

# **ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**

O A No.7 OF 2011

TUESDAY, THE 15TH DAY OF JANUARY, 2013/25TH POUSHA, 1934

CORAM:

HON'BLE MR. JUSTICE SHRI KANT TRIPATHI, MEMBER (J)

HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

## **APPLICANT:**

1. PETER GEORGE THOTTAM\*\*, 76 YEARS  
RETD. CORPORAL 215446 IAF,  
BLOCK 1, DOOR B, GALAXY EDIFICE,  
VAZHAKKALA, THRIKKAKARA P.O.,  
ERNAKULAM DISTRICT, COCHIN – 682 021,  
KERALA STATE. (\*\* Died)

## **Addl. Applicants:**

2. MRS. EMILY PETER GEORGE THOTTAM,  
W/O.LATE PETER GEORGE THOTTAM (215446 IAF, CPL),  
PRESENTLY RESIDING AT C/O. SEN PETER THOTTAM,  
2C, ASTER SKYLINE APARTMENT, N.F. GATE,  
TRIPUNITHURA, COCHIN – 682 301.
3. ANSON PETER THOTTAM, PILIYANNOOR P.O.,  
KOTTAYAM – 686 573.
4. SEN PETER THOTTAM, 2-C ASTER SKYLINE APARTMENT,  
TRIPUNITHURA, KOCHI – 682 301.
5. BEN PETER THOTTAM, THOTTAM HOUSE, ELANJI P.O.,  
KOTTAYAM – 686665.
6. MERIN CYRIAC, MADURAPUZHA HOUSE, ELANJI P.O.,  
KOTTAYAM – 686665.
7. SERIN JOSE, PULIYALAKKAL HOUSE, K.S. PURAM,  
ARANOTTIPURAM, KOTTAYAM DISTRICT – 686 604.

(The additional applicants 2 to 7 are impleaded  
vide order dated 24.9.2012 in MA 224/12.)

BY ADV. SRI. N.D. JOY

**versus**

**RESPONDENTS:**

1. THE UNION OF INDIA, REPRESENTED BY  
SECRETARY, MINISTRY OF DEFENCE,  
NEW DELHI - 11.
2. THE CHIEF OF THE AIR STAFF,  
AIR HEAD QUARTES, NEW DELHI – 11.
3. THE OFFICER COMMANDING (SQUADRON LEADER),  
HQ TRAINING COMMAND UNIT,  
INDIAN AIR FORCE, BANGALORE – 1.
4. THE PRINCIPAL C.D.A. (PENSIONS),  
DRAUPADI GHAT, ALLAHABAD – 211 014.

R1 TO R4 BY ADV. SRI.TOJAN J. VATHIKULAM, CENTRAL GOVT. COUNSEL

**ORDER**

**Shri Kant Tripathi, Member (J):**

Heard Mr.N.D.Joy for the applicant and the Central Government Counsel for the respondents and perused the record.

2. The applicant No.1, Corporal Peter George Thottam, an Ex-Corporal No.215446, died on 22.6.2011 after the filing of the Original Application and thereafter, the applicant Nos.2 to 7, his widow and children got substituted in his place. By the instant O.A. filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicants have prayed for a direction to the respondents to grant the 2<sup>nd</sup> applicant (widow) regular pension as also disability pension along with other benefits as per the representation dated 24.11.2010 (Annexure A1) with effect from the date of discharge of late Peter George Thottam. In addition thereto, she has also claimed 18% interest on the arrears.

3. The present Original Application seems to be the third round of litigation. The first case filed by the late Peter George Thottam was O.P.No.32232 of 1999 wherein he claimed Invalid Pension as per his representation dated 12.1.1999 (Ext.P4 therein). The Kerala High Court examined the matter in detail and disposed of the Original Petition with the direction to the respondents to consider the claim of the 2<sup>nd</sup> applicant's husband in the light of Ext.P4 and also in the light of the judgment rendered in W.A. No.1271 of 1992 latest by 31.12.2002. Accordingly the respondents considered the case of the 2<sup>nd</sup> applicant's husband and allowed him Invalid Pension with effect from the date of his discharge. Certain medical benefits were also granted. The 2<sup>nd</sup> applicant's husband did not feel satisfied with the decision taken by the respondents, therefore, he filed another petition, W.P.(C) No.28457 of 2005 in the Hon'ble High Court of Kerala and claimed therein the interest and other benefits. The learned Single Judge dismissed the writ petition and found that the 2<sup>nd</sup> applicant's husband had been granted more benefits than what he had claimed in the previous petition, O.P.No.32232 of 1999. The learned Single Judge further observed that by taking advantage of the concession granted by the Air Force authorities, the 2<sup>nd</sup> applicant's husband started bargaining more benefits. The Air Force authorities clarified the matter before the High Court that the medical allowances would be payable from the date his

P.D.A. counter signing his medical option certificate and as such he was entitled to medical allowances with effect from 11.5.2004. Accordingly, the learned Single Judge dismissed the writ petition filed by 2<sup>nd</sup> applicant's husband.

