

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.2 of 2012

Friday, the 21<sup>st</sup> day of September 2012

THE HON'BLE JUSTICE SHRIKANT TRIPATHI  
(MEMBER-JUDICIAL)  
AND  
THE HON'BLE LT GEN (RETD) ANAND MOHAN VERMA  
(MEMBER – ADMINISTRATIVE)

Smt.J.Pangajammal  
W/o Late Ex-Sapper Jayaraman No.1322640  
No.67, 5<sup>th</sup> Main Street, 3<sup>rd</sup> Cross Street  
Chokkalinga Nagar, Koodal Nagar  
Madurai, Tamil Nadu-625018

...Applicant.

By Legal Practitioner: Mrs.Tonifia Miranda

Vs.

- 1.Union of India & Others.  
Represented by its Secretary  
Ministry of Defence  
New Delhi-110011
- 2.The Chief of the Army Staff  
Army HQ, DHQ P.O  
New Delhi-110 011.
- 3.Director General of Madras Engineering Group,  
Army HQ, DHQ PO, New Delhi-110 011.
- 4.The Senior Record Officer  
Record Office, Madras Engineering Group  
PIN-900493, C/o 56 APO.
- 5.Chief Controller of Defence Accounts Pensions  
Draupathighat, Allahabad, UP-211014.

...Respondents

By Shri B.Shanthakumar, SPC (Govt. Advocate for Respondents).

**ORDER**

(Order of the Tribunal made by  
Hon'ble Justice Shrikant Tripathi, Member-Judicial)

1. Heard Mrs.Tonifia Miranda, the Counsel for the Applicant and Shri B.Shanthakumar, Senior Panel Counsel for Respondents and perused the record.

2. The applicant Smt. J.Pangajammal has filed the instant petition under Section 14 of the Armed Forces Tribunal Act, 2007 for dual family pension which has been turned down by the respondents on the ground that the applicant's husband, after his retirement from the Army, took a civil employment under the State Government of Tamil Nadu and the applicant was in receipt of the family pension from the civil employer and as such she was not entitled to Army Family Pension.

3. The applicant's husband joined the Madras Engineer Group of the Indian Army on 30<sup>th</sup> June, 1944 and served there for 10 years and 20 days with unblemished career. He was awarded medals for the services he rendered. After the retirement from the Army, he was in receipt of Army Pension upto 24.11.2000 being the date of his death. It may not be out of context to mention that the applicant's husband took a civil employment as Electrician Grade-II in the Government Rajaji Hospital at Madurai on 19.7.1954 after his retirement and served in the Hospital upto 30.4.1987. Therefore, he used to draw civil pension with effect from 1.5.1987 and continued to draw such pension till his death. After the death of her husband, the applicant is getting civil family pension with effect from 25.11.2000.

4. The applicant now claims the Army Family Pension on the ground that the Civil Pension being paid to her husband was covered by the Employees Pension Scheme, 1995. Therefore, the applicant was entitled to the pension from the Army too. But the Principal Controller of Defence Accounts (Pensions) Allahabad vide letter No.G4-VII-LC-SK-11

dated 25.5.2011 declined the Army Family pension to the applicant which compelled her to file the instant petition.

5. The respondents have filed a written reply stating therein that the aforesaid Scheme was not applicable with regard to the pension matter of the husband of the applicant, therefore, the applicant was not entitled to family pension from the Army. It is next alleged that the applicant's husband died in the year 2000, but she filed the present case in July, 2012 without any proper explanation of the delay. Therefore, the petition was liable to be dismissed on the ground of laches.

6. The learned counsel for the applicant submitted that the civil employment of the applicant's husband in the Government Rajaji Hospital at Madurai was after his retirement from the Army. His civil pension matter was being governed by the Employees Pension Scheme, 1995, therefore, the applicant's claim for the family pension from the Army was tenable. The learned counsel further submitted that in the following similar cases this Tribunal has earlier granted Army family pension to the widow:

- i) O.A.No.6 of 2012 (ordered on 25.1.2012)  
Smt.A.Mariammal Vs. Union of India and two others.
- ii) O.A.No.51 of 2010 (ordered on 17.3.2011)  
Smt.R.Subalakshmi Vs. Union of India and four others.

