

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.31 of 2014

Monday, the 27<sup>th</sup> day of October 2014

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH  
(MEMBER - JUDICIAL)  
AND  
THE HONOURABLE LT GEN K. SURENDRA NATH  
(MEMBER – ADMINISTRATIVE)

Smt. Gulzar Begum  
W/o Late Spr Ibrahim Baig  
D No 21-21-15/1, Rice Colony  
Beside Usmania Masjid  
Ramalingeswarapet  
Tenali, Guntur-522 201 (AP).

... Applicant

By Legal Practitioner: Mr. M. Selvaraj

vs.

1. Union of India, Rep. by Integrated  
Head Quarters MOD (Army)  
Adjutants General's Branch  
Addl Dte Gen Personnel Service  
New Delhi-110 011.

2. The Officer in Charge Records Signals  
Pin-908770, C/o 56 APO

3. Principal Controller  
of Accounts (Pension) PCDA (P)  
Droupadi Ghat, Allahabad.

4. Zilla Sainik Welfare Office  
Guntur District, Andhra Pradesh  
28, Infantry Div Signal Regiment,  
C/o 56 APO.

.... Respondents

(R.4 is deleted by Order of this  
Tribunal dt. 23.04.2014)

By B. Shanthakumar, SPC

### **ORDER**

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

1. This application is filed by the applicant to set aside the impugned order No.1344423/Pen(f) dated 20<sup>th</sup> April 2012 wherein the second respondent restricted the payment of Special Family Pension to the applicant from the date of notification, i.e., 20<sup>th</sup> January 2009 and seeking a direction against the respondents to pay Special Family Pension and other attendant benefits with effect from 23.03.1996 to 19.01.2009 as arrears and for further direction to pay Family Pension to the applicant for the period 01.01.1996 to 23.03.1996 with interest with immediate effect.

2. The factual matrix of the case of the applicant would be as follows:

The applicant's husband enrolled in the army on 10.10.1965 as soldier and he served under the Infantry Division

Signals. During his service, he met with a vehicle accident and died and therefore, the applicant was sanctioned Special Family Pension by PPO dated 30.09.1981. On her re-marriage in the year 1982, the Special Family Pension was stopped on and from 25.11.1982 and the same was granted to the applicant's father-in-law with effect from 25.11.1982. Her father-in-law died on 22.03.1996 and the mother-in-law of the applicant did not receive Special Family Pension and she also died on 14.07.2007. The claim for Special Family Pension of applicant from 24.03.1996 upto this date was not granted, but was granted only from 20.01.2009. The applicant is entitled for arrears of Special Family Pension from the date of death of her father-in-law, i.e., from 22.03.1996 to 19.01.2009. Though a representation dated, 30.03.2012 was made to the second respondent, it was rejected by the impugned order dated 20.04.2012 by stating that the benefit of continuance of Special Family Pension would be available to her only from 20.01.2009. The above said reply is not valid in law as the eligibility of the applicant starts from 01.01.1996 onwards. Therefore, the applicant has filed this application for the above said reliefs.

3. The objections raised by the respondents in their reply statement would be as follows:

The facts of enrolment of the applicant's husband in the army on 10.10.1965, his death occurred on 18.10.1977 at Base Hospital due to vehicle accident, his marriage with the applicant according to Muslim rites and there is no issue in their wedlock are not disputed by the respondents. Special Family Pension was granted to the applicant from 18.03.1977 vide PPO No.F/27/84. After some time, the applicant was disqualified to receive Special Family Pension and the same was stopped due to her remarriage. Then, applicant's father-in-law Mr. Abdul Rahim Baig was receiving Special Family Pension from 26.06.1984 till his death on 23.03.1996. Thereafter, claim for continuance of Special Family Pension for the mother-in-law Mrs. Nanimabi @ Ashrafunnisabibi was taken up with Principal Controller of Defence Account (Pensions) Allahabad, but it was rejected for the reason that a third life award of the Special Family Pension is not permissible. The respondents further submit that the applicant claimed for Special Family Pension and it was granted to the tune of a sum of Rs.7,000/- per month with effect from 20.01.2009 vide PPO F/0118/2009 (Army) dated 31.12.2009 on the basis of letter of Govt of India, Min Defence letter No.1 (1)/2001/D/(Pension/Policy), dated 20.01.2009. Since the actual benefit arising out of this order will be payable only from 20.01.2009, no arrears shall be admissible to the applicant and this fact had also

been informed to the applicant vide letter dated 20.04.2012 of Records Madras Engineer Group, Bangalore. In view of the above facts and circumstances, the applicant is not entitled for arrears of Special Family Pension from 24.03.1996 to 19.01.2009. Further, the applicant is also not entitled for Family Pension with effect from 01.01.1996 to 23.03.1996. Therefore, this application deserves dismissal, as devoid of any merit.

