

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.11 of 2012

Friday, the 14th day of September 2012

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

Mrs.Vasanthi Victor.
W/o Late Ex-SGT Amaldass Victor,
4/92-A, Richard Street
NGGO Colony, Coimbatore-641022
Tamil Nadu

... Applicant

By Legal Practitioners:
M/s G.B.Saravanabhavan and N.Chinnaraj.

Vs.

JWO, JWO IC P&WW(FP)
AirForce Record Office
Subroto Park, New Delhi-110010.

....Respondent

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 the Mr.S.Pasupathi, Advocate holding brief on behalf of the learned counsel for the applicant and Shri B.Shanthakumar counsel for the respondents and perused the records.

2. The applicant Mrs.Vasanthi Victor, has filed the instant petition under Section 14 of the Armed Forces Tribunal Act, 2007 for the

payment of family pension vide PPO No.AF/F/NA/007/2010 with interest at the rate of 12% per annum.

3. It is not in dispute that the applicant's husband Mr. Amaldass Victor served the Indian Air Force from 3.12.1960 to 31.12.1975 and was sanctioned pension after his retirement from the Air Force vide PPO No.S/24817/75 and continued to draw the pension till his death which took place on 25.9.2008. The applicant is admittedly the widow of the aforesaid Mr.Amaldass Victor and is recorded as such in the record of the Air Force. The applicant was also sanctioned family pension vide PPO No. AF/F/NA/007/2010 which was despatched to her on 15.3.2010. It is also not in dispute that the applicant's husband, after the retirement from the Air Force was re-employed in Canara Bank and was also in receipt of civil pension therefrom after his retirement. It is also not in dispute that the applicant, after her husband's death, was sanctioned and is being paid civil family pension from the Canara Bank.

4. When the respondents came to know about the family pension being paid to the applicant by the Canara Bank, the respondents issued the letter dated 21.10.2010 (Document No.5) asking the Branch Manager, Canara Bank, Mettupalayam-641301, Coimbatore, Tamil Nadu to stop the payment of the family pension to the applicant on the basis of PPO No. AF/F/NA/007/2010 on the ground that she was in receipt of civil family pension from the Canara Bank. It appears that the Air Force family pension was also being paid to the applicant through the Canara Bank and that is why the letter dated 21.10.2010 was sent to the Canara Bank for stopping payment of her family pension.

5. The main grievance raised on behalf of the applicant is that the respondents were not justified in issuing the aforesaid letter dated 21.10.2010 stopping payment of Air Force family pension to the applicant which was being paid on the basis of PPO No. AF/F/NA/007/2010. The contention of the applicant is that the family pension being paid to the applicant by the Canara Bank was not a government pension, therefore, she was entitled to dual-family pension, one from the Canara Bank and the other from the Air Force.

6. The respondents have, however, refuted the allegations made on behalf of the applicant by filing a written reply and stated that the applicant was not entitled to dual-pension as the pension sanctioned by the Canara Bank is not governed by the Family Pension Scheme, 1971 or the Employees Pension Scheme, 1995.

7. Keeping in view the facts and circumstances of the case, the sole question that arises for consideration is whether the applicant, who is in receipt of a civil family pension from the Canara Bank is entitled to the Air Force family pension?

8. The aforesaid question had been dealt with by the Kochi Bench of the Armed Forces Tribunal in T.A.16 of 2010 (**Sobhana Kumari Vs. Union of India and others 2011(1) AFTLJ 54**). In that case too, a civil family pension was being paid to the applicant from the Canara Bank and family pension from the Air Force. The Kochi Bench of the Armed Forces Tribunal arrived at the conclusion that the second family pension from the

Air Force was payable to the applicant Sobhana Kumari. The Bench further held that the civil family pension being paid by the Canara Bank could not be taken as a ground to stop the Air Force family pension as it was not a pension received from the government. The Kochi Bench, while laying down the aforesaid principle, placed reliance on a judgement of the Kerala High Court rendered in Writ Petition (C) No.22963 of 2007, in which the Kerala High Court had held that widow of a re-employed Air Force personnel was entitled to Family Pension from the Air Force notwithstanding receipt of family pension under the Employees Family Pension Scheme from the re-employer. The said judgement of the Kerala High Court was upheld by a Division Bench in Writ Appeal No.2155 of 2008 following the decision of another Division Bench rendered in **Union of India Vs. Visalakshy 1998 (2) KLT 797**. The SLP preferred against the judgement in W.A.2155 of 2008 was also dismissed by the Apex Court.

9. The Kochi Bench propounded the aforesaid principle keeping in view the Regulation 195(a) of the Pension Regulations for the Air Force, 1961, Part-I, which provides that a relative specified in Regulation 192 shall be eligible for the grant of family pension, provided –

“(a) he or she is not in receipt of any other pension from government.”

In other words, the Kochi Bench was of the view that a person in receipt of any other pension from Government is not entitled to the family pension from the Air Force.

10. In our view the aforesaid decisions of the Kochi Bench of the Armed Forces Tribunal as also the Kerala High Court as affirmed by the

Apex Court, squarely apply to the present case. Therefore, the applicant's claim for dual family pension is fully established and is liable to be allowed.

11. The Petition is allowed. The respondents are directed to make payment of Air Force family pension to the applicant vide PPO No. AF/F/NA/007/2010 with effect from the due date and continue to make the payment in accordance with law. The letter No.RO/2853/236189/17269 HD/P&WW(FP) dated 21.10.2010 issued by the respondents to the Branch Manager, Canara Bank, Mettupalayam, Coimbatore is quashed. The respondents are further directed to make payment of entire arrears of the family pension within three months from today failing which the applicant would be entitled to recover the arrears of the family pension with interest at the rate of 7% per annum.

12. The learned counsel for the respondents prayed for the Leave to appeal the Supreme Court and submitted that a point of law of general public importance was involved in the matter. In our opinion, no question of law of general public importance is involved in the present matter. Therefore, the Leave prayed for is refused.

13. Costs easy. Inform.

Sd/-
JUSTICE SHRIKANT TRIPATHI
(MEMBER-JUDICIAL)

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

14.9.2012
//TRUE COPY//

To,

1. JWO, JWO IC P&WW(FP)
AirForce Record Office
Subroto Park, New Delhi-110010

2. M/s G.B.Saravanabhavan and N.Chinnaraj, Advocate for Applicant.

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

4. OIC Legal Cell, Air Force, Avadi, Chennai.

5. Library, AFT, Chennai

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

AND

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

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