

**ARMED FORCES TRIBUNAL REGIONAL BENCH CHENNAI**

**O.A.No. 17 of 2012**

**Tuesday, the 18<sup>th</sup> day of September 2012.**

**THE HON'BLE JUSTICE SHRIKANT THRIPATHI  
MEMBER (JUDICIAL)  
AND  
THE HON'BLE LT.GEN. (RETD) ANAND MOHAN VERMA  
(MEMBER – ADMINISTRATIVE)**

Anthony Ammal,  
W/o.Ex. Hav.Late D. Pushpanadan  
New No.28/5, Old No.66, Tannery Godown Street,  
Salavanpet, Vellore - 632 001.

... Applicant

Counsel for Applicant: M/s. H. Nazirudeen, A Prabhakaran,  
P.Haribabu & P.Bhuvaneshwari.

Vs.

1. Government of India rep by its Secretary,  
(Defence Department) (Pension Cell)  
New Delhi- 110 011
2. Madras Engineer Group Abhilekh Karyalaya  
Record Office Madras Engineer Group  
Sivanchetty Garden Postal Office,  
Post Box No. 4201, Bangalore- 560042
3. The Record Officer  
Officer –in-charge (Records)  
Madras Engineer Group Abhilekh Karyalaya  
Record Office Madras Engineer Group,  
Sivanchetty Garden Postal Office,  
Post Box No. 4201, Bangalore. 560042.

... Respondents

**ORDER**

1. Heard Mr. H. Naziruddin for the Applicant and Shri B. Shanthakumar, the Government Counsel for the Respondents and perused the record.
2. The applicant Mrs. Anthony Ammal has filed the instant petition under Section 14 of the Armed Forces Tribunal Act, 2007 for allowing her to draw family pension

with regard to the services rendered by her husband Ex. Hav. Late Pushpanadan in the Indian Army.

3. The applicant alleged that her husband was enrolled in the Indian Army on 26.04.1939 and was discharged there from on 28.12.1954 and was accordingly sanctioned Army pension vide P.P.O.No. S/862 of 1995 and continued to draw the pension till the date of his death on 14.10.1972. The applicant further stated that the first wife of her husband died i.e. 21.04.19954 before his discharge from the Army. After the death of the first wife, the late Hav. Pushpanadan married to the applicant on 11.07.1957 in a Church and after that the applicant continued to live with her husband as his legally wedded wife. It was also alleged that after discharge from the army, the applicant's husband re-enrolled himself in NCC on 23.12.1964 and also discharged there from 31.07.1967 but was not in receipt of any pension for NCC service as he had not completed the requisite length of service. Therefore the applicant claims that in view of her marriage with the late Ex. Hav. Pushpanadan on 11.07.1957, she was entitled to the family pension but her request for the family pension was turned down by the respondents only on the technical ground that she had not been able to establish her marriage with Ex. Hav.Late Pushpanadan.

4. The respondents, on the other hand, set up the defence that they were agreeable to sanction the family pension to the applicant provided that the applicant's marriage with late Ex. Hav. Pushpanadan had been established. But the applicant could not establish the marriage. More so there was no declaration of the marriage by a competent court. In this view of the matter the petitioner was not entitled to the family pension. It was next submitted on behalf of the respondents that the claim was highly belated, therefore, the application was liable to be dismissed on the ground of laches.

5. The learned counsel for the applicant submitted that the applicant has filed a certificate of the marriage (Annexure-6) which is in the form of an extract from the Register of Marriages maintained in the concerned Church. Therefore according to that document the applicant's marriage with late Havildar Pushpanadan is fully proved. The learned counsel for the applicant further submitted that on the discharge certificate issued by the Army, the applicant's photograph has been affixed as the wife of late Havildar Pushpanadan. More so, in the Military canteen smart card, there is a photograph of the applicant in which she has been shown as the wife of Late Hav. Pushpanadan Service No.17745/PPO N/A which has been issued by Southern Command, Pune. Similarly "the identity card of widows" in favour of the applicant showing her as the wife of Late Hav. Pushpanadan has also been issued by the Assistant Director of Ex-Servicemen Welfare (Zilla Sainik Board) Vellore. The learned counsel for the applicant further submitted that in the ration card issued by the Army, the applicant's photograph has been affixed and in that document too she has been indicated as the wife of Late Hav. Pushpanadan. The learned counsel lastly submitted that the ration card is not transferable to anybody. On the basis of the aforesaid documents, the learned counsel for the applicant submitted that it was fully established that the applicant was the widow of the Late Hav.Pushpanadan and therefore she was entitled to the family pension as claimed.