7. The learned counsel for the applicant further submitted that Rule 54 of the Central Civil Services (Pension) Rules, 1972, hereinafter referred to as "the CCS Rules", deals with the matters regarding family pension. Sub rule (13-B) of Rule 54 of the CCS Rules, no doubt, prohibits grant of family pension under CCS Rules to a person who is already in receipt of a family pension or is eligible therefor from a government etc. But the second proviso to the said sub-rule added by the Central Civil

Services (Pension) Amendment Rules, 2001 permits with effect from 27.07.2001 grant of family pension under the CCS Rules in addition to the Family Pension admissible under the Employees Pension Scheme, 1995 or the Family Pension Scheme, 1971. It was next submitted that the family pension being paid to the applicant with regard to the civil employment of her husband was a pension payable under the Employees Pension Scheme, 1995 and as such the applicant was entitled to the military pension under Rule 54 (13-A) and (13-B) of the CCS Rules. Sub-rules (13-A) and (13-B) of Rule 54 of the CCS Rules may be reproduced as under :

**“(13-A)** A military pensioner, who on retirement from military service, on retiring pension, service pension or invalid pension is governed for the grant of ordinary family pension by Army Instruction 2/S/64 or corresponding Navy or Air Force Instructions and is re-employed in a civil service or civil post before attaining the age of superannuation, shall for the purpose of eligibility for the family pension admissible under this rule or the family pension already authorized under the aforesaid Army / Navy / Air Force Instruction, be governed as follows:-

(i) If he dies while holding a civil post, his family shall be allowed family pension under these rules or the family pension authorised at the time of retirement or discharge from the military service, whichever is more advantageous to the family:

(ii) if he has, on appointment to a civil service or posted, opted to retain military pension for the past military service –

(a) and retires from the civil re-employment without earning and pension therefor, his family shall be entitled to family pension as authorized at the time of his retirement/ discharge from military service;

(b) retires from civil re-employment after becoming eligible for pension therefor, he shall exercise an option at the time of applying for pension for civil service either to be governed by family pension under these rules or to avail of family pension benefits as authorized at the time of his retirement/ discharge from military service and the said option once exercised shall be final.

**(13-B)** Family Pension admissible under this rule shall not be granted to a person who is already in receipt of Family Pension or is eligible therefor under any other rules of the Central Government or a State Government and/or Public Sector Undertaking/ Autonomous Body / Local Fund under the Central or a State Government :

Provided that a person who is otherwise eligible for family pension under this rule may opt to receive family pension under this rule if he foregoes family pension admissible from any other source.

Provided further that family pension admissible under the Employees Pension Scheme, 1995 and the Family Pension Scheme, 1971, shall, however, be allowed in addition to the family pension admissible under these rules.“

8. The learned counsel for the respondents on the other hand submitted that the CCS Rules do not deal with the Military Pensions including Military Family Pension and apply only to pensions relating to civil services and posts. He further submitted that if the CCS Rules are held to be applicable to the Military Pensions, even then, the applicant's claim has no merit in view of the fact that the civil employment of the husband of the applicant was a government job, therefore, the family pension of the civil employment being paid to the applicant was a government family pension which does not in any way fall within the ambit of the Employees Pension Scheme, 1995. Therefore, the applicant was not entitled to the dual-family pension as she has claimed. The learned counsel for the respondents further submitted that the Employees Pension Scheme, 1995 is applicable to employees of factories and other establishments to which the Employees Provident Fund and Miscellaneous Provisions Act, 1952 applies or is applied. The civil employment of the applicant's husband was under the State Government of Tamil Nadu, therefore the applicant's case for the dual-family pension was untenable in view of the Regulation 219 of the Pension Regulations for the Army, 1961 which creates a bar on the grant of a Military Pension if the person concerned is in receipt of another pension from Government.

9. Keeping in view the facts and circumstances of the case and the submissions of the learned counsel for the parties, the only question that arises for consideration is whether the applicant is entitled to Army

Family Pension despite the fact that she is already in receipt of a civil family pension from the State Government of Tamil Nadu?

10. It is well settled that all matters pertaining to Army Pension including Army family pension are regulated by the Pension Regulations for the Army, 1961. When a question arises whether or not the widow is entitled to Army Family Pension, the question has to be considered according to Regulation 219 of the Pension Regulations for the Army, 1961 and related provisions incorporated in the said Regulations. Regulation 219 provides a relative (the widow too) specified in Regulation 216 shall be eligible for the grant of Army family pension. However, this provision has few exceptions and one of the exceptions is that if the relative is in receipt of any other pension from Government, he/she will not be entitled for the Army Family Pension. To put it otherwise, no widow or another relative shall be eligible for the grant of Army family pension if he or she is receiving any other pension from Government. The term "Government" does not appear to have been defined in the Pension Regulations for the Army, 1961, therefore, the definition provided in the General Clauses Act, 1897 would apply. According to Section 3(23) of the General Clauses Act, 1897, the term "Government" includes the Central Government and any State Government. As such, the term "Government" used in Regulation 219 of the aforesaid Regulations shall include not only the Central Government but also any State Government.

