

SEE RULE 102(1))**ARMED FORCES TRIBUNAL , REGIONAL BENCH, KOLKATA****O. A NO. 43/2015****ON THIS 12TH DAY OF APRIL, 2016****CORAM : HON'BLE JUSTICE N.K. AGARWAL , MEMBER (JUDICIAL)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER(ADMINISTRATIVE)**

Smt Chhaya Mallik, mother of No.14650166L Late C.F.N Samir Kumar Mallik, Village Haripur, P.O. Bachanari, P.S. Arambag, Dist Hooghly, West Bengal, Pin 712 413

.....Applicant

-VS-

1. Union of India, Service through the Secretary,
Govt of India, Ministry of Defence,
Sena Bhawan, New Delhi – 110 105
2. The Chief of the Army Staff, Army Head Quarter,
Integrated Headquarter of Ministry of Defence (Army),
Defence Head Quarters, New Delhi – 110 011
3. The Director, Army Recruiting Office, Barrackpore, Pin-
900407, C/o 99 APO
4. Lt Col Officer-in-Charge Legal Cell for Officer-in-Charge EME
Records, Pin 900453, C/o 56 APO
5. Saraswati Mallik, widow of Late Samir Kumar Mallik now
married with Sri Rajkumar Roy, son of Biswanath Roy of
village Takshal, P.o. Chunait, P.S. Arambagh, Dist Hooghly

.... Respondents.

For the Applicant : Mr. G.S. Dey, Advocate
Mr. Rudranil De, Advocate

For the respondents : Mr. Sudipta Panda, Advocate (Resp 1-4)
Ms Pampa Dey, Advocate (Resp 5)

ORDER**PER JUSTICE N.K. AGARWAL , MEMBER (JUDICIAL)**

In this Original Application filed under Section 14 of the AFT Act 2007 the applicant has prayed to quash and set aside the communication dated 8 January 2015 (Annexure A/16) of the respondents and also to direct the official respondent for giving more pensionary benefits to the applicant being the family members of her deceased son.

2. The admitted facts of the case is that the applicant is the mother of Samir Kumar Mallik who was in Army Service and was working as CFN No.14650166L. Her son, Samir Kumar Mallik suddenly died on 26 August, 2009. After the death of her son, she approached the respondent authorities to make all correspondences relating to the claim of her son since deceased. That on 4th June 2011 the applicant approached the respondent authorities to grant 50% of family pension, DCRG and other death benefits of her deceased son in favour of her since the wife, i.e. Pvt Respondent No.5 had never lived together with her son. The respondent authorities vide its letter dated 24th June, 2012 intimated the applicant that the pension terminal benefits have been divided in the ratio of 75% : 25% between her and Saraswati Mallik (Pvt Respondent 5) respectively. In spite of her approaching the respondent authorities repeatedly to pay more benefit in favour of her, the respondent authorities sat tight over the matter and ultimately by a letter dated 30th January 2014 it has intimated that as per policy decision, P.F., Gratuity, AGI and other benefits have already been paid to respondent No.5, i.e. Saraswati Mallik and the applicant is only entitled to receive 25% of Special Family Pension, on which

the applicant has raised objection vide its letter dated 1st April, 2014. It has further been stated by the applicant that in the meantime, the respondent No.5 has remarried on 12-8-2013 to one Rajkumar Roy of Village Takshal, P.O. Chunait, P.S. Arambagh. It has been contended by the respondent authorities vide its letter dated 8-1-2015 that as per Para 121 of Pension Regulations for the Army Part I (2008), Widow of deceased soldier is eligible and entitled for grant of special family pension even after her remarriage. The applicant has further stated that since the respondent No.5, i.e. Saraswati Mallick has remarried to one Raj Kumar Roy, she should not be treated as the family member of the Late Soldier and the decision of division of Pension amount at the ratio fixed by the respondent authorities between the widow and mother is not only in violation under the provisions of law but also such action is de hors to the constitutional provision and as such Para 121 of Pension Regulations for Army Part I (2008) is inconsistent to the meaning of family pension giving to a family of a deceased employee.

