dated 13.3.1979, which was revised from time to time as per the policies of Government. The said Abraham was married to the applicant, who was also nominated as his heir to receive the

Family Pension. The applicant submitted a petition dated 17.6.2010 along with death certificate of Late Gnr Abraham in which it was intimated that he died on 28.4.2010. She also requested the 2nd respondent Artillery Records to release Family Pension in her favour. In the letter No.1227716/T-2(J)/Misc/Pen-3(B) dated 3.7.2010, the 2nd respondent asked the petitioner to forward requisite documents to Zila Sainik Welfare Office/Station Headquarters for the grant of Family Pension and to make joint notification in favour of the petitioner and the same was processed to the competent Pension Sanction Authority, the 3rd respondent, for their adjudication. On receipt of the requisite documents, it was noticed as per Part-II of re-employment details, the husband of the applicant was re-employed as Chainman in the Office of Tehsildar, Sidhout, Kadapa District, Andhra Pradesh State, and was drawing Civil family Pension at Rs.2216/- per month vide Pension Payment Order No.REV/KDP/SP/002163 dated 22.11.2003. It was certified that no Family Pension has been granted by the State of Andhra Pradesh and will not be granted to the applicant. Therefore, the 2nd respondent approached the re-employment authority to cancel the Civil Family Pension and forward a copy to this office if Civil Family Pension has been jointly notified in favour of the widow. Otherwise, a certificate has to be forwarded mentioning that Civil Family Pension has not been granted and will not be granted to the petitioner of the above named deceased for processing the Family Pension from army side. The re-employment

authority through its letter No.C/51/2011 dated 1.2.2011 intimated tht the signature on the documents forwarded by the Artillery Records dated 7.1.2011 are fake and forgery. Hence the question of submitting Civil Family Pension certificate does not arise in the said matter. However, the Family Pension claim of the applicant was processed to competent pension sanctioning authority PCDA (P), Allahabad, the 3rd respondent through a letter No.1227716/T-2(J)/Misc/Pen-3 (B) dated 28.3.2011. The said claim was perused and was returned by the 3rd respondent through its letter No.G4/II/Audit-I/Art Rec/G 346711 dated 27.4.2011 since the deceased was re-employed in the office of Tehsildar, Sidhout, and the applicant was drawing Family Pension admissible at Rs.2216/- per month. The 2nd respondent again approached the re-employment authority for cancellation of the Pension Payment Order in order to facilitate the grant of Military Family Pension and accordingly the re-employment authority forwarded cancellation of PPO No.REV/KDP/SP/002163 dated 22.11.2003 through its letter dated 27.6.2011. Thereafter, the claim of Family Pension of the applicant was again processed and sent to 3rd respondent. 3rd respondent again perused and returned the claim through its letter No.G4/II/Audit-I/Arty/G 651811 dated 27.7.2011 by stating that the widow cannot change her option for Family Pension from civil side to military side under Rule-54 (13-A) of the Central Civil Services (Pension) Rules, 1972, with an advice to approach the civil authorities for restoration of her Civil Family Pension

already sanctioned vide PPO No.REV/KDP/SP/002163 dated 22.11.2003. The claim of the applicant in her petition dated 17.6.2010 was within the stipulated period of two years from the date of death of her husband. The same was again submitted to the 3rd respondent for adjudication as per the provisions of Government of India, Ministry of Defence letter No.10(6)/92/D(Pers/Sers) dated 28.9.1992. However, the 3rd respondent perused the case again and returned the claim through its letter No.G4/II/AT-I/ART/G780211 dated 9.9.2011 by stating that the facility to opt for Military/Civil Family Pension by the family pensioner as provided by the Government of India, MoD letter No.10(6)/92/D(Pers/Sers) dated 28.9.1992, was one time measure and this facility is not available after the cut off date. Therefore, the Military family Pension was not allowed under the extant orders in vogue and the same was communicated to the applicant through the 2nd respondent's letter No.1227716/T-2(J)/Misc/Pen-3(B) dated 7.12.2011. However, as per the policy of Government of India, Ministry of Defence letter No.01(05)/2010-D (Pen/Policy) dated 17.1.2013, the families of Armed Forces Pensioners who got re-employment in Civil Departments/Government/PSUs/Autonomous bodies/local funds of Central/State Government after getting retired/discharged from military service and were in receipt of Ordinary Family Pension would be entitled to draw two family pensions authorised by the re-employer for re-employed civil service subject to fulfilment of other prescribed conditions. Since the