4. The 2<sup>nd</sup> applicant's husband then filed W.A.No.2246 of 2007 which was also dismissed by the Division Bench of the Hon'ble High Court of Kerala on 18<sup>th</sup> September 2007. Before the Division Bench the 2<sup>nd</sup> applicant's husband had prayed for interest also at the rate of 16% but the Division Bench found that all the monetary benefits had been granted to the appellant therein by the Air Force authorities, therefore the claim set up by the 2<sup>nd</sup> applicant's husband was dismissed.

5. In our view, the claim for regular pension and disability pension as set up by the 2<sup>nd</sup> applicant's husband had arisen much prior to the institution of his first Original Petition in the High Court, but the 2<sup>nd</sup> applicant's husband instead of claiming regular pension and disability pension before the High Court claimed only Invalid Pension which was directed to be considered by the respondents and was ultimately granted. In this view of the matter, the claim for disability pension as also service pension is apparently barred by the principles of

constructive res judicata and as such cannot be entertained again.

6. So far as the claim for interest is concerned, it was also pressed in the subsequent litigation (W.P.(C) No.28457/2005) as well as Writ Appeal No.2246 of 2007, but the High Court held that whatever benefit the 2<sup>nd</sup> applicant's husband had been entitled have been granted by the respondents, therefore, the relief for interest was also not allowed. As such, the claim for interest is also barred by res judicata and cannot be allowed to be set up by way of the instant Original Application.

7. The claim for medical benefits was also considered by the Hon'ble High Court and was properly answered, therefore, the same cannot be entertained.

8. On a perusal of the representation (Annexure A1), the 2<sup>nd</sup> applicant's husband had set up two new claims, firstly, the Constant Medical Attendant's Allowance at home at the rate of Rs.9000/- per month, and secondly, enhanced Invalid Pension consequent upon the enforcement of the recommendations of 6<sup>th</sup> Central Pay Commission.

9. Learned counsel for the applicants submitted that the 2<sup>nd</sup> applicant's husband was entitled to these two benefits and as such the

representation dated 24.11.2010 moved by the applicant's husband with regard to these two benefits had to be given due consideration by the respondents.

10. We are failing to understand as to how and under what circumstances any amount was payable to the applicant's husband by way of Constant Medical Attendance Allowance by the respondents. Learned counsel for the applicants could not point out any rule or regulation in support of the claim of Rupees Nine Thousand per month towards Constant Medical Attendance allowance. In the reply statement filed, the respondents have taken up the stand that there is no provision in the Pension Regulations for grant of Medical Attendance Allowance to a person who is not in receipt of any disability pension. The 2<sup>nd</sup> applicant, widow of the Ex.Corporal Peter George Thottam, is an old lady, so she needs proper medical assistance. Therefore, her claim for constant medical attendance allowance is to be given due consideration, if admissible, as per the existing rules, regulations and Government Orders. We make it clear that such claim, if admissible under rules, shall not be with effect from any previous date, but with effect from the date of filing of this application. The respondents are directed to consider her case accordingly.

11. So far as the benefits of the 6<sup>th</sup> Central Pay Commission with regard to enhancement of Invalid Pension payable to late Ex.Corporal Peter George Thottam is concerned, the applicants case has some substance. Each type of pension has already been revised by the Central Government on the basis of the recommendation of the 6<sup>th</sup> Central Pay Commission with effect from 1.1.2006. In the present matter, the invalid pension was payable to the 2<sup>nd</sup> applicant's husband till his death and not thereafter. Learned Central Government Counsel has pointed out that in Annexure A1 communication dated 14<sup>th</sup> December 2010, the 2<sup>nd</sup> applicant's husband was requested to forward Annexure A annexed thereto in triplicate in original duly signed by his P.D.A. (i.e. SBT, Kolencherry) affixing rubber stamp directly to PCDA (P), Allahabad. However, in the reply statement filed by the respondents, they have not stated anything with regard to the claim for enhanced Invalid Pension based on the recommendations of 6<sup>th</sup> Central Pay Commission.

12. Whether Invalid Pension in respect of late Ex.Corporal Peter George Thottam was revised with effect from 1.1.2006 or not is a question of fact to be examined by the respondents. Therefore, they are directed to consider the matter accordingly and pass appropriate orders. If any formality as mentioned in Annexure A1 is to be observed

by the 2<sup>nd</sup> applicant with regard to claim of her late husband for revised Invalid Pension, the respondents may forward the necessary form to the 2<sup>nd</sup> applicant and on fulfillment of such formalities by the applicants, the respondents shall take appropriate decision in the matter within three months thereafter.

13. There will be no order as to costs.

14. Issue free copy of this order to both side.

Sd/-  
LT. GEN. THOMAS MATHEW,  
MEMBER (A)

Sd/-  
JUSTICE SHRI KANT TRIPATHI,  
MEMBER (J)

DK.

(True copy)

Prl. Private Secretary