

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

ORIGINAL APPLICATION No. 46 of 2018

Thursday, this the 6th day of April, 2023

CORAM

**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Air Marshal Balakrishnan Suresh, Member (A)"**

Smt. Vanlalremruati
D/o.Ex.No.4332226
Late NK Thankhuma
R/o.Venghlui, Aizawl

..... Applicant

Ld. Counsel for the Applicant : Sri Anil Rinliana Malhotra, Advocate

Versus

1. The Union of India
R/o the Secretary to the Govt. of India
Ministry of Defence,
South Block, New Delhi
2. The Commandant,
Assam Regimental Centre
Happy Valley, Shillong, Meghalaya.
3. The Senior Record Officer,
For OIC Records,s
The Assam Regiment,
PIN (ARMY)-900332,
C/o. 99 APO.
4. Principal Controller of Defence Accounts (Pensions)
Draupadi Ghat,
Allahabad-211014.

..... Respondents

Ld. Counsel for the Respondents : Shri P.J.Barman, Advocate
Central Govt. Counsel



ORDER

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought the following reliefs:-

- (i) *To call for the records and issue rule, calling upon the Respondents to show cause as to why the impugned letter No.4043/SDD/4332226/148(FP) dated 18/3/16 shall not be set aside and quashed and as to why the Petitioner being the unmarried daughter of her deceased father Ex No. 4332226 late NK Thankhuma (L) should not be allowed to enjoy the children family pension benefit of her late father with interest for delayed payment since the date she became eligible, and after hearing both parties to make the rule absolute and to allow this Application, and/or to pass any other Order(s) as your Lordship may deem fit and proper.*
- (ii) *That as per Rule 54(6)(iii) of the CCS (Pension) Rules, 1972, an unmarried daughter is eligible for payment of family pension and until she gets married or until she starts earning her livelihood, whichever is earlier.*
- (iii) *That according to Para 3 of the Government of India's decision No.26 and 26A below Rue 54 of the CCS (Pension) Rules, even in cases herein eligibility of unmarried daughters occurs after issue of PPO, and the pensioner or his spouse has expired, the unmarried daughter can herself intimated such details to the pension sanctioning authority.*

2. Brief facts of the case are that No.4332226 Ex Late Thankhuma Lushai, father of the applicant, was enrolled in the Army on 03.08.1943 and discharged from service on 04.06.1959 after completion of 15 years 10 months 1 day of service. He was granted life time service pension. The father of the applicant died on 27.05.1981. After death of the father of applicant, Smt. Thantluangi, wife of Late Thankhuma Lushai, and mother of the applicant, was granted family pension from

28.05.1981 vide PPO NO. F/NA/Pre-64/1608/93. On 04.01.2016, mother of the applicant also died. As per service record, date of birth of the applicant is 20.01.1979. Consequent upon death of parents, their daughter i.e. applicant became eligible for grant of Ordinary Family Pension w.e.f. 04.01.2016. At the time of death of her mother, applicant was about 37 years old. Applicant being unmarried daughter is entitled to family pension from the next date of death of her mother i.e. from 04.01.2016. This O.A. has been filed by the applicant for grant of Family Pension from the date of death of her mother i.e. w.e.f. 04.01.2016.

3. Learned counsel for the applicant pleaded that after death of father of the applicant, her mother was granted Ordinary Family Pension till 04.01.2016. After death of the mother of the applicant, she is authorised for grant of family pension from the date of death of her mother till she attained. The applicant was 37 years old at the time of death of her mother. Applicant submitted letter dated 18.2.2016 to the Record Officer, Records the Assam Regiment through District Sainik Welfare and Resettlement Officer, Aizawl, requesting for grant of family pension. The Respondents had written to the District Sainik Welfare and Resettlement Office with a copy to the applicant informing her that the service documents in respect of the late father of the applicant had been destroyed being outlived during the year 2010 as per existing rule and also as per Long Roll

maintained by the Office, the name of the applicant claimed as unmarried daughter of the deceased soldier, had not been found on records. Hence, no action could be taken by the Office and till date, family pension has not been issued by the respondents. Applicant submitted all papers duly completed through District Sainik Welfare and Resettlement Officer, Aizawl. The learned counsel for the applicant pleaded that the question of the name of the applicant being included in the Long Roll maintained by the Respondents cannot arise because the applicant was born only on 20.01.1979 while her late father was discharged on 04.06.1959 and as such, directions be issued to respondents for grant of Family Pension to the applicant from the date of death of her mother.

