

P. Aknes Versus the Union of India and Others

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Court : Armed forces Tribunal AFT Regional Bench Chennai

Decided On : Apr-05-2010

Judge : A.C. Arumugaperumal Adityan (Member-Judicial) & the Honourable Lt Gen (Retd) S. Pattabhiraman (Member “ Administrative)

Appeal No. : T.A. No. 26 of 2010 (W.P. No. 5005 of 2009)

Judgement :

(Order of the Tribunal was made by Justice ACA Adityan)

1. The unfortunate mother of a soldier, who served in the Army and before completing his service ended his life by committing suicide with an army weapon, had knocked at the doors of the Honourable High Court of Judicature at Madras (Madurai Bench), with a writ petition, which has been transferred to this Tribunal after the formation of this Armed Forces Tribunal under the Armed Forces Tribunal Act, 2007 and reassigned T.A.No.26 of 2010.

2. The short facts in the affidavit to the petition relevant for the purpose of deciding this petition run as follows:- The petitioners son viz. V.Titus was enrolled in the Army under the Madras Regiment and his number was assigned as L / NK No.2599729 and he had committed suicide with the army weapon on 28.10.2004 when he was in service at Trivandrum camp. He was the only earning member of the family of the petitioner. The petitioners son late V.Titus had married one Sudharani on 20.09.2004 and they lived together as husband and wife for only 21 days and they have not been blessed with any issues. The department has

sanctioned all death benefits to the wife of late V.Titus. Ordinary Family Pension was also sanctioned to his wife Sudharani by proceedings of CDA (P), Allahabad vide PPO.No.F.N/A/010538/2006. The said Sudharani remarried another Army man on 22.12.2005 and she discarded the tile of the widow of late V.Titus on the same day of her second marriage. She had not been blessed with any child through said V.Titus. On the representations made by the petitioner along with the relevant documents relating to the second marriage of the said Sudharani, the second respondent had stopped further payment of pension to the said Sudharani from February, 2006 and forwarded all papers to PCDA (P), Allahabad, enabling to cancel the Ordinary Family Pension granted by them to the said Sudharani. As per the request of the second respondent, the petitioner also submitted all the relevant documents to enable the second respondent to grant family pension to the petitioner. But to her dismay, the petitioner had received a letter from PCDA (P), Allahabad, vide their proceedings No.2599729 / FP / 2003 / PG-2, rejecting the claim of the petitioner for family pension. Hence, the petition.

3. The respondents in their common counter have stated that the petitioner is not a dependant on her late son Lance Naik V.Titus, who died by committing suicide at the unit. As per service documents, the petitioners son was married on 20th September 2004 and died on 28th October 2004 by committing suicide by shooting himself with service weapon. Consequent to his death, all the death benefits including Ordinary Family pension were granted to Sutharani, the legally wedded wife of late V.Titus. Mr.M.Varghese, the father of late Lance Naik V.Titus, had sent a letter on 8th March 2006 communicating that the said Sutharani, widow of his late son V.Titus, had remarried one G.Vijayakumar and requested to stop family pension of his daughter-inlaw and to grant the same in favour of the parents. Accordingly, the Office after the receipt of relevant documents from him, had informed the Manager, Indian Overseas Bank to stop the pension, after due verification. On an application from Smt.Sudharani stating that she has not remarried, the subject was referred to The Assistant Director of Ex-Servicemens Welfare Office, Kaniyakumari and got a confirmation about her remarriage vide their letter No.4230/06/A5 dated 14th July 2006. The petitioner was again reminded to produce the specific documents to process her case with Pension Sanctioning Authority vide letter No.2599729 / FP / 90 / PG-2 dated 23rd August

