

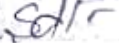

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI
(Sl. No. 14)

O.A. No. 44 of 2018

Smt. Lalbiaksangi Applicant
By Legal Practitioner for the Applicant : Shri Anil Rinliana Malhotra, Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : Ms. Dipanjali Bora, Advocate

Notes of the Registry	Orders of the Tribunal
	<p>06.04.2023 Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) Hon'ble Air Marshal Balakrishnan Suresh, Member (A)</p> <p>One the case being taken up for hearing no one is present on behalf of the applicant.</p> <p>Heard Ms. Dipanjali Bora, Ld. Counsel for the respondents.</p> <p>Original Application is allowed on merit.</p> <p>For orders, see our order passed on separate sheets.</p> <p>Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"><div style="text-align: center;"> (Air Marshal Balakrishnan Suresh) Member (A)</div><div style="text-align: center;"> (Justice Umesh Chandra Srivastava) Member (J)</div></div> <p>AKD/MC/-</p>

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

ORIGINAL APPLICATION No. 44 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. Lalbiaksangi
D/o Late Army No. 4332637 Sep. Lalrova Lushai
R/o Zemabawk North, Aizawl, Mizoram

..... Applicant

Ld. Counsel for the Applicant : **Sri Anil Rinliana Malhotra,**
Advocate (**Not Present**)

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,
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 : **Ms. Dipanjali Bora,** 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 -

- "1) To change Part II order and change NOK of late Army No. 4332637 Sep Rova Lushai (L) into the name of the Applicant/Petitioner.
- 2) To call for the records and issue rule, calling upon the Respondents to show cause as to why the impugned letter No.4043/DD/4332637/07/Pen (FP) dt. 19.01.17 shall not be set aside and quashed and as to why the Applicant/Petitioner being the unmarried daughter of her deceased father Army No. 4332637 Sep Rova Lushai (L) should not be allowed to enjoy the pension benefit of her late father with interest for delayed payment since the date she became eligible as per CCS (Pension) Rules, 1972, and after hearing both parties to make the rule absolute and to allow this Application by allowing the Applicant/Petitioner to enjoy the pension benefit of her late father with interest for delayed payment since the date she became eligible till she will become ineligible as per CCS (Pension) Rules, 1972, and/or to pass any other Order(s) as your Lordships may deem fit and proper."

2. Brief facts of the case are that applicant is widowed daughter of late Sep Rova Lushai and Smt. Romawil. Late Sep Rova Lushai was enrolled in the Assam Regiment of the Indian Army on 12.01.1944 and was invalided out from service on 10.10.1950. The father of the applicant was granted pension. The father of the applicant (late Sep Rova Lushai) died on 15.11.2016. The mother of the applicant, Smt. Romawil who

was NOK in the service record of late Sep Rova Lushai died on 15.03.2013. In fact, name of the applicant was not recorded in the service of Sep Rova Lushai due to the reason that applicant was born on 14.05.1956 after six years of retirement of his father, Sep Rova Lushai. The applicant was married with Sh. Tiangthankhuma on 11.02.1989 but unfortunately, Sh. Tiangthankhuma, husband of the applicant died on 13.01.2010 and the applicant never re-married since her husband passed away. Thereafter, Ex Sep Rova Lushai intimated to the Record Office to change NOK or to nominate/publish Part II Order in favour of his widowed daughter, the applicant. However, Assam Records vide letter dated 19.01.2017 intimated that no action can be taken on such claim for grant of family pension as the name of the applicant had not been found endorsed in the service records of Army No. 4332637 late Sep Rova Lushai. Thereafter, applicant approached the Law Court for issuance of Heirship Certificate in respect of the children family pension of her late father, Sep Rova Lushai and the Civil Judge-II, Aizawl has issued an Heirship Certificate vide Memo No. 277/CJ(A)/2017 dated 11.09.2017 in favour of the applicant. Thereafter, applicant filed a writ petition, W.P. (C) No. 152/2017, before the Hon'ble Guwahati High Court, Aizawl Bench for grant of family pension which was withdrawn with liberty to file afresh. Being aggrieved by the denial of family

pension, the applicant has filed the present Original Application for grant of ordinary family pension.

