

A F R

(SEE RULE 102(1))

ARMED FORCES TRIBUNAL, KOLKATA BENCHT. A. NO.22/2012 – M.A. No. 93 of 2012.THIS 22<sup>ND</sup> DAY OF DECEMBER, 2015CORAMHON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)HON'BLE LT GEN GAUTAM MOORTHY, MEMBER(ADMINISTRATIVE)

Smt Kunilata Ray, Mother of Dilip Kumar Ray and Wife of  
Late Kalandi Charan Ray, Vill : Rampur, P.O. Areikana  
P.S. Balichandrapur, Dist. Jaipur

- Applicant

-Versus-

1. Union of India, represented through Ministry of Defence, New Delhi.
2. Deputy Directorate, General of A.M.C. Quarter Master, General Branch Army Head Quarter West Block 1/1 R. K. Puram, New Delhi.
3. The O.I.C. AMC records, Lucknow-II.
4. P.C.D.A.(P), Allhabad-14, Utter Pradesh.
5. Commanding Officer Military, Hospital Chennai-32.
6. Malati Sahoo, aged about 32 years, W/O- Late Pintu Sahoo, C/O- Bhikari Charan Swain, At-Narada, PO-Lekhanpur, P.S.-Rameswar, Dist-Cuttack (Odisha), PIN- 754201.

Respondents

**\*\*** *"Cause title of the case i.e. T.A. No. 22 of 2012- M.A. No. 93 of 2012 is corrected pursuant to the order dated 2.2.2016 passed by Hon'ble Tribunal in M.A. No. 10 of 2016(Arising out of T.A. No. 22 of 2012)"*

**Registrar**

ADVOCATE FOR THE APPLICANT :MR. BISIKESAN PRADHAN

ADVOCATE FOR THE RESPONDENTS : Mr. ANAND BHANDARI

PER : HON'BLE JUSTICE N. K. AGARWAL, MEMBER (JUDICIAL)ORDER

This application has been filed by the mother of the  
deceased Sepoy Dilip Kumar Ray (in short D. K. Ray)

seeking a direction to the Respondent Nos. 1 to 5 to disburse service benefits, other benefits and family pension of late D. K. Ray in favour of the applicant and for quashing the order dated 18<sup>th</sup> June 2011 passed by Senior Record Officer for OIC Records where aforementioned benefits were denied to her by the respondents authority.

2. The background facts, in brief, are as under :

i) Late Sepoy D. K. Ray was enrolled in the Army Medical Corp on 29<sup>th</sup> June 1994. He died on 2<sup>nd</sup> October 2007 at Government Quarter allotted to him while in service in Military Hospital, Chennai. As per service records (Sheet Roll) of the deceased soldier maintained by AMC Records, Late D.K.Ray was married to Smt. Malati Ray (Swain) on 28<sup>th</sup> June 2006 and a marriage certificate dated 5<sup>th</sup> October 2005 was produced. According to records, Smt. Malati Ray is his legally married wife and first nominated legal heir of all pensionary/terminal benefits on the demise of her husband.

ii) Father of late Sepoy D.K.Ray and his mother, the instnt applicant, made a representation to the respondent authorities requesting pensionary/terminal benefits of their deceased son late Sepoy D.K.Ray. As per Para 5(c) of the reply filed by the Respondent Nos. 1 to 5, the respondent No.3 advised them to claim division of family pension with

the wife of the deceased and forward documents in triplicate through Zilla Sainik Welfare Office, which are reproduced below :

- (i) Wholly dependent certificate issued by the Village Sarpanch / Pradhan as well as from the Court of Law (1<sup>st</sup> Class Magistrate) on a stamp paper.
- (ii) Monthly income certificate of parents (mother and father) of the deceased separately (to be issued by Tehsildar)
- (iii) Details of the dependents of the deceased duly signed by the village Sarpanch.
- (iv) Monthly income certificate of all the brothers/sisters of the deceased issued by the Tehsildar.
- (v) Willing/unwilling certificate for looking after/ capable of looking after the parents from brothers of the deceased duly signed by the brothers and countersigned by the village Sarpanch/ Pradhan/ Tehsildar in respect of each brother separately.
- (vi) Details of all children to be signed by the village Sarpanch/Pradhan.
- (vii) Supporting / non-supporting certificate towards dependents from Smt. Malati Ray, widow of the deceased duly signed by her and countersigned by village Sarpanch/Pradhan.

