

FORM NO – 4
(SEE RULE 11 (1))
IN THE ARMED FORCES TRIBUNAL, KOLKATA BENCH

ORDER SHEET

APPLICATION No.O.A. No.49/2012

APPLICANT (S)

Smt. Parul Biswas @ Sudana Biswas

RESPONDENT (S)

Union of India & 4 Others

Legal Practitioner for applicant (s)

Legal practitioner for Respondents

Mr. Jagadish Ranjan Das

Lt. Col Mukul Dev
Ms. Manika Roy

<u>ORDERS OF THE TRIBUNAL</u>	
Order Serial Number: 6	Dated : 28.08.2012
<p>Heard Mr. Jagadish Ranjan Das, learned counsel for the applicant. Also heard Lt. Col. Mukul Dev from Legal Cell, HQ Bengal Area on behalf of the respondents.</p> <p>2. In terms of our earlier order dated 24.08.2012, the matter is taken up today for final disposal.</p> <p>3. The pleaded case in short of the applicant is that her husband Nk Gokul Chandra Biswas retired from 18 Inf. Div. Signal Regiment on 31.01.1983 on attaining the age of superannuation. The incumbent after his retirement from Army service joined in the State Bank of India Park Street Branch as an ex-serviceman on 08.02.1988 wherefrom he superannuated on 31.01.2005. The name of the present applicant, who is the widow of the incumbent, has been recorded in the PPO of the incumbent and all other related service records. It is further the case of the applicant that although her name has been recorded as Sudana Biswas in the State Bank of India records, but in fact she is the same and one person and the wife of the incumbent and to that effect she has also submitted the necessary certificates. Her name has been recorded with OIC Records Signals as Smt. Parul Biswas @ Sudana Biswas. After expiry of her husband, the applicant made necessary appeal before the respondent authorities for grant of her family pension from the Army</p>	

side. In the meantime, his subsequent employer, State Bank of India has also offered family pension from the civil side but the applicant has refused to accept the same. In fact, she by filing necessary application before the State Bank of India has surrendered such pensioner favour granted by the Bank for the service rendered by her husband. The applicant though made necessary correspondences with the respondent authorities but the respondents vide their impugned order dated 14.02.2012 has rejected her claim on the ground that her husband while was in service exercised option for family pension from civil side i.e. State Bank of India.

4. The related provisions regarding granting of subsequent pension in civil side is regulated and guided by Rule 18, 19, 54(13-A) and 54(13-B) of the Central Civil Services (Pension) Rules, 1972. Rule 54(13-B) proviso indicates that a person who is otherwise eligible for family pension under CCS(Pension) Rules may opt to receive family pension under this Rule if he forgoes family pension admissible from any other source.

5. That apart, such a similar matter having arisen for consideration before the Principal Bench of this Tribunal in O.A.No. 141 of 2010 (Smt. Om Bati vs Union of India & Ors. Disposed on 29.09.2010), the Principal Bench referring to the clarification issued by the Government of India vide Circular dated 11.04.2001, has allowed such pension both from the civil side and also from the Army side. The relevant portion of that judgement is quoted below:

“Respondents in that reply have pointed out that she is not entitled to family pension as her claim has been closed. Therefore, applicant filed present petition with the request that applicant is entitled to ordinary family pension on account of the full term rendered by her husband and she cannot be denied the ordinary family pension on account of her husband is getting a civil pension from the service in the Municipal Corporation, Faridabad. Therefore, question is whether an Air Force personnel who on retirement accepted a civil employment, is entitled to Air Force pension or not. In this connection, our attention was invited to the decision of Hon’ble Himachal Pradesh High Court in the case of Smt. Kamla Devi vs Union of India & Others – Mil LJ 2003

HP 181 as well as decision of Hon'ble Delhi High Court given in the case of Smt. Khazani Devi vs Union of India & Others. However, learned counsel for applicant invited our attention to the Circular issued by Government of India, Ministry of Personnel, PG & Pensions, Department of Pension and Pensioners' Welfare dated 11.04.2001, the relevant provision of this Circular reads as under :-

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2. The matter has been reconsidered in consultation with Ministry of Finance and it has been decided that Rule 18 and 19 shall apply respectively to the civil and military re-employed pensioners. In other words, in the case of re-employment of a military pensioner in civil service the pensioner benefits for second spell of service shall not be subject to any limitation as per provisions of Rule 18(3) of CCS (Pension) Rules, 1972.

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It appears that the matter has now been clarified in consideration in the Ministry of Personnel, PG & Pensions and it has been decided that Rule 18 and 19 shall apply respectively to the civil and military re-employed pensioners and in case of re-employment of military pensioner in civil service, the pensionary benefits for second spell of service shall not be subject to any limitation as per provisions of Rule 18(3) of CCS (Pension) Rules, 1972. It means an incumbent who has retired from Military Service and accepted civil service, he will not be disentitled to civil pension. It shows that now after this clarification issued by the Government of India, the employees who are retired from the Army service and accepted civil service will be entitled to both the pensions. Consequently, we allow this petition and direct respondents to release ordinary family pension to the widow of deceased JWO Laxmi Ram. Entire arrears should be worked out and paid to applicant with 12% interest. In view of aforesaid Circular dated 11.04.2001 which put the matter beyond any doubt, Government should review all the cases and decide the matters not driving the personnel to litigation. Petition is accordingly allowed. Hearing exercise may be conducted as far as possible within three months time. No order as to costs."

6. In the instant case, however, the applicant has already surrendered her pension from State Bank of India but it appears that the respondents i.e. more particularly, OIC Records Signals taking a hypertechnical view rejected such pension on the ground that option was exercised by the individual for Family Pension from civil side i.e. State Bank of India and as such the claimant is not eligible for family pension from army side, but however, family pension may be provided to the widow from civil side.

7. We are of the view that in view of the clarification issued by the Government of India referred to in the judgement of OA No. 141 of 2010 (Smt. Om Bati vs Union of India) wherein a decision rendered by the Hon'ble Himachal High Court reported in Mil LJ 2003 HP 181 as well as decision of the Hon'ble Delhi High Court rendered in the case of Smt. Khazani Devi vs Union of India have also been cited, the issue is set of rests by judicial pronouncement.

8. In view of the clarification made by the Government of India, Ministry of Personnel, PG & Pensioners, Department of Pension and Pensioners' Welfare dated 11.04.2001 as well as the provisions contained in Rule 54(13-A) and 54(13-B), we are of the view that the applicant is entitled to get the family pension from the military side as claimed by her. Accordingly, the stand taken by the respondent authorities as per the impugned order dated 14.2.2012, being not in accordance with law, is set aside and quashed. The respondents, more particularly the OIC Records Signals, respondent No. 2 and 3, are directed to issue necessary orders for grant of family pension from any side to the widow of the deceased NK Gokul Chandra Biswas from the date of death of the deceased with 12% interest till the date of payment. Necessary exercise in this connection shall be completed within a period of 30 days from the receipt of this order and the amount shall be paid to the applicant. With this order the appeal stands allowed. No order as to costs.

9. It is further observed herein that the applicant in terms of the order passed by the Principal Bench in O.A No. 141 of 2010 (Smt. Om Bati vs Union of India & Others) may claim for pension from State Bank of India also.

(Lt Gen K.P.D. Samanta)
Member (Administrative)

(Justice H N Sarma)
Member (Judicial)