3. Learned counsel for the applicant pleaded that late Sep Rova Lushai was enrolled in the Assam Regiment on 12.01.1944 and was invalided out from service on 10.10.1950 on medical grounds. The father of the applicant (late Sep Rova Lushai) was in receipt of pension and he died on 15.11.2016. The mother of the applicant, Smt. Romawil who was NOK in the service record of late Sep Rova Lushai already died on 15.03.2013. The name of the applicant was not recorded in the service record of Sep Rova Lushai due to the reason that applicant was born on 14.05.1956 after six years of retirement of his father, Sep Rova Lushai. The applicant was married with Sh. Tiangthankhuma on 11.02.1989 but unfortunately, her husband Sh. Tiangthankhuma, died on 13.01.2010 and the applicant never re-married since her husband passed away. Thereafter, Sep Rova Lushai, father of the applicant intimated to the Record office to change NOK or to nominate/publish Part II Order in favour of his widowed daughter. However, Assam Regiment Records vide letter dated 19.01.2017 intimated that no action can be taken on such claim for grant of family pension as the name of the applicant (Smt. Lalbiaksangi) had not been found endorsed in the service records of Army No. 4332637 late Sep Rova Lushai. Thereafter, applicant approached the Court for issuance of Heirship Certificate in respect of the children family

pension of her late father, Sep Rova Lushai and the Civil Judge-II, Aizawl has issued an Heirship Certificate vide Memo No. 277/CJ(A)/2017 dated 11.09.2017 in favour of the applicant. Thereafter, applicant filed a writ petition, W.P. (C) No. 152/2017, before the Hon'ble Guwahati High Court, Aizawl Bench for grant of family pension which was dismissed as withdrawn with liberty to file afresh.

4. Learned counsel for the applicant further pleaded that applicant is not employed in any Govt. or semi Govt. office. In the connection, she holds an Income Certificate dated 08.11.2017 wherein her Annual Income is shown Rs. 30,000/- only (copy of Income Certificate attached alongwith O.A.). It is further pleaded that the law relating to grant of family pension to widowed daughters was amended from time to time and as per Govt. of India's decision No. 27 below Rule 54 of the CCS (Pension) Rules, 1972, widowed daughters have been made eligible for grant of family pension. The applicant made a lot of correspondents with the respondents for grant of family pension but nothing materialised. In this connection, District Sainik Welfare Officer, Kolasib has also intimated the Respondent No. 3 by sending a letter dated 02.02.2015 for publication of Part II Order regarding birth casualty of the applicant but the same was denied by the respondents and thus, applicant could not be granted family pension, though, she is legally entitled for the same. He pleaded that applicant be granted family pension from

the date of death of her father, late Sep Rova Lushai, as per the CCS (Pension) Rules, 1972.

5. On the other hand, submission of learned counsel for the respondents is that Ex Sep. Rova Lushai was enrolled in the Assam Regiment on 14.02.1944 and was invalided out from service on 10.10.1950 and his service documents have been destroyed on 10.03.2004 being outlived as per existing rule after stipulated period of retention, i.e. 50 years in terms of Para 592 and 595 of the Regulations for the Army (Revised Edition 1987). In absence of service documents of late Sep. Rova Lushai, the respondents are not in position to comment upon the application which has been filed after 14 years of destruction of service documents. However, as per Long Roll, maintained by the Record Office, late Ex Sep Rova Lushai was married to Smt. Romawil on 08.01.1948 and Smt. Romawil died on 15.03.2013 and death occurrence was published vide NE series Part II Order No. 1/NE/0100/0001/2013. Ex Sepoy Rova Lushai vide his personal application dated 21.06.2013, received through District Sainik Welfare & Resettlement Office, Kolasib vide letter dated 24.06.2013, had requested for publication of occurrence regarding death of his wife and nomination of his widowed daughter named as Smt. Lalbiaksangi. However, the Assam Regiment Records intimated to District Sainik Welfare & Resettlement Office, Kolasib vide letter dated 11.07.2013 that

service documents of the individual have been destroyed and Record Office is not in position to entertain his request for publication of birth of child in absence of the relevant service documents. Hence, no action could be taken by the respondents.