financial benefit was restricted to be granted with effect from 24.9.2012, the grant of Military family Pension was processed to PCDA (P), Allahabad, through letter No.1227716/T-J/PCDA/Pen-3(B) dated 22.4.2013 for notification of PPO in favour of the applicant. Therefore, the claim for payment of Military Family Pension from the date of death of her husband cannot be allowed nor the Service Pension from military side can be granted to the pensioner retrospectively as asked for by the applicant. Therefore, the application may be dismissed being devoid of merit.

4. On the above pleadings, the following points have been framed for consideration :-

- 1) Whether the order passed by the 2nd respondent dated 7.12.2011 intimating the rejection of Military Family Pension to the applicant be set aside ?
- 2) Whether the 3rd respondent be directed to sanction Military Service Pension to the applicant's husband with effect from 28.8.2001 till his death on 28.4.2010 ?
- 3) Whether the applicant is entitled and be paid with Military Family Pension from 29.4.2010 till this date and also in future ?
- 4) To what relief the applicant is entitled for ?

5. Heard Mr. M. Selvaraj, Learned Counsel for the applicant and Mr. B. Shanthakumar, Learned Senior Panel Counsel assisted by Mr. M. Dennison, representative of Legal Cell, ATNK & K Area, Chennai, appearing for the respondents.

6. The Learned Counsel for the applicant would submit in his argument that the facts put forth by the applicant regarding the service of her husband Late Gnr P. Abraham was enrolled as Soldier with Regiment of Artillery on 28.11.1963 and was discharged from service on 1.12.1978 and thereafter he joined civil service with State of Andhra Pradesh and was employed as Chainman with Office of the Tehsildar, Sidhout Taluk, Kadapa District, Andhra Pradesh State, and served there and retired with pensionable service from there also, were not disputed. He would further submit that the applicant's husband Ex Gnr P. Abraham, after his retirement from civil service, had opted for getting pension from civil authorities and was receiving the pension from civil authorities till his death on 28.4.2010. He would also submit that the applicant was granted with Civil Family Pension on the death of her husband and was receiving the same and after finding that the Military Family Pension is more beneficial to the applicant, she had applied for Military Family Pension by changing the option within two years from the date of death of her husband as per the contents of Government of India, Ministry of Defence letter No.10(6)/92/D(Pers/Sers) dated 28.9.1992,

and it was processed by the 2nd respondent by asking the applicant to get cancelled the Civil Family Pension and accordingly the Civil Family Pension was cancelled by the civil authorities. However, the 3rd respondent had rejected the claim of the applicant by stating that the option given by the pensioner to receive Civil Family Pension under Sub-rule (13-A) of Rule-54 of Central Civil Services (Pension) Rules, 1972, was one time measure and it cannot be exercised second time. He would submit in his argument that the contents of the letter dated 28.9.1992 would clearly state that the option given by the pensioner can be changed by the family pensioner within a period of two years from the date of death of the pensioner and, therefore, the decision reached by the 3rd respondent rejecting the claim of the applicant has no legs to stand. He would also argue that the option for change of Family Pension from civil side to military side should have been accepted by the 3rd respondent and only at the direction of the 3rd respondent, the receipt of Civil Family Pension was cancelled by the re-employing civil authorities, namely Government of Andhra Pradesh, and the change of option for Family Pension by the applicant should have been accepted by the 3rd respondent. He would further submit that the Military Family Pension ought to have been granted from the date of death of her husband and, therefore, the application should have been allowed after setting aside the impugned order passed by the 3rd respondent as intimated by the 2nd respondent, and the Family Pension to the applicant should have

been granted by the 3rd respondent from the date of death of her husband i.e. 28.4.2010. He would, therefore, request to allow the application with costs.