4. On the above pleadings, the following points were framed for consideration:

- 1. Whether the impugned order issued by the second respondent No.1344423/Pen(f) dated 20<sup>th</sup> April 2012 is liable to be quashed and set aside ?*
- 2. Whether the applicant is entitled for arrears of Special Family Pension with effect from 23.03.1996 to 19.01.2009 ?*
- 3. Whether the applicant is entitled for Family Pension from 01.01.1996 to 23.03.1996?*
- 4. To what relief, the applicant is entitled for ?*

5. We heard Mr. M.Selvaraj, learned counsel for the applicant and Mr. B.Shanthakumar, learned Senior Panel Counsel appearing for the

respondents. We also perused the documents and the records produced on either side.

6. **Point Nos.1 to 3:** The applicant is the widow of late Sapper Ibrahim Baig who was enrolled on 10.10.1965 as a soldier and he died while in active service due to a vehicle accident and therefore, the applicant was granted with Special Family Pension vide PPO dated 30.09.1981. The applicant was receiving Special Family Pension till she remarried on 25.11.1982 and thereafter, the Special Family Pension was granted to applicant's father-in-law, namely Abdul Rahim Baig. The father-in-law of the applicant was receiving the Special Family Pension till his death on 23.03.1996. The remarriage of the applicant made her disqualified from receiving the Special Family Pension and therefore, the payment of Special Family Pension was not granted to the applicant after the death of the applicant's father-in-law. The mother-in-law of the applicant, namely Mrs. Nanimabi alias Ashrafunnisabibi claimed the payment of Special Family Pension, but it was rejected for simple reason that third life award of Special Family Pension is not permissible. However, the payment of Special Family Pension was not continued to the applicant also by stating the reason that she is not eligible since she remarried prior to 01.01.1996. Subsequently, the applicant was granted with Special Family Pension on and from

20.01.2009 by the Government's sanction by virtue of the letter dated 20.01.2009 issued by Government of India, Ministry of Defence in letter No.1 (1)/2001/D/(Pension/Policy). The PPO was also issued to that effect which is produced by the applicant in Annexure A.6.

7. However, the applicant is claiming arrears of Special Family Pension from the date of death of her father-in-law, i.e., 23.03.1996 till 19.01.2009 and also the eligible Family Pension from 01.01.1996 to 23.03.1996. The learned counsel for the applicant would submit in his argument that the remarriage of a widow except the brother of her husband debar a widow to get Special Family Pension under Para 219 of Pension Regulations for the Army 1961, Part-I, but it was regulated by the issuance of Defence Pension Payment Instructions [PCDA(P) PPI-2005] in which remarriage of the widows have been exempted from disqualification to receive Special Family Pension with certain conditions. He would also submit in his argument that Para 38.4 of the said Instructions would entitle the remarried widow to continue the benefit of getting full family pension when she has no child from the deceased husband. The learned counsel for the applicant would insist in his argument that the applicant is entitled to get the Special Family Pension from the date of death of her father-in-law, i.e., 23.03.1996 onwards, but she was granted only from

20.01.2009 and therefore, she is entitled to get the arrears of Special Family Pension from 23.03.1996 to 19.01.2009. He would further submit that she is also entitled for Family Pension from 01.01.1996 to 23.03.1996 till she was not granted with Special Family Pension as per the provisions of Defence Pension Payment Instructions [PCDA (P) PPI-2005] despite her father-in-law was given the benefit of Special Family Pension during that period.

8. Per contra, the learned Senior Panel Counsel would submit in his argument that the said provisions of Defence Pension Payment Instructions would apply to those widows who remarried on and after 01.01.1996 but the applicant admittedly remarried in the year 1982 and she was disqualified on her remarriage as per rules in vogue and the second life pension award was given to her father-in-law and therefore, she cannot invoke the provisions of the said Defence Pension Payment Instructions. He would further submit that the Government of India issued a letter dated 20.01.2009 in order to benefit the widows who remarried prior to 01.01.1996 and the receipt of their family pension was stopped due to the disqualification and such benefits would be payable only from the date of issuance of the said letter dated 20.01.2009 and no arrears be paid prior to the said date. He would therefore submit that the grant of PPO continuing the Special Family Pension stopped owing to her



disqualification in the year 1982 was ordered with effect from 20.01.2009 and it is quite legal that the order passed on the foot of the said letter is not liable to be set aside. He would therefore request us to dismiss the application as not sustainable.