6. Learned counsel for the respondents further submitted that name of Smt. Lalbiaksangi, as daughter of Ex Sep Rova Lushai, has not been found recorded in the Long Roll maintained by the Record Office. Ex Sep Rova Lushai never approached to Record Office for publication of birth occurrence in respect of the applicant, rather he requested to Record Office on 21.06.2013 after his service documents have been destroyed on 10.03.2004, hence, there being no name recorded in service documents of Smt. Laibiaksangi as daughter of late Sep Rova Lushai, the applicant is not entitled for grant of family pension.

7. We have heard learned counsel for the respondents and perused the material placed on record.

8. The questions which needs to be answered is that if the name of the applicant (daughter of deceased soldier) is not recorded in service documents of deceased soldier, then applicant, widowed daughter of deceased soldier is entitled for grant of family pension or not?

9. Regulation 66 of Pension Regulation for the Army 1961 (Part-I) as amended in 2008, definition of family has been defined as under:-

DEFINITION OF FAMILY

"66. Family for the purpose of Regulations in this Section shall consist of the following:-

(i) Wife in the case of male service personnel or husband in the case of female service personnel lawfully married before or after retirement.

(ii) A judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.

(iii) Unmarried daughters/ unmarried sons (including those legally adopted widowed/ divorced daughters.

(iv) Parents who were wholly dependent on the service personnel when he was alive."

10. Regulation 63 of Pension Regulation for the Army 1961 (Part-I) as amended in 2008, reads as under:-

(b) Ordinary Family Pension

"Para 63. Where Service personnel dies in the circumstances mentioned in the Category A of the Regulation 82 of these Regulations:-

(i) Either while in service, provided he had been found fit after successful completion of the requisite training and medical examination for commission, or at the time of enrolment in the case of Personnel Below Officer Rank, or

(ii) After release/retirement/discharge/invalidment with a pension of any kind under these regulations"

11. The respondents have conceded that applicant being a widowed 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 Sep. Rova Lushai, neither in service documents nor in Long Roll maintained by the Record Office as

service documents have been destroyed after expiry of retention period of 50 years as per rules. 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.”

12. 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 and the same conditions also apply in the case of widowed daughters.

13. We are, therefore, of the view that in the instant case, the applicant, who is the widowed daughter of the deceased soldier, which is established by the Birth Certificate of the applicant

dated 14.05.1956, Marriage Certificate of the applicant dated 11.02.1989 with Sh. Tiangthanthuama and Death Certificate of Tiangthanthuama dated 22.03.2013 and Heirship Certificate dated 11.10.2017 issued by the Court of Senior Civil Judge-II, Aizawl (all documents attached with the Original Application), that applicant is widowed daughter of late Sep. Rova Lushai and she is entitled to receive family pension from the next date of death of her father, Ex Sep. Rova Lushai, i.e. w.e.f. 16.11.2016.

14. We also observe that applicant's father has forwarded all the required documents to the Record Office for publication of Part II Order in respect of birth of his daughter (applicant in the present Original Application) but the name of his daughter was not recorded by publication of a Part II Order by the respondents and it was rejected stating that after destruction of service documents over a period of 50 years, the authenticity of birth/name of the applicant cannot be verified at this belated stage. The respondents cannot deny her legal right only on the ground that the birth of the applicant, who was born on 14.05.1956, was not declared by the deceased father late Sep. Rova Lushai and that the service documents in respect of late Sep. Rova Lushai had been destroyed on 10.03.2004 as per existing rule. Once applicant has produced/submitted various documents proving that she is legal heir/daughter of late Sep. Rova Lushai, 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 14.05.1956 while her late father was discharged on 10.10.1950) and therefore, they are not under obligation to grant family pension. Accordingly, applicant is entitled for grant of ordinary family pension from the next date of death of her father.

15. Thus, in the result, Original Application succeeds and is **allowed**. The impugned order dated 19.01.2017 passed by the respondents is set aside. The applicant is directed to submit all requisite documents, available with her, to the respondents (Record Office) within a period of one month. After receipt of the necessary documents, respondents shall update their record mentioning name of the applicant as widowed daughter of late Sepoy Rova Lushai and grant Ordinary Family Pension to the applicant from the next date of death of her father, i.e. w.e.f.

16.11.2016 by issuing a corrigendum PPO. The respondents are further directed to give effect to this order within a period of five 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.

16. There will be no order as to costs.

17. Pending Misc. Applications, if any, shall stand disposed off.

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

Dated : 6th April, 2023
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