7. The Learned Senior Panel Counsel would submit in his argument that the applicant's husband received the Service Pension from re-employing authority only and he did not receive any Service Pension from military side. He would further submit that the applicant cannot invoke the benevolence of the said letter since her husband Ex Gnr P. Abraham was receiving Civil Service Pension till his death. He would also submit that if really the applicant's husband was receiving the Military Service Pension, the applicant could have exercised the option to get the Military Family Pension within two years of his death, but it is not so in this case and, therefore, the option given by the husband of the applicant to get Civil Family Pension under Sub-rule (13-A) of Rule-54 of Central Civil Services (Pension) Rules, 1972, became final and the second option is not available to the applicant. He would further submit that the impugned order passed by the respondents 2 and 3 are quite right in accordance with the contents of letter of Government of India, Ministry of Defence No.10(6)/92/D(Pens/Sers) dated 28.9.1992. However, he would submit in his argument that the applicant is entitled to Military Family Pension on and from 24.9.2012 as per the changed policy of the Government of India, MOD letter No.01(05)/2010-D (Pen/Policy) dated

17.1.2013, in which dual Family Pensions were permitted to be drawn by the family pensioners. He would also submit that the applicant was issued Pension Payment Order to pay Military Family Pension on and from 24.9.2012 and, therefore, the application filed by the applicant has to be dismissed. He would also submit that the claim for Military Family Pension from the date of death of the applicant's husband cannot be granted till 23.9.2012, for the aforesaid reasons. He would further submit that the claim for Service Pension to the applicant's husband on and from 28.8.2001 till the date of his death cannot also be granted since her husband had given option to Civil Service Pension alone and was receiving the said pension till his death. He would, therefore, request us to dismiss the application being devoid of merit.

8. We have given anxious thoughts to the arguments advanced on either side. We have also perused the documents produced.

9. **Points No.1 & 3:** The undisputed facts would be that the husband of the applicant Late Gunner P. Abraham was enrolled in the Regiment of Artillery on 28.11.1963 and was discharged from service on 1.12.1978 after attaining the pensionable service in the army. He was also re-employed in Government of Andhra Pradesh in the Office of Tehsildar, Sidhout, Kadapa District, Andhra Pradesh, as Chainman and he had also completed

pensionable service in the said re-employment and was drawing Civil Service Pension of Rs.2216/- per month as per Pension Payment Order No.REV/KDP/SP/002163 dated 22.11.2003. The said Gunner Abraham died on 28.4.2010 and till his death he received the Civil Service Pension. After his death, the applicant was issued with Civil Family Pension and she had also applied for Military Family Pension through her petition dated 17.6.2010 by changing the option given by her husband to get Civil Family Pension. The said claim was recommended by the Records Officer through his letter dated 21.10.2011 to PCDA (P), Allahabad, for the grant of Military Family Pension as per the contents of the letter of Government of India, Ministry of Defence letter No.10(6)/92/D(Pens/Sers) dated 28.9.1992. In the said letter, the Record Office recommended that the Military Family Pension is more beneficial than the Civil Family Pension and the applicant was entitled to change the option within two years from the date of death of her husband. However, the recommendation made by the Record Office was rejected by the PCDA (P), Allahabad, by stating that the option exercised by the applicant's husband once, cannot be changed by the applicant.

10. In the backdrop of the admitted case, the applicant has come forward with this application for setting aside the impugned orders passed by the respondents 2 and 3 in rejecting the grant of Military Family Pension from the date of death of her husband i.e. 28.4.2010. According to the Learned

Counsel for the applicant, the letter issued by Government of India, MoD letter No.10(6)/92/D(Pens/Sers) dated 28.9.1992 is benevolent to the widows of pensioners to exercise their option to get Military Family Pension within two years of the death of their husband and, therefore, the rejection order passed is not correct. He would also refer to the letter of the Record Officer dated 21.10.2011 quoting the same interpretation in favour of the applicant.