3. The official respondents vide their affidavit in reply stated inter alia that the CFN Samir Kumar Mallik died on 26-8-2009 due to cardiac arrest while on a bonafide military duty in High Altitude Area. The death of the soldier was considered by duly constituted Court of Inquiry as attributable to military service. Consequent to death of the soldier, the following death benefits were paid to Smt Saraswati Mallik, the legally wedded wife and NOK to receive all the death benefits of the deceased soldier.

a) AGI Insurance death benefits	Rs7,50,000/-
b) Army Central Welfare Fund (ACWF)	Rs 30,000/-
c) AGI Regular Maturity benefits	Rs 66,013/-
d) Credit balance	Rs1,95,309/-
e) AFPP Fund balance	Rs1,20,807/-
f) Death cum retirement gratuity	Rs2,11,596/-

4. After the death of the soldier, the mother of the deceased soldier had made representation to the respondent authorities denying the relationship of respondent No.5 with her late son and not to entertain the claim made by the respondent No.5 and to grant family pension and other death benefits in favour of the applicant, but she had been suitably replied affirming the claim of the respondent No.5 since she is the legally wedded wife.

5. The official respondents further stated in their reply that the instant case being a disputed case, the case was referred to HQ Recruiting Zone, Kolkata for their investigation and recommendation vide their letter dated 12-11-2010, who had recommended to share family pension between wife and the mother of the deceased soldier in the ratio of 75:25 respectively. Thereafter the case was taken up with the Office of DGAFMS for issuing direction on attributability aspect and the DGAFMS has agreed to the death as attributable to military service. Further, with regards to grant of remaining 50% share of AGI Death benefits, due to dispute between the widow and mother of the deceased soldier, a sum of Rs7,50,000/- has been deposited in Social Security Services. However, upon the consent of the widow, the same would be remitted to next eligible heir of the deceased soldier as has been intimated vide AGIF, Integrated HQ of MOD (Army) letter dated 23-9-2011. It has further been contended by the respondents that in view of the

acceptance of division of family pension between wife and mother of the late soldier in the ratio of 75:25% was given by both the ladies, 25% special family pension was sanctioned in favour of the applicant w.e.f. 27-8-2009 vide PPO dated 8th March 2013 and 75% of Special Family Pension to Smt Sarawati Mallik w.e.f. the same date vide PPO dated 8th March 2013. The official respondents further contended that vide a petition dated 8-10-2013 the applicant has intimated that since the respondent No.5 has remarried to one Shri Raj Kumar Roy, hence other death benefits should not be released to her. However, in view of the petition of the respondent No.5 dated 1st December 2014 informing about her 2nd marriage and requested not to issue directions to PDA for allowing her to withdraw her special family pension. It has further been contended by the official respondent that as provided in para 121 of Pension Regulations for the Army, Part I (2008) in sub para I(ii), which states that if widow has no children – full family pension will be continued and in this case the widow of the deceased soldier is entitled for continuation of her special family pension since she is similarly placed. The official respondents in their affidavit in reply has stated that during the life time of the soldier he had approached the respondent authorities for publication of his marriage part II order along with all necessary supportive documents stating that he was married to Saraswati Ghosh on 21st June, 2009 as per Hindu Rites and hence the marriage Part II order was duly published and thus it has been contended by the official respondents that the averment of the applicant that the marriage between the deceased soldier and the respondent No.5 is void and the fact of their marriage is not known to the applicant has been termed as false and it has further been stated that the action on the part of the respondents in the matter is just, fair and legal as per the rules in force. They further stated that respondent No.5 is the legally

wedded wife and NOK to receive family pension and other death benefits of the deceased soldier, though she is re-married since she is childless, she is entitled for continuation of special family pension. The respondent authorities thus prayed that since the application has been filed upon vague and baseless grounds, the applicant has no case at all and urged to dismiss the O.A. by imposing exemplary cost.

6. In the meantime, when the matter was listed on 11th June 2015, none was present for the respondents. But in order to adjudicate the matter, we heard the learned counsel for the applicant for sometime, the questions those have cropped up are : (i) As to whether after remarriage of the widow of the deceased soldier, the entire family pension should be diverted to the parents? and (ii) Keeping in view the Indian tradition and family life, is it justified to pay the family pension to the widow of the deceased soldier even after her remarriage?

7. In her affidavit in opposition filed on 20th November, 2015, the respondent No.5 inter alia stated that the marriage between the Late Soldier and her was solemnised under the Special Marriage Act,1954 and she alleged that due to misbehaviour coupled with mental torture by her laws she was compelled to leave her matrimonial house and had to shift to her paternal house. She further contended that as per paragraph 12 of the Pension Regulations for the Army Part I (2008) the widow of the deceased soldier is eligible and entitled for grant of family pension even after her remarriage and no deviation from the regulations is permissible without the prior sanction of the Government of India as per the notification dated 1/7/2008 and nobody can alter the rules framed thereunder unless challenged for its ultra vires and by making earnest request to the authority

by the name of the financial condition of the family members of the deceased army is a futile exercise.

