

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

O.A No. 49 of 2018

DATED : THE Thirteenth Day OF NOVEMBER, 2018

CORAM :

Hon'ble Dr. (Mrs.) Justice Indira Shah, Member (J)

Hon'ble Lt Gen Gautam Moorthy, Member (A)

Applicant : Uday Kumar @ Uday Kumar Singh,
 Son of No. 14822373L Late NK Radul Kumar Singh
 Presently residing at Village-Chandpura Saidabad
 P.O.Mohanpur, P.S. Bidupur, District-Vaishali
 PIN-844115, Bihar.

.....APPLICANT

By Aniruddha Datta, Ld. Counsel

VERSUS

1. Union of India, service through the Secretary,
 Ministry of Defence, New Delhi - 110011.
2. The Secretary, Department of Ex-Servicemen Welfare
 & Pension, Ministry of Defence, South Block,
 New Delhi-110011;
3. Principal Controller of Defence Account,
 (Pension), Draupadi Ghat, Allahabad-211001;
4. Officer-in-Charge, ASC Records (South),
 Pin - 900493, C/O 56APO.
5. Smt. Sangita Devi,
 Wife of No. 14822373L Late NK Rudal Kumar Singh,
 Presently residing at Village - Chandpura Saidabad,
 P.O. Mohanpur, P.S. Bidupur, District - Vaishali,
 Pin - 844115, Bihar.

.....RESPONDENTS

By Mr. Asish Kr. Chatterjee (Respondent No. 1-4), Ld. Counsel
 BY Miss Manika Roy (Respondent No. 5), Ld. Counsel

ORDERPer Lt Gen Gautam Moorthy, Hon'ble Member (Administrative):

1. This is a case filed Under Section 14 of the Armed Forces Tribunal Act, 2007.

2. The facts of the case are that the applicant is the biological son of 14822373L Late NkRudal Kumar Singh. Late NkRudal Kumar Singh was enrolled in the Indian Army on 23rd April, 1995 and expired on 30th October, 2014 while still in service. Earlier, the applicant's father had married Smt. Pramila Devi on 5th May, 1994 before his enrolment in the Army and hence had nominated Smt. Pramila Devi as his next kin and heir for family pension. Smt. Pramila Devi passed away on 20.06.1999. The applicant, however was born about one year earlier on 18.06.1998. After the death of Pramila Devi, the applicant married Smt. Sangita Devi on 18.06.2000 and nominated her as next of kin and heir to the family pension. Three Children were born to Smt. Sangita Devi and the applicant's father. After the death of his father Late NkRudal Kumar Singh, terminal death benefits were paid to Smt. Sangita Devi.

3. The claim for grant of family pension in respect of Smt. Sangita Devi was processed with the Office of the PCDA (Pension) Allahabad which vide letter No. G4/PHP/PF011524/2015 dated Nil September, 2015 had intimated that Master Uday Kumar (date of birth 18th Jun. 1998) will eligible for share of 50% of the ordinary family pension, if he is otherwise eligible in terms of the Regulations 67 (ii) and 71 (b) of Pension Regulations for the Army, Part-1 (2008). However, PPO No. F/N/20977/2015 dated 9th October, 2015 granting 50% ordinary family pension in favour of Smt. Sangita Devi with enhanced rate @ Rs. 3995/- per month for the period from 10.12.2014 to 10.12.2024 or remarriage whichever is earlier and ordinary family pension @ Rs. 2397/- with effect from 11.12.2024 per month till widowhood, was granted. The original son of Smt. Pramila Devi, (Applicant) was entitled to the remaining share of 50% of ordinary family pension subject to meeting other criteria of age/ marital status and income. However it was not granted to him.

4. The contention of the respondents is that no provision exists in the Pension Regulations with regard to transfer of share of ordinary family pension in respect of child of 1st wife to the 2nd wife (Applicant's step mother). While the applicant approached the authorities, there were certain discrepancies noted that came to notice. They were (a) the name of the applicant was recorded as Uday Kumar Singh in the school certificate whereas his name had been endorsed as Uday Kumar in the service record of his father & (b) the name of mother was found to be Smt. Sangeeta Devi (Step mother) in his school certificate whereas his biological mother is Smt. Pramila Devi (First Wife).