11. Therefore, we should see whether the contents of the Government of India, MoD letter dated 28.9.1992 is applicable to the facts and circumstances of the case and is beneficial to the applicant. The extraction of the said letter has become necessary for appreciating the contention of the applicant. Paragraph-2 of the letter which is relevant would run as follows :-

"2. The question of grant of such an option for drawing ordinary family pension for the Armed Forces service rendered by the Armed Forces pensioners has been under consideration of the Govt for sometime. The President is pleased to decide that the families of the Armed Forces pensioners, who were in receipt of military pension till their death, their widows/eligible members of the families drawing family pension from the Central Civil Ministries/Departments, State Govts/PSUs/Autonomous bodies

for the re-employed service of the deceased may now be allowed to exercise an option within two years from the date of issue of this letter or the date of death of the Armed Forces pensioners, whichever is later, to draw ordinary military family pension wef 1.1.1992, or the date following the date of death of pensioner, whichever is later, foregoing the family pension from the Civil source from that date. Such an option will be exercised in the form prescribed at Appendix to this letter. Those family pensioners who do not opt for drawal of ordinary military family pension within the stipulated period of two years, will be deemed to have opted for continued drawal of ordinary family pension from civil side."

12. On a careful understanding of the qualification to get the benefit of exercising second option was mentioned clearly in Para-2 of the letter dated 28.9.1992. It is quite clear that the families of Armed Forces pensioners who were in receipt of Military Pension till their death, their widows drawing Family Pension from Central Civil Ministries/Department, State Governments etc. for the re-employed service of the deceased may be allowed to exercise an option within two years from the date of issue of the said letter or the date of death of the Armed Forces pensioners, whichever is later to draw Ordinary Military Family Pension. Admittedly the husband of the applicant,

namely Late Gnr P. Abraham, was receiving Civil Service Pension till his death and he was not receiving any Military Service Pension.

13. In the said circumstances, the qualification given was the pensioners should receive military pension till their death. If really any military pensioner receiving military pension has opted for getting Civil Family Pension, found the Military Family Pension is more beneficial, they can very well ask for exercising a second option as per the contents of the letter dated 28.9.1992. If such option is found not exercisable due to want of any qualification, the earlier option given by the pensioner cannot be changed. In this case, the husband of the applicant P. Abraham, was not receiving Military Service Pension till his death and, therefore, the applicant is not entitled for exercising a second option within two years from the date of death of her husband. The mere recommendation of the Record Office to permit the applicant to exercise second option cannot be relied upon by the applicant since the said recommendation done by Record Office was in contravention of the contents of the letter dated 28.9.1992. Therefore, the order passed by the respondents 2 and 3 rejecting the claim of the applicant for exercising the second option to get Military Family Pension from the date of death of her husband was perfectly in order. Point No.1 is answered accordingly.

14. Admittedly, the applicant was receiving Civil Family Pension from the re-employing authority and on claiming the Military Family Pension from the respondents 2 and 3 by exercising the second option as detailed in the letter dated 28.9.1992, the Record Office required the applicant to get cancellation of the Civil Family Pension and in accordance with the said requirement, the Civil Family Pension of the applicant was cancelled. The mere cancellation of Civil Family Pension received by the applicant to facilitate the grant of Military Family Pension will not entitle the grant of Military Family Pension as the applicant was not attracted by the benevolent contents of the letter dated 28.9.1992. When the applicant was not granted Military Family Pension from the date of death of her husband i.e. 28.4.2010, she is entitled to get Civil Family Pension, which was cancelled on a wrong notion that she would be granted Military Family Pension by exercising a second option. However, it is for the applicant to approach the State Government of Andhra Pradesh to seek for the arrears of Civil Family Pension payable from the date of death of her husband, if it is not paid. In the said circumstances, the 3rd respondent cannot be directed to grant Military Family Pension in favour of the applicant, as asked for.