8. The O.A. was admitted for hearing on following questions :

(i)As to whether after remarriage of the widow of the deceased soldier, the entire family pension should be diverted to the parents? and (ii) Keeping in view the Indian tradition and family life, is it justified to pay the family pension to the widow of the deceased soldier even after her remarriage?

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

10 After going through the entire pleadings it appears that the applicant's main grievance is that respondent No.5 is either not entitled for special family pension or applicant is entitled for more pensionary benefit as has been awarded by the official respondents.

11. During the course of hearing we tried to pursue both sides to reach into an amicable settlement. The respondent No.5 has agreed to receive 60% of special family pension instead of 75%, but disagrees to share the AGIF benefit amount with the applicant. Hence, there is no option but to hear and adjudicate the matter on merit.

12. The provisions contained with regard to Special Family Pension may be looked into in the Pension Regulations for the Army Part I(1961) (in short 'Regulations'). Regulation 215,216,217 and 219 deals with Special Family Pension. For convenience the said Regulations are reproduced below:-

"215. Special family pension is intended for the support of all the eligible members of a family, irrespective of in whose name it stands.

216. The following members of the family of a deceased individual shall be viewed as eligible for the grant of a special family pension' provided that they are otherwise qualified ;

- (a) widow lawfully married,
- (b) son actual and legitimate/including validly adopted below 25 years.
- (c) Unmarried daughter, actual and legitimate (including validly Adopted) below 25 Years.
- (d) Father not below the age of 50 years.
- (k) Mother.

217. An ex-gratia award may be sanctioned to foster parents or a step child of an individual whose death takes place in the circumstances mentioned in Regulation 213, subject to the condition that the claimant was largely dependent on the deceased for support at the time of death and is in pecuniary need.

(2) An award under clause (l) above shall not be made if a special family pension is admitted to a member of the family specified in Regulation 216.

219. A relative specified in Regulation 216 shall be eligible for the grant of family pension, provided;

General :

- (i) he or she is not in receipt of another pension from Government.
- (ii) he or she is not employed under Government (but see Regulation 222).
- (iii) Widow, lawfully married/judicially separated wife, such Separation not being granted on the ground of adultery. And the person surviving was not held guilty of committing Adultery.

Remarriage of the widow will constitute a disqualification but this condition shall, however, not apply to a widow who remarried with the real brother of her deceased husband and continues to live a communal life with and/or contributes to the support of other living eligible heir.

13. From a plain reading of the aforesaid provisions, it is apparent that the special family pension is intended for the support of all eligible members of a family, irrespective of in whose name it stands. Meaning thereby the special family pension may be paid not only to the wife but also to other members of the family to give them a support. Regulation 216

provides the list of eligible members of the family which not only include the widow lawfully married but also son, unmarried daughter, father and mother. Regulation 216 must be read in conjunction with Regulation 215 which entitles other members of the family to claim special family pension in case they are eligible. It is inclusive and not preferential. Attention has also been invited to Regulation 221 and 227. Regulation 221 deals with the date from which a grant of family pension takes effect. Regulation 220 deals with the situation where there is nomination and where there is no nomination. Even if there is nomination, Regulation 220 may not be intended to exclude Regulation 215 and 216. Regulation 227 further provides the rates with regard to the payment of special family pension. For convenience Regulation 221 and 227 are reproduced as under:-

“221. (a) The original grant of special family pension shall be made as a first life award from the date following that of casualty which created the claim, to the nominated heir and in the absence of notification to the highest living heir on the date referred to in Regulation 220 (a) (i). Pending enquiry award already paid, if any, shall be adjusted in accordance with Regulation 48 of Pension Regulation (Army), 1961, Part II.

(b) If on the date referred to in clause (a) all the eligible members are dead or disqualified the arrears may only be paid at the discretion of the President.

(c) In no case shall claims preferred after disqualification of a claimant be entertained.

227. Special Family Pension (SFP) shall be calculated at the uniform rate of 60% of reckonable emoluments subject to a minimum of Rs. 7000/- per month, irrespective of whether widow has child(ren) or not. There shall be no maximum ceiling of Special Family Pension. In case the children become the beneficiary, SFP i.e., 60% of the reckonable emoluments shall be admissible to the senior most eligible child till 25 years of age or date of marriage, whichever is earlier. Thereafter SFP shall pass to next eligible child.

14. It is settled interpretative proposition of law that the provisions contained in a Statute or Act or Enactment of rules or regulation must be read line by line, word by word and understood as a whole and it must not be read in piece-meal. The aim and object of the special family pension is apparent from Regulation 215 (supra). The purpose of special family pension is to provide support or assistance not only to the widow but also to other members of the family i.e. minor son, unmarried daughter, father or mother.