iii) Parents of the deceased Sepoy D.K.Ray did not respond to the advice of the Respondent No.3. The father late Kalandi Charan Ray filed a writ petition being numbered WP(C) 14523 of 2007 praying for grant of all pensionary benefits of their deceased son. The said writ petition was disposed of 04.02.2010 directing interalia –

“In view of the aforesaid facts, this writ petition is disposed of with a direction that if the petitioner No.2, mother of late Dilip Kumar Ray furnishes all the information as stipulated in Annexure R/3 and fulfills other criteria for the purpose of division of pension without prejudice to her claim the authorities shall do well to consider the same and taking into the ripe age and helpless condition of a widowed mother pass necessary orders as expeditiously as possible. This action shall however be without prejudice to the rights of the petitioner to

dispute the status of opposite party No.6. Liberty is granted to the petitioner to file a suit before the competent court for obtaining a decree with regard to the status of opposite party No.6, if she is so advised it is needless to say that pension shall be proportionately apportioned between the petitioner No.2 and opposite party No.6 till a decree is produced before the authorities.

iv) Pursuant to the above direction the applicant's case was allegedly considered by the respondents authority and the same has been rejected vide order dated 18<sup>th</sup> June 2011 solely on the ground that the applicant is recipient of family pension from State Government of Odisha where her late husband was employed and in terms of Para 219 of Pension Regulation the applicant is not entitled to another family pension.

v) Feeling aggrieved therewith the applicant approached the Hon'ble High Court of Orrisa at Cuttack being numbered as WP(C) 26732 of 2011 which was transferred to this Tribunal and renumbered as T.A. 22 of 2012.

v) According to the applicant her deceased son D.K.Ray was unmarried till death. Smt. Malati Ray, who claimed to be legally married wife of her deceased son was actually married to one Pintu Sahoo, who died in a motor accident on 11.12.1999. Smt Sahoo filed a M.A.C.T. case before the Court of First Motor Accident Claims Tribunal, Cuttack vide Misc. Case No. 1282 of 1999, which was allowed on

21.06.2000 with an award of compensation of 80,000/- in favour of Smt. Malati Sahoo. It is further alleged that the entries in Service Record of her deceased son that private respondent No 6 is his legally married wife is fraudulent. It is the further case of the applicant, that the respondent authorities had not decided her case in the letter and spirit of the order passed by the Hon'ble High Court of Orissa.

3. By filing affidavit-in-opposition the respondents have denied applicant's claim supporting the fact of marriage of late Sepoy D. K. Ray with Smt. Malati Ray, private respondent No.6, and also supporting the order dated 18<sup>th</sup> June 2011 which, according to them, is a speaking and reasoned order passed in accordance with Para 219 of Pension Regulation. The private respondent No.6 after filing counter affidavit did not enter appearance in the Tribunal. In the counter affidavit, in substance, she has taken same plea as has been putforth by respondent Nos. 1 to 5, which we have perused.

4. We have heard the learned counsel for both the parties and perused records.

5. Mr. Bisikesan Pradha, Id. counsel for the applicant by placing reliance of the judgement of the Hon'ble Supreme Court reported in (2015) 6 SCC 557 in the case of Madhukar Sdbha Shivarkar Vs. State of Maharashtra &

Others would submit that private respondent No.6 was married to one Pintu Sahoo who died in a motor accident on 11.12.1999 leaving behind private respondent No.6 and one minor son, Prahallad Sahoo. Private respondent No.6 along with minor son and other family members filed a motor accident claim case in which they were awarded Rs.3 lakhs as compensation by 1<sup>st</sup> MACT, Cuttack I/C vide its order dated 21.06.2000. The applicant son committed suicide while serving Military Hospital, Chennai and was unmarried. The Part II order has been obtained by private respondent No.6 playing fraud. Therefore, private respondent No.6 being not legally married wife of the deceased Sepoy is not entitled for any family pension and other retiral benefits. Therefore, the alleged marriage of the deceased Sepoy may be declared void and the entire family pension be awarded in favour of the applicant.