11. No doubt Rule 54 (13-A) of the CCS Rules also regulates dual-family pension matter, one military family pension and the other, civil family pension admissible under the CCS Rules. But the CCS Rules, being a Central Rule, are applicable only to civil services and posts in

connection with the affairs of the Union including civilian government servants in the Defence services and other Central services and posts as is evident on a perusal of rule 2 of the CCS Rules. The CCS Rules do not apply to a family pension matter pertaining to a State Government employment. In such matters, the State Rules would be applicable. Therefore, the submission of the learned counsel for the applicant, in the light of Rule 54 (13-A) of the CCS Rules, does not appear to have any merit. The provisions of sub-rule (13-B) of Rule 54 of the CCS Rules also have to face the same consequence with regard to its applicability to a family pension matter pertaining to a State-government employment. The sub-rule (13-A) of Rule 54 of the CCS Rules would apply only when a question for grant of dual-family pension, one under the CCS Rules and the other under Military rules arises for consideration. The said sub-rule (13-A) would not be attracted in a case where the question of the claim of family pension arises under a State Government Rule and also under the military rules. In view of the fact that the applicant's husband, after retirement from the Army, had obtained a civil employment in a Government hospital of the State Government of Tamil Nadu, her case needs to be examined in accordance with the Pension Regulations for the Army, 1961 vis-à-vis the Rule 13-A of the State Rules, hereinafter referred to as the State Rules, brought into force vide G.O.No.22 Finance(Pension) dated 6.1.96 which reads as follows :

13-A. A military pensioner, who on retirement from military service on retiring pension, Service pension, or invalid pension is governed for the grant of ordinary family pension under military rules and is re-employed in a civil service or civil post before attaining the age of superannuation, shall for the purpose of eligibility for the family pension under this rule or the family pension already authorised under military rules be governed as follows:

(a) If he dies while holding a civil post, his family be allowed family pension under this rule, or the family pension authorised at the time of retirement or

discharge from the military service, whichever is more advantageous to the family.

(b) If he has an appointment to a civil service or post, opted to retain military pension for the post of military service, and

(i) retires from the civil re-employment without earning any pension therefor his family shall be entitled for family pension as authorised at the time of his retirement or discharge from the military service;

(ii) retires from the re-employment after becoming eligible for pension therefor, he shall exercise an option at the time of applying for pension for the civil service either to be governed by family pension under this rule or to avail of family pension benefits, as authorised at the time of his retirement or discharge from the military service and such option once exercised shall be final.

(c) If an appointment to a civil service or post, he has opted to surrender military pension and count the military service for civil pension, his family shall be entitled to family pension under this Rule”

12. The death of applicant's husband took place on 24-11-2000 much after the enforcement of the aforesaid Rule 13-A of the State Rules and as such the same is fully applicable with regard to civil family pension being paid to the applicant. It may not be out of context to mention that the provisions of Rule 13-A of the State Rules are almost synonymous to the provisions contained in sub-Rule (13-A) of Rule 54 of the CCS Rules. The Rule 13-A of the State Rules as also sub-rule (13-A) of Rule 54 of the CCS Rules prohibits dual-family pension, one for the military service, and the other, for the civil service or post under the State Government. The widow or other relatives are entitled to only one of the said two family pensions which is more advantageous to the family. Sub-Rule (13-A) of Rule 54 of the CCS Rules regulates also the military family pension, besides the family pension payable under the CCS Rules, to certain extent, therefore, sub-rule (13-B) of Rule 54 of the CCS Rules would also be applicable with regard to the family pension being claimed by the applicant regarding the Army service of her husband. The said sub-rule (13-B) also prohibits



grant of family pension under the CCS Rules, which includes even the military family pension, to a person, who is in receipt of a family pension or is eligible therefor under the rules of the Central Government or a State Government and/or Public Sector Undertaking / Autonomous Body / Local Fund under the Central or a State Government. In other words, the aforesaid sub-rule (13-B) is somehow synonymous to Regulation 219 of the Pension Regulations for the Army, 1961 which also prohibits grant of military family pension to a person who is in receipt of government pension. But the aforesaid sub-rule (13-B) of Rule 54 of the CCS Rules is much wider which includes not only a government family pension but also Public Sector Undertaking / Autonomous Body / Local Fund, etc. family pension. The first proviso to the said sub-rule (13-B) further speaks of only one pension subject, of course, to a right of election to opt for any one of the admissible pensions. The second proviso, therefore, permits the dual-family pension, one from government and the other according to any of the Schemes, i.e., Employees Pension Scheme, 1995 and the Family Pension Scheme, 1971. If, in a case either of the two Schemes is applicable, the pensioner will be entitled to both the pensions.