15. We have discussed and come to a conclusion that the 3rd respondent cannot be directed to grant Military Family Pension in favour of the applicant as asked for by her. However, it has been admitted by the Learned Senior

Panel Counsel that the Government has changed the policy on 17.1.2013 by issuing a policy letter vide Government of India, Ministry of Defence letter No.01(05)/2010-D (Pen/Policy) dated 17.1.2013, in which dual family pension were permitted on and from 24.9.2012. It is also clarified that the financial benefits shall be granted only from 24.9.2012 in past cases and this case being a past one as per letter dated 17.1.2013, the applicant is entitled for Military Family Pension on and from 24.9.2012 and accordingly she has to be granted Military Family Pension from the said date. Even though the applicant was not found entitled to Military Family Pension from the date of death of her husband i.e. 28.4.2010 till this date by exercising the option of getting Military Family Pension as per the tenor of the letter dated 28.9.1992, the applicant is found entitled to Military Family Pension along with Civil Family Pension on and from 24.9.2012. Therefore, the Military Family Pension can be granted to the applicant on and from 24.9.2012 only. Accordingly, the third point is decided partly in favour of the applicant.

16. **Points No.2 & 4:** The applicant had asked for the grant of Military Service Pension to the applicant's husband from 28.8.2001 till his death on 28.4.2010 and thereafter to grant Military Family Pension to her by invoking the contents of the Government of India, Ministry of Defence letter No.10(6)/92/D(Pens/Sers) dated 28.9.1992. In the pleadings, it was not stated as to how the applicant's husband was entitled to Military Service

Pension on and from 28.8.2001. Though the policy letter of Government of India, Ministry of Personnel, Public Grievances and Pensions dated 27.7.2001 was in respect of applicability of Sub-rule (13-B) of Rule-54 of CCS (Pension) Rules, 1972, to certain institutions covered under Employees Pension Scheme, 1995 and Family Pension Scheme, 1971, for the grant of dual family pension and the letter dated 28.8.2001 issued by Government of India, Ministry of Defence, was towards the applicability of Employees Pension Scheme, 1995 and Family Pension Scheme, 1971 as mentioned in Sub-rule (13-B) of Rule-54 of CCS (Pension) Rules, 1972, they are not relevant towards the grant of Military Family Pension on the ground of the benefits rendered under the policy letter of Government of India, Ministry of Defence in letter No.10(6)/92/D(Pens/Sers) dated 28.9.1992 nor it is helpful to decide the entitlement of the applicant husband's Military Service Pension from 28.8.2001. Therefore, the claim for payment of Military Service Pension to the applicant's husband from 28.8.2001, is baseless.

17. We have also decided that the applicant is not entitled to Military Family Pension from the date of death of her husband i.e. 28.4.2010 in lieu of Civil Family Pension, which was received and subsequently cancelled. However, we have found that the applicant is entitled to Military Family Pension on and from 24.9.2012 only and the cancellation of Civil Family Pension from Government of Andhra Pradesh could be revived since it was

cancelled at the request of 2nd respondent in its letters dated 7.1.2011 and 14.5.2011 on the pretext of granting Military Family Pension. For the above reasons, the application is partly allowed in respect of the grant of Military Family Pension to the applicant on and from 24.9.2012 only. In other respects the application is dismissed.

18. In fine, the application is partly allowed towards the grant of Military Family Pension to the applicant on and from 24.9.2012. In other respects, the application is dismissed. There shall be no order as to costs.

Sd/-
LT GEN ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)

Sd/-
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

11.11.2013
(True Copy)

Member (J) – Index : Yes / No

Internet : Yes / No

Member (A) – Index : Yes / No

Internet : Yes / No

NCS

To,

1. The Government of India,
Ministry of Defence,
New Delhi.
2. The Officer in Charge Records,
Topkhana Abhilekh,
Artillery Records,
Nasik Road Camp – 422 102
APS PIN : 908 802.
3. Principal Controller of Defence Accounts (P),
PCDA-(P), Grant-4, Sec.III,
Allahabad, (U.P.)
4. Zila Sainik Welfare Office,
Kadapa, A.P.,
PIN :516 001.
5. The Commanding Officer,
16 Corps Engineering Signal Regiment,
C/O 56 APO.
6. Mr. M. Selvaraj,
Counsel for applicant.
7. Mr. B. Shanthakumar, SPC
For respondents.
8. OIC, Legal Cell (Army),
ATNK & K Area HQ,
Chennai.
9. Library, AFT, Chennai.

**HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)**

O.A.No.58 of 2013

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