6.. The Counsel for the respondents on the other hand submitted that the question of legal heirship is beyond the domain of the Tribunal, therefore, first of all the applicant had to go to the Civil Court to seek the declaration that she is the widow of the late Ex. Hav. Pushpanadan and only after seeking such declaration, the present petition could be filed in the Tribunal.

7. So far as the power of this Tribunal to decide the question of legal heirship for the entitlement of the family pension is concerned, we are of the view that the submission made on behalf of the respondents has no substance. The main question that has arisen in this case is whether the applicant is entitled to the family pension and this question very well falls within the jurisdiction of the Tribunal. While deciding the question of entitlement of family pension, the question of legal heirship also can be looked into incidentally. Therefore, the contention that the applicant has to go to the Civil Court first and to seek declaration of her right to claim legal heirship and then come to the Tribunal does not appear to be teneable in law.

8. Admittedly the marriage of the applicant with Late Hav. Pushpanadan took place after his discharge from the Army.. Regulation 216 of Pension Regulation for the Army, 1961 provides for eligibility of pension according to which the widow, who was married after individual's release or after his retirement/discharge/invalidment is also entitled to the family pension. Therefore the family pension claimed by the applicant cannot be denied only on the ground that her marriage with Late Hav. Pushpanadan took place after his discharge from the Army. According to Regulation 220(b) (I) of the aforesaid Pension Regulation 1961 provides that the pension shall be granted to the family who stands highest in the list under Regulation 216, according to which the widow is at No.1. Regulation 216 of the Army Regulations further specify that the relative specified in Regulation 216 shall be eligible for grant of family pension, provided he or she is not in receipt of any other pension from the Government or he or she is not re-employed in Government or the widow is not re-married. There is no allegation that the applicant solemnised remarriage after the death of her husband. There is also no allegation that she is employed in the Government or is in receipt of any other pension from the Government. Therefore if

the applicant has established herself as the widow of Late Ex. Hav. Pushpanadan, she would be entitled to the Family Pension keeping in view the provisions of the Regulation 216, 219 and 220(b)(I) of the Pension Regulation for the Army 1961.

9. No doubt in the present case the question whether or not the applicant is the widow of Late Ex. Hav. Pushpanadan is involved, but there is ample evidence to prove her marriage with Late Ex. Hav. Pushpanadan. The various documents referred to in the earlier part of this judgment including the marriage certificate and the affidavit of the applicant, have fully established her marriage with late Ex.Hav.Pushpanadan which took place on 11.07.1957. Per contra, there is no evidence at all from the side of the respondents to controvert the story of the applicant's marriage. Therefore, while deciding the question of the applicant's entitlement for the family pension, We consider it just and expedient to believe the applicant's evidence and to hold that she is the widow of late Ex. Hav. Pushpanadan and is entitled to the family pension. The respondents have, by issuing the Military Canteen Smart card, Military ration card, identity card to the applicant, virtually acquiesced the fact that the applicant is the wife of late Ex. Pushpanadan, therefore, their stand in this regard is devoid of 'merit'.

10. So far as the family pension for NCC service is concerned, it is sufficient to observe that the applicant's husband was not in receipt of any pension for the NCC service, therefore, We do not consider it proper to grant any relief to the applicant regarding the Family pension relating to N.C.C. Service. However, the applicant's claim for Family Pension for the army service of her husband is fully established. The question of laches would be insignificant if the arrears of the Family Pension is confined to three years prior to the institution of the instant case, especially when the

cause of action relating to pension matter is a recurring cause of action accruing every month.

11. For the reasons stated above, the application is allowed. The respondents are directed to pay the family pension to the applicant till she continues to be eligible for the pension. However the arrears of the Family Pension shall be confined to the period of three years prior to the institution of the instant case which shall be paid to the applicant within three months from today failing which the respondents shall have to make the payment of the interest also at the rate of 7% per annum.

12. Costs easy. Inform.

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

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

**18.9.2012**  
**//TRUE COPY//**

To

1. Government of India rep by its Secretary,  
(Defence Department) (Pension Cell)  
New Delhi- 110 011
2. Madras Engineer Group Abhilekh Karyalaya  
Sivanchetty Garden Postal Office,  
Post Box No. 4201, Bangalore- 560042
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Officer –in-charge (Records)  
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Post Box No. 4201, Bangalore. 560042.
4. M/s. H. Naziruddin, A.Prabhakaran, P. Haribabu & P.Bhuvanewari,  
Counsel for applicant, No.87, Law Chambers, High Court Bldgs, Chennai.104.
- 5.Mr. B. Shanthakumar, SPC, Counsel for Respondents.
- 6.OIC, Legal Cell, ATNK & K. Area, Chennai.9
- 7.Library, AFT, RBC.

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

**AND**

**HONOURABLE LT GEN (RETD)  
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