4. On the other hand, submission of learned counsel for the respondents is that the application dated 18.02.2016 filed by the applicant along with all documents /certificates have been forwarded to the Records the Assam Regiment PIN (ARMY) 900332, C/o 99 APO by the District Sainik Welfare and Resettlement Officer, Aizawl vide their letter dated 23.02.2016 (Annexure- 7 of the OA) for grant of family pension after death of her mother. The Respondents vide affidavit dated 18.02.2020 stated that the applicant was intimated by Records The Assam Regiment vide letter No. 4023/4332226/148/Pen/(FP) dated 18 March 2016 (Annexure- 2 to the Counter Affidavit) that service

documents in respect of 433222W Lt Ex Nk Thankuma Lushai had been destroyed on 04 Nov 2010 as per existing rule. However, as per Long Roll maintained by this Office, name of Miss Vanlalremruati claimed as unmarried daughter of the deceased ex servicemen, has not been found recorded. Hence, no action could be taken by the respondents.

5. In view of the above, applicant had applied for an Heir ship Certificate for the Family Pension benefit of her late father NK Thankhuma Lushai and the same was issued to her by the Court of Sr. Civil Judge-II Aizawl Judicial District but the same was rejected by the respondents. The applicant has stated that denial of the applicant to enjoy the children family pension benefit of her deceased father who was an ex- serviceman under the Assam regiment is highly illegal and arbitrary.

6. We have heard learned counsel for the parties and perused the materials placed on record.

7. In the counter affidavit, respondents have conceded that applicant being an unmarried daughter is entitled for grant of family pension but the name of the applicant is not found recorded as a daughter of the deceased father Late ex NK Thankhuma Lushai. As far as grant of family pension is concerned, in this regard, para 219 of Pension Regulations for the Army, 1961 (Part-I) is relevant, which for convenience sake is reproduced as under:-

"Conditions of eligibility for a family pension

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

Widow

(iii) a widow has not remarried.

This condition shall not apply to a widow who remarried her deceased husband's brother, and continues to live a communal life with and/or contributes to the support of the other living eligible heirs.

Son.

(iv) a son is below the age of 25 years.

Daughter

(v) a daughter until she attains the age of 25 years or marriage whichever is earlier."

8. The aforesaid provision which says that a daughter is entitled to receive Ordinary Family Pension up to the age of 25 years has been amended vide MOD letter No. 2(2)/2012/D(Pen)/Pol dated 14th December 2012, which states that unmarried daughters beyond the age of 25 years are also entitled to receive family pension on the death of their parents. We are, therefore, of the view that in the instant case, the applicant, who is the unmarried daughter of the deceased soldier, is entitled to receive family pension on the death of her mother late Smt. Thantluangi on 04.01.2016.


9. We also observe that applicant has forwarded all the required documents to prove that she is entitled for grant of family pension after death of her mother. Moreover, applicant has prayed for family pension from the date as recorded in service documents of her late father and not from the date as recorded in Adhaar Card and Pan Card. Respondent cannot

deny her legal right only on the ground that the birth of the applicant, who was born on 20.01.1979, was not declared by the deceased father Late ex NK Thankhuma Lushai and that the service documents in respect of Ex. Nk Thankuma Lushai had been destroyed on 04.11.2010 as per existing rule. Once applicant has produced various documents as asked, then respondents cannot deny for grant of family pension on flimsy grounds. At least, respondents, after ascertaining the factual position, should assist the applicant in granting family pension and means of livelihood. Public interest demands that administration must abide by the promises held out to citizens. It is totally immoral to go back from the promises held out by the mighty state to the detriment of small people. Therefore, it is the function of the Courts to see that the citizen's rights should be protected against the mighty state and state should be forced to abide by the promises made to its citizens. Respondents cannot say that name of the applicant has not figured in service documents of the deceased soldier (as the applicant was born only on 20.01.1979 while her late father was discharged on 04.06.1959) and therefore, they are not under obligation to grant family pension. Accordingly, applicant is entitled for grant of family pension from the date of death of her mother.

10. Thus, in the result, Original Application succeeds and is **allowed**. Applicant is directed to submit all requisite documents as asked by the respondents within one month. After receipt of

the necessary documents, respondents shall grant Ordinary Family Pension to the applicant from the next date of death of Smt. Thantluangi, mother of the applicant i.e. from 05.01.2016. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 8% on the amount accrued from due date till the date of actual payment.

11. The impugned letter No. 4043/SDD/4332226/148/Pen(FP) dated 18.3.2016 issued by the Respondent No.3 (Annexure 8 to the OA) is set aside and quashed.
12. There will be no order as to costs.
13. Pending applications, if any, shall stand disposed off.

 (Air Marshal Balakrishan Suresh) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 6th April, 2023
MC/AKD