13. The applicant's case needs to be examined in the backdrop of the aforesaid principles. The civil employment of the applicant's husband was an employment under the Government of Tamil Nadu. As already observed, the pension of such employment is governed by the State Rules, therefore, the contention that the civil pension matter of the applicant's husband or the civil family pension matter of the applicant was regulated by the Employees Pension Scheme, 1995 does not appear to have any substance. Neither the Family Pension Scheme, 1971 nor the

Employees Pension Scheme, 1995 is applicable to a State government pensioner, unless it is shown that the Establishment in which the original pensioner had served was an establishment to which of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 was applicable or had been applied as the Schemes of 1971 and 1995 have been framed under Section 6-A of the Act, which has been enacted to provide for the institution of Provident Funds, Pension Fund and Deposit Linked Insurance Fund for employees in factories and other establishments. Section 1(3), 1(4) and 1(5) deal with the provisions with regard to the application of the Act, which may be reproduced as under:

**“ 1. Short title, extent and application.-**

(1) .....

(2) .....

(3) Subject to the provisions contained in section 16, it applies -

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify, in this behalf:

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

(4) Notwithstanding anything contained in sub-section (3) of this section or-sub-section (1) of section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.

(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty. “

14. It is also relevant to observe that by virtue of para 44 of the Employees Pension Scheme, 1995, the Family Pension Scheme, 1971 ceased to operate with effect from 16<sup>th</sup> November, 1995 being the date of the commencement of 1995 Scheme. Para 1(3) of the Employees Pension Scheme, 1995 also provides for the application of the Scheme, according to which, the Scheme is applicable to the employees of all factories and other Establishments to which the Employees Provident Fund & Miscellaneous Provisions Act, 1952 applies or is applied under sub-section (3) or sub-section (4) of Section 1 or Section 3 thereof. A similar provision had been incorporated even in para 1(3) of the Family Pension Scheme, 1971, which was in force prior to the commencement of the Employees Pension Scheme, 1995.

15. Therefore, on a perusal of provisions of Section 1 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and para 1(3) of the Employees Pension Scheme, 1995 clearly transpires that the Employees Pension Scheme, 1995 is applicable only to the employees of factories and other establishments to which the Employees Provident Fund and Miscellaneous Fund Act, 1952 applies or is applied under sub-section (3) or sub-section (4) of Section 1 or Section 3 of the said Act and to none others.

16. In the instant case, there is no material or evidence to show that the Employees Provident Fund and Miscellaneous Provisions Act, 1952 was either applicable or had been applied to the Electrician post in the

Government Rajaji Hospital, Madurai, Tamil Nadu in which the applicant's husband was employed. In absence of any specific evidence or case on this point, the contention of the learned counsel for the applicant that the Employees Pension Scheme, 1995 regulate the applicant's civil family pension matter, cannot be upheld.

17. It is also significant to observe that the applicant opted for the civil family pension and is in receipt thereof since the date of death of her husband. Her case for the military family pension in addition to the civil family pension is not in any way acceptable as both of them are government pensions and as already held, there is a bar to grant both the pensions simultaneously.

18. The decisions of this Bench relied upon by the counsel for the applicant which have been referred in para 6 of this Order, are distinguishable. In O.A.No.51 of 2010, Smt.R.Subalakshmi Vs. Union of India and others, the applicant therein was re-employed in Public Works Department and the Tribunal found that his services in the PWD was governed by the Family Pension Scheme, 1971. The other case in O.A.No.6 of 2012, Smt.A.Mariammal Vs. Union of India and others, was with regard to re-employment in Canara Bank to which the Employees Pension Scheme, 1995 was held applicable by the Tribunal. However, in the present case, there is no evidence nor certificate of the civil employer to show that the pension matter relating to re-employment service of the applicant's husband or the matter relating to applicant's Civil Family pension is governed by any of the aforesaid Schemes. Therefore, the aforesaid Orders of this Bench do not operate as judicial precedents.

19. For the reasons discussed above, the applicant's claim for the Army Family Pension, has no merit and is accordingly dismissed.

20. Costs easy. Inform.

**Sd/-**  
**JUSTICE SHRIKANT TRIPATHI**  
**(MEMBER-JUDICIAL)**

**Sd/-**  
**Lt. GEN (RETD) ANAND MOHAN VERMA**  
**(MEMBER - ADMINISTRATIVE)**

**21.9.2012**  
**//TRUE COPY//**

To,

1. Union of India & Others.  
Represented by its Secretary  
Ministry of Defence  
New Delhi-110011

2. The Chief of the Army Staff  
Army HQ, DHQ P.O  
New Delhi-110 011.

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4. The Senior Record Officer  
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Draupathighat, Allahabad, UP-211014.

6. Mrs. Tonifia Miranda, Counsel for Applicant.

7. Shri B. Shanthakumar, SPC (Govt. Advocate for Respondents).

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

9. Library, AFT, Chennai.

**HONOURABLE JUSTICE  
SHRIKANT TRIPATHI  
(MEMBER-JUDICIAL)**

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**HONOURABLE LT GEN (RETD)  
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