15. In furtherance thereto Central Government had issued Circular dated 31-1-2001. According to para 5.8(b), the Special Family Pension on re-marriage of widow shall be regularised as follows :

“5.8. Special Family Pension on Re-marriage of Widow – Special Family Pension on remarriage of widow, shall be regulated as follows:

(a) **Commissioned Officers**

(i) If she has child(ren) :

- | | | |
|------|---|--|
| (aa) | If she continues to support Children after remarriage | Full Special Family Pension to continue to widow. |
| (ab) | If she does not support Children after remarriage | Ordinary Family Pension (OFP equal to 30% of emoluments last drawn to the remarried widow:
50% of the Special Family Pension to the eligible children |
| (ii) | If widow has no children | Full Special Family Pension to continue to widow. |

(b) **PBOR**

(i) **If Special Family Pension is sanctioned to the Widow:**
Same provisions as applicable to officers”

(ii) **Where first life award is sanctioned to parents**

- | | | |
|------|---|--|
| (aa) | If widow continues to support Child(ren) after remarriage or has no issues. | 50% of SFP to parents
50% of SFP to widow |
|------|---|--|

- | | | |
|------|--|--|
| (ab) | If widow does not support Children after remarriage but the children are supported by the parents. | Full SFP to parents
Ordinary Family Pension to widow |
| (ac) | If children are not supported either by the re-married widow or the parents | 50% of SFP to parents
50% SFP to eligible children
Ordinary Family Pension to Widow. |
| (ad) | On death or disqualification of parents and the widow supports the children or has no issues. | Full SFP to widow |
| (ae) | On death or disqualification of parents and the widow does not support the children | Full SFP to eligible children.
Ordinary Family Pension to widow. |

16. In view of the provisions contained in para 5.8 of the Circular letter dated 31-1-2001 it is amply clear that even after remarriage of the widow of a soldier, she is entitled for Special Family Pension as per para 8.2 (ii) where first life award is sanctioned to parents, and if widow continues to support child(ren) after remarriage or has no issues 50% of the Special Family Pension shall be admissible to the mother (applicant in this case) and 50% to the widow, i.e. respondent No.5. Admittedly, in the instant case the Special Family Pension was awarded to the applicant, i.e. mother of the Late Soldier and the respondent No.5 (wife) in the ratio of 25% : 75% after taking their consent.

17. Moreover, in the instant case, Samir Kumar Mallik (Son of the applicant and husband of respondent No.5) died on 26th August, 2009, i.e. after coming into force the Hindu Succession Act, 1956 (hereinafter referred as 'Act of 1956') and after coming into force of the Hindu Succession (Amendment) Act, 2005 whereunder Section 24 has been repealed. Section 4 of the Act of 1956 has an overriding effect over all existing laws and in effect abrogates the operation of the Hindu Widows'

Re-marriage Act, 1856 and all then existing laws whether in the shape of enactments or otherwise shall cease to apply to Hindus insofar as they are inconsistent with any of the provisions contained in the Act. The Hon'ble Supreme Court in case of **Kasturi Devi v. Dy. Director of Consolidation (1976) 4 SCC 674** has categorically held that a mother cannot be divested of her interest in the deceased son's property either on the ground of unchastity or remarriage. In the same manner, the right vested in a widow cannot be divested, on the ground of her remarriage. The judgement interpreting the old Hindu Laws are thus not applicable in the facts and circumstances of the present case and the applicant's counsel's reliance upon such judgements is misplaced.

18. Considering every aspect of the matter, the effect and import of the Act of 1956 and Para 5.8(b) of the circular dated 31.01.2001, in our opinion neither the applicant nor the respondent No.5 are entitled for entire Special Family Pension. It has to be distributed among them in equal proportion. Respondent No.5 even after her re-marriage is entitled for grant of Special Family Pension. The questions formulated are answered accordingly. In the light of aforesaid findings, we refrain ourselves from considering the validity or otherwise of Pension Regulations, 2008 as the same is not necessary in the facts & circumstances of the case.

19. For the reasons mentioned above, the application deserves to be and is hereby allowed in part. The applicant is entitled for Special Family Pension to the extent of 50 per cent. As the applicant did not pray for any share in dues and AGIF in the application, nor has brought to our notice any enabling rules in this regard, therefore, we have no option but to dismiss the aforesaid claim of the applicant put forth by the applicant during the course of argument. Respondents are directed to amend the DO Part-II accordingly. This process shall be completed within a period of two months from the date of receipt of the copy of the order. No order as to costs.

(Lt Gen Gautam Moorthy)
Member(Administrative)

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