5. The respondents have averred that no policy exists to change the name of mother of any person and hence the respondents' hands are tied due to the incorrect name of mother in the School/Identity Certificate of of the appellant as Smt. Sangita Devi (Step Mother) in place of Smt. Pramila Devi, biological mother. Section 71(b) of the Pension Regulations for the Army is reproduced as follows:

" Where a deceased is survived by a widow and has also left behind eligible child/children from another wife who is not alive, the eligible child of the deceased wife shall be entitled to the share of ordinary family pension which the mother would have received if she had been alive at the time of death of the service person/ pensioner. Further, as per Regulation 67 (ii) of ibid Pension Regulations, the Ordinary Family Pension to the eligible unmarried son shall be granted till he attains the age of 25 years or upto the date of his marriage, whichever is earlier and subject to income criteria stipulated by the government from time to time."

6. Hence Pension Sanctioning Authority has notified the PPO No. F/NA/20977/2015 dated 09.Oct. 2015 granting 50% ordinary family pension in favour of Smt. Sangita Devi (2nd wife) with effect from 11.12.2014. While admitting that the applicant, eligible son of Late Smt. Pramila Devi, (his Biological Mother) and Late NkRudal Kumar Singh (his Biological Father), is

entitled to grant of remaining 50% of share, they state that they are unable to transfer the share to the step mother as they are bound by the regulations.

7. From the scrutiny of documents before us, it is very evident that the applicant is indeed entitled to receive 50% of Ordinary Family Pension. The applicant in a sworn affidavit before the Executive Magistrate, Hazipur, Vaishali which is set out as hereunder has stated :-

*"BEFORE THE EXECUTIVE MAGISTRATE
HAZIPUR, VAISHALI
AFFIDAVIT*

I, Uday Kumar Singh, son of Late NkRudal Kumar Singh, aged about 18 years, permanently residing at village – Chandpura Saidabad, Post – Mohanpur, P.S. – Bidupur, District – Vaishali, do hereby solemnly declare as follows :

- 1. That I am a citizen of India, permanently residing at the aforementioned address.*
- 2. That my father Late Rudal Kumar Singh was employed in the Indian Army and his Army No. was 14822373L.*
- 3. That my father expired on 10 December 2014.*
- 4. That I have turned 18 years old and thus became entitled to receive pension.*
- 5. That I declare on oath in my full sense that I intend to transfer my part of fifty percent (50%) pension to my second mother Smt. Sangeeta Devi and I express my no-objection to the same.*
- 6. That my second mother Smt. Sangeeta Devi take full care of me.*
- 7. That I am now 18 years old for which I am in need of relation certificate.*

As such this affidavit is affirmed.

*Sd/-Uday Kumar Singh
(Deponent)*

Deponent Uday Kumar Singh

Identified by me

Duly identified by Shri. Akhilesh Kumar Singh, Advocate

*Sd/- Ahkilesh Kumar Singh
Advocate*

Sd/- - Illegible

*Executive Magistrate
Hazipur, Vaishali."*

8. In view of the above circumstances, it is apparent that the respondents were bound by policy constraints and hence are unable to proceed beyond the boundaries of the policy laid down to grant 50% share of the applicant

to his step mother, Smt. Sangeeta Devi. We have no doubt that the applicant is entitled to the 50% share as per the policy in vogue and admitted by the respondents themselves. Therefore we hold that the amount due to him can be rightfully transferred to his step mother, Smt. Sangita Devi as per the wishes of the applicant which he has conveyed in the affidavit submitted by him (Annexure A-6 (p. 25 & 25A) of the OA).

9. PCDA (P) Allahabad is therefore, directed to pay the held up amount of 50% of Ordinary Family Pension, DCRG and any other gratuity amount to Smt. Sangita Devi, the proforma respondent No. 5, surviving wife of No. 14822373L Late NK Rudal Kumar Singh within a period of three months from the date of receipt of a copy of this order, failing which 8% simple interest will be paid to the applicant.

10. Therefore, the application is allowed without any order as to costs.

11. Let a plain copy of this order be handed over to both the parties upon usual formalities.

(Lt Gen Gautam Moorthy)
Member (Administrative)

(Justice Indira Shah)
Member (Judicial)

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