6. By denying the fact by the Id. counsel for the respondents, Mr. Anand Bhandari, would contend that as per the direction of the Hon'ble High Court of Orissa liberty was granted to the applicant to file a suit before a competent court of jurisdiction for obtaining order. The same has been filed by the applicant in the Civil Court of Cuttack bearing Civil Suit No. 54 of 2013. However, the same has been dismissed on 10.02.2015. Thus, the

applicant is now estopped from saying that the marriage between deceased Sepoy and private respondent No. 6 was invalid.

7. True fraud vitiates entire proceedings as held by Hon'ble Supreme Court in the aforementioned case however, the matter has already been dealt with by the Hon'ble High Court of Orissa granting liberty to the applicant to file a suit before the appropriate civil court for obtaining order in respect of private respondent No.6. Copy of the order produced in the matter would reveal that the applicant in fact filed a civil suit which has been dismissed for want of jurisdiction. As per the order of the Hon'ble High Court the applicant was and is free to pursue her remedy before the civil court of competent jurisdiction in accordance with law, but it is not open for this Tribunal to enter into the realm of disputed facts regarding validity or otherwise of marriage between deceased Sepoy and private respondent No.6 and the above plea taken the applicant is rejected.

8. Now we shall examine the legality and propriety of the order dated 18<sup>th</sup> June 2011 passed by the respondents authority rejecting applicant's representation and denying division of pension in terms of Para 219 of the Pension Regulation.

9. Indisputedly, family members of the deceased Sepoy D.K.Ray are entitled for ordinary family pension and not special family pension.

10. The respondents themselves advised the applicant to claim division of pension with the wife of the deceased and to forward documents in triplicate through Zilla Sainik Welfare Office. The respondents have also admitted the above fact in the counter affidavit filed in the Hon'ble High Court at Orissa. For this it would be appropriate to quote the relevant portion of the order dated 04.02.2010 :

"In the counter affidavit, the OP have taken a stand that though the petitioners were directed to furnish certain documents and to comply all other paraphernalia for grant of family pension and other benefits along with the widow, no action has been taken by the petitioner till date. The letter dated 27.11.2007 written to Kalandi Charan Ray petitioner No.1 has been annexed as annexure R-3 to the counter filed by the OP No. 3."

11. On the basis of the above admission, directions have been issued by the Hon'ble High Court of Orissa. As per para 5(g) of the respondents' reply the applicant's claim has been rejected in terms of letter dated 04.01.2011 wherein PCAD(P) observed :

"Porportion/share in which the family pension is to be notified in favour of mother and widow. Further it is observed from your letter dated 18.08.2010 enclosed with the claim that mother of the deceased is in receipt of family pension of her husband and therefore is not dependent on her son and thus the order of the Court is contrary to Govt. orders."

12. The aforesaid observation regarding order of the Court by the PCDA(P) is unwarranted and uncalled for.



Hon'ble High Court has passed the order on admitted fact and above statement is liable to be deprecated.

13. The applicant's representation has been rejected solely on the ground that she is recipient of family pension of her deceased husband and is not entitled to another family pension. We have perused the Pension Regulation and we find that Pension Regulation 216 and 219 relates to Special family pension and not ordinary family pension for which the respondents have advised the applicant for applying division of pension and on that basis only order has been passed by the Hon'ble High Court, therefore, the order passed by the respondents is per se illegal and the same has been passed without considering the order of the Hon'bel High Court in its letter and spirit and thus in our considered opinion the same deserves to be quashed.

14. In view of the forgoing the transferred application is allowed in part. The impugned order dated 18.06.2011 is quashed. The respondents are directed to re-consider the applicant's representation in the light of the above observation and in adherence to the direction issued by the Hon'ble High Court of Orissa. Respondents are directed to pass a reasoned and speaking order within three months from the date receipt of the copy of this order. M.A. is also disposed of. No order as to costs.

(Lt Gen Gautam Moorthy)  
Member (Administrative)

(Justice N. K. Agarwal)  
Member ( Judicial )