9. For appreciating the rival contentions, the provisions of Defence Pension Payment Instructions as laid down in Para 38.4 is necessarily to be extracted. It runs as below:

" 38.4: In case, the widow is in receipt of Special Family Pension, w.e.f. 1.1.1996 on her remarriage shall be regulated as under:-

(a)	<u>Commissioned Officers</u>	
(i)	<i>If she has child (ren)</i>	
(aa)	<i>If she continues to support children after marriage</i>	<i>Full Special Family Pension to continue to widow.</i>
(bb)	<i>If she does not support children after marriage</i>	<i>Ordinary Family Pension (OFP) equal to 30% of emoluments last drawn to the remarried widow, 50% of the special family pension to the eligible children</i>
(ii)	<i>If widow has no children</i>	<i>Full Special Family Pension to continue to widow</i>

Personnel Below Officers Rank:

(i) *If Special Family Pension is sanctioned to the widow: Same provisions as applicable to officers as (a) above. "*

10. Admittedly, para 38.4 along with other provisions was issued in the year 2005. In the said para 38.4, the effect of payment of family pension for remarried widows have been explained. The remarriage of a widow receiving family pension has been regulated as per Para 38.4. It says that a remarried widow of a PBOR is entitled for full Special Family Pension, if she has no children provided she was in receipt of Special Family Pension, with effect from 01.01.1996. On a careful reading of the said provisions, it could be applied to a widow, she must be a remarried widow on and after 01.01.1996. In the case of the applicant, she remarried in the year 1982 and therefore, she was disqualified as per the rules in vogue. It is also an admitted fact that she was not in receipt of Special Family Pension as on 01.01.1996 but her father-in-law was in receipt of Special Family Pension till his death on 23.03.1996. In our opinion, the said provisions are not applicable to the applicant since she was not in receipt of Special Family Pension as on 01.01.1996 and she also got remarried prior to 01.01.1996. The said provisions of Defence Pension Payment Instructions would benefit only the widows who remarried on and after 01.01.1996. However, the Government had considered the plight of pre-01.01.1996 widows and issued an order vide Government of India, Min Defence letter No. 1(1)/2001/D(Pen/Policy), dated 20.01.2009 granting the benefit of

Special Family Pension to a widow where the Special Family Pension was stopped on her remarriage entered before 01.01.1996. In the said letter it was clearly mentioned that no arrears shall be payable prior to the said date and the actual benefit arising out of this letter will be payable from the date of issue of the said letter. That entitles the applicant who remarried prior to 01.01.1996 to receive Special Family Pension with effect from the date of issuance of the said letter, namely 20.01.2009, the Special Family Pension which was stopped owing to her remarriage in the year 1982. No doubt PPO was issued in favour of the applicant by the respondents with effect from 20.01.2009 as per the tenor of the Government's letter dated 20.01.2009. We have already found that the applicant was not entitled to any grant of Special Family Pension with effect from 23.03.1996 as per the provisions of Defence Pension Payment Instructions [PCDA (P) PPI-2005]. Therefore, the issuance of PPO bestowed on the applicant who is a pre-01.01.1996 widow as per letter dated 20.01.2009 is quite legal and the communication passed by the second respondent dated 20.04.2012 is also quite sustainable. Therefore, the request of the applicant to set aside the said letter of the second respondent communicating the sanction of Special Family Pension payable to the applicant only with effect from 20.01.2009 and no arrears shall be paid, cannot be granted.

11. In view of the discussions held above, all the three points are decided against the applicant.

12. **Point No.4:** In view of the decisions reached in the aforesaid points that the applicant is not entitled to Special Family Pension with effect from 23.03.1996 till 19.01.2009 and Family Pension from 01.01.1996 to 23.03.1996 and the impugned order dated 20.04.2012 issued by the second respondent is not liable to be set aside, we find that the application is not allowed. Therefore, the application filed by the applicant is liable to be dismissed.

13. In fine, the application is dismissed. No order as to costs.

Sd/  
LT GEN K. SURENDRA NATH  
MEMBER (ADMINISTRATIVE)

Sd/  
JUSTICE V.PERIYA KARUPPIAH  
MEMBER (JUDICIAL)

**27.10.2014**  
**(True copy)**

**Member (J)** – Index : Yes/No  
**Member (A)** – Index : Yes/No

Internet : Yes/No  
Internet : Yes/No

VS

To:

1. Integrated Head Quarters MOD (Army)  
Adjutants General's Branch  
Addl Dte Gen Personnel Service  
New Delhi-110 011.

2. The Officer in Charge Records Signals  
Pin-908770, C/o 56 APO

3. Principal Controller  
of Accounts (Pension) PCDA (P)  
Droupadi Ghat, Allahabad

4. M. Selvaraj,  
Counsel for applicant.

5. Mr. B. Shanthakumar, SPC  
For respondents.

6. OIC, Legal Cell,  
ATNK & K Area, Chennai.

7. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH  
MEMBER (JUDICIAL)  
AND  
HON'BLE LT GEN K. SURENDRA NATH  
MEMBER (ADMINISTRATIVE)

O.A.No.31 of 2014

Dt: 27.10.2014