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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00372/2014

Pronounced on : 10.04.2015
Reserved on : 30.03.2015

CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER

Smt. Sukhjeet Kaur, wife of late Sh. Mohinder Singh, (PA No. 28489 A/C Mech. (E-II) (as Civilian Employee) aged 55 years, resident of Village Salana (Babdi), Amloh, P.O. Salana, District Fatehgarh Sahib.

..... Applicant

Versus

1. Union of India, Ministry of Defence (Pension-A), New Delhi.
2. PCDA (P), Draupati Ghat, Allahabad.
3. The Officer In-charge, Air Force Record Office, Subroto Park, New Delhi.
4. Commanding Officer No. 41, R & SU, Air Force, Ambala.

..... Respondents

Present: Sh. Ram Naresh Ojha, counsel for the applicant
Sh. Sanjay Goyal, counsel for the respondents

ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

“quash the impugned orders dated 10.03.2010, 19.08.2008 and 28.02.2007 (Annexures A-1 to A-3) and respondents may kindly be directed to restore the family pension of the applicant from the date it stopped and the applicant may kindly be allowed the arrears accrued thereupon from the date of stopping of the family pension till its realization alongwith interest @ 18% per annum.”

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2. MA. No. 572/2014 has been filed seeking condonation of delay of 760 days (2 years and 1 month) in filing the OA as the applicant had earlier moved the Armed Forces Tribunal, Chandigarh Bench, by filing OA No. 14/2014 for restoration of family pension, but during the course of hearing, it came to notice that the AFT did not have the jurisdiction to decide this matter and hence, she has filed the present OA before the CAT.

3. The background of the matter is that the applicant is the widow of late Sh. Mohinder Singh (Service No. 263205, Rank LAC) who was enrolled in the Indian Air Force on 04.01.1964 as Combatant Member and was invalided out from the Air Force Service on 21.11.1971 on medical grounds. The husband of the applicant was granted disability pension from the Air Force Service vide PPO No. D/3983/1972 @ 20% for life. After being discharged from the Air Force Service, the husband of the applicant rejoined the Air Force Service as A/C Mech. (E-II) (as civilian employee). The husband of the applicant was posted to the Unit No. 41 R&SU Air Force at Ambala. During the service, the husband of the applicant died on 27.03.1975. Out of the wedlock of the applicant with Sh. Mohinder Singh on 26.06.1974, a female child was born on 05.04.1975 within a month after the death of the husband of the applicant. Subsequent to the death of her husband, family pension was granted to the applicant vide PPO No. CDA(P) Allahabad No. 18

IGIGI/C/36227/GP/XXV/947 dated 24.01.1976 and she received the family pension upto 1982. Disbursement of pension was stopped by the Pension Disbursing Authority, Ludhiana in 1982 and the applicant learnt that this was on account of her re-marriage with the younger brother of her deceased husband. Although she had submitted several representations in this regard, the release of the family pension was not resumed.

4. In 2011, the applicant came to know through her relatives who are in military service that she was entitled to get the family pension and therefore, she approached the Armed Forces Tribunal, Chandigarh Bench, by filing OA No. 14 of 2011. In this case, the respondents filed written statement before the Tribunal wherein they had stated that the husband of the applicant was invalided put from the Indian Air Force and was also granted disability pension for life vide PPO No. D/3983/1972 which was stopped after the death of the husband of the applicant. The applicant further was entitled to get family pension on account of disability pension which was given to the husband for life. Accordingly, the applicant was further directed to file amended petition in the OA No. 14 of 2011 for grant of dual family pension. However, the AFT Chandigarh Bench vide its order dated 19.03.2014 (Annexure A-12) held that the family pension was granted to the applicant on account of service rendered in the Air Force by her husband as Civilian Employee. Therefore, the applicant was directed to put up the claim before appropriate court. M —

5. In the grounds for relief, reliance had been placed on Delhi High Court judgement in Kashmiro Devi Vs. UOI & Ors. reported as 2008(4) RSJ 362 wherein it was held that re-marriage with the younger brother of the deceased husband was not a ground to stop the family pension.

6. The respondents have filed the counter to the MA for condonation of delay stating that the cause of action arose to the applicant in 1982 when payment of the family pension was stopped while she had moved this OA, 32 years later, and hence, delay in filing the same could not be condoned.

7. In the counter reply, it has been stated that the applicant was in receipt of family pension from 1976 to 1982 from District Treasury Office Ludhiana which was stopped from 1982 i.e. after remarriage with the real brother of her late husband, when the authority concerned came to know the fact. As per Sub Rule 13(A) & 13(B) of Rule 54 of CCS (P) Rules, only one family pension is allowed and the late individual might have opted for family pension from civil side. As per earlier prevailing Rules, the applicant was not entitled for family pension from civil side after her remarriage. As per Rule 54(6) of CCS (Pension) Rules, 1972, the period of family pension to a widow is upto the date of death or re-marriage whichever is earlier (Annexure R-1).

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8. In the rejoinder filed on behalf of the applicant, reference has been made to Rule 54 of CCS (Pension) Rules, 1972, that reads as follows:-

"(13-A). A military pensioner, who on retirement from military service, on retiring pension, service pension or invalid pension is governed for the grant of ordinary family pension by Army Instruction 2/S/64 or corresponding Navy or Air Force instructions and is re-employed in a civil service or civil post before attaining the age of superannuation, shall for the purpose of eligibility for the family pension admissible under this rule or the family pension already authorized under the aforesaid Army/Navy/Air Force instruction, be governed as follows:-

(i) If he dies while holding a civil post in a temporary capacity in the course of re-employment, his family may be allowed to opt for the family pension admissible under this rule or the family pension authorized at the time of his retirement or discharge from the military service under Army Instruction 2/S/64 or the corresponding Navy or Air Force Instruction.

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9. Reference has also been made to Rule 219 of the Army Pension Regulations, 1961, that reads as follows:-

"Rule 219 : A relative specified in regulation 216 shall be eligible for the grant of family pension provided:

i and ii xxxxxx
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"..... (Annexure A-14).

10. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicant reiterated the facts and

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grounds taken in the OA and referred to the rules that enable a widow who marries a brother of her deceased husband, being entitled to continued release of family pension. He also referred to Rule 12-A of the CCS (Extraordinary Pension) Rules that reads as follows:-

"Remarriage by widow : Notwithstanding anything contained in clause of sub-rule (3) of Rule 12, a widow of an employee who re-marries her deceased husband's brother and continues to live a communal life with, or contributes to the support of the other dependants of the deceased shall not be disqualified for the grant of extraordinary pension, otherwise admissible to her under these rules."

He stated that from a reading of these provisions, it was crystal clear that the applicant was entitled to continuance of her family pension.

11. Learned counsel for the respondents requested that matter be decided keeping in view the written statement filed on behalf of the respondents.

12. I have carefully considered the matter and perused the pleadings of the parties and the rules and judgements cited on behalf of the applicant. It is clear from the same that the pension released to the applicant after the death of her husband could not be discontinued as per the rules. Hence, the respondents are directed to reconsider the matter in the light of Rule 54 of CCS (Pension) Rules, 1972, Rule 219 of the Army Pension Regulations, 1961 and Rule 12-A of the CCS (Extraordinary Pension) Rules. Such consideration may be completed within a period of three months of a certified copy of this order being served upon the

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respondents and the arrears due to the applicant on account of restoration of her pension from 1982 may also be released to her within this period.

13. The OA stands disposed of with these directions. No costs.

dr _____
(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.

Place: Chandigarh
Dated: 10.4.2015.

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