2006. On receipt of requisite documents, the case of the petitioner was submitted to the Pension Sanctioning Authority, PCDA (P), Allahabad, for continuance of family pension in favour of the petitioner, vide letter No.2599729 / FP / 97 / PG-2 dated 5th April 2007. The pension sanctioning authority PCDA(P), Allahabad, has rejected the claim of the petitioner for grant of Ordinary Family Pension vide their letter No.G4/4/02/86/IV/51 dated 9th July 2007 in terms of Rules governing grant of Ordinary Family Pension. The same was communicated to the petitioner vide letter No.2599729/FP/103/PG-2 dated 23rd July 2009. It is clarified vide Para 13.2 of Government of India, Ministry of Defence, letter No.1(6)98 D (Pension/Service) dated 3rd February 1998 that the parents can be granted Ordinary Family Pension, who were wholly dependent on the armed forces personnel, when he/she was alive provided the deceased employee had left behind neither a widow nor a child. Since the son of the petitioner was married and the Ordinary Family Pension was sanctioned to the widow, the petitioner is not at all eligible for the same. Hence, the petition is liable to be dismissed.

4. Heard the learned counsel for the petitioner and the junior counsel for the learned Senior Central Government Standing Counsel and considered their respective submissions.

5. Now the point for determination in this petition is whether the petitioner, who is the mother of the deceased Lance Naik V.Titus No.2599729 is entitled to the family pension after the same was rejected to the widow of late Lance Naik V.Titus (daughter-in-law of the petitioner) on the ground of her remarriage as prayed for?

6. POINT:- A reading of the counter filed by the respondents will go to show that only on the sole ground that the petitioners daughter-in-law Sudharani had remarried after receiving the family pension, the same was stopped by the second respondent. The relevant provision under the Pension Regulations for the Army 1961 (Part I), applicable to the petitioner is Regulation 219, which starts with a caption Conditions of eligibility for a family pension, which reads as follows:-

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.

Parents

Second life Award (Special Family Pension) shall be admissible to the parent(s) of the deceased and in the absence of the persons eligible brother and sisters of the deceased of the rate of 50% of the special family pension determined vide Regulation 227(a), if the claimant was/were largely dependent on the deceased for support and is/are in pecuniary need.

Mother

(vi) a mother who is a widow at the time of her son's death or who becomes a widow thereafter, has not remarried. If she had remarried before her son's death, she shall remain eligible for the special family pension, unless and until she again becomes a widow and remarries.

Brother/Sister

(vii) The brother/sister were largely dependent on the deceased for support and are in pecuniary need.

(viii) In the case of brother he has not completed the age of 25 years.

(ix) In the case of sister, she has not completed the age of 25 years or has not married.

None of the proviso to Regulation 219 will be applicable to the petitioner herein. So, as per the Regulation 219, the persons who are entitled to the Family Pension as per Regulation 216 are__

(a) widow/widower lawfully married. It includes a widow who was married after individual's release/retirement/discharge/invalidment.

(b) Son actual and legitimate/including validly adopted.

(c) Daughter, actual and legitimate/ (including validly adopted).

(d) Father.

(e) Mother

(f) Brother

(g) Sister

Note 1:- The term widow used in the above or any other regulation in this sub-section in respect of special family pensionary awards shall be deemed to include such a widow who was married after the individual's discharge/invalidment.

Note 2:- The term child used in the above or any other regulation in this sub-section in respect of special family pensionary awards shall be deemed to include such a child born out of a marriage after discharged/invalidment of the individual.

Note 3:- The term father and mother or parents used in the above or any other rule in this sub-section shall also be deemed to include such putative parents (or surviving parents as the case may be) as had not contracted a lawful marriage, but were living as husband and wife at the time of, or got lawfully married subsequent to, the conception of deceased member of the forces.

Note for the Readers

If any member of family is denied any share in the property of the individual under a will or deed such member shall be debarred for spl. Family Pension. Order of priority in which payable. In the case of personnel below officer rank:

(i) Nominated heir and on her/his disqualification or death to other member, one at a time as per priority vide Regulation 216.

(ii) In the absence of nomination, to the widow and on her disqualification or death to the eligible child. In case there is no widow/widower the eligible child, it shall be paid to the father and in his absence to the mother.

So, it is clear that after the death of Lance Naik V. Titus (after committing suicide) his legally wedded wife Smt. T. Sudharani was granted family pension till her remarriage. On a petition from the parents (of V. Titus) the competent authorities have stopped the payment of family pension to the said Sudharani on the ground of her remarriage. Under such circumstances, the petitioner herein (who is the mother of the said late Lance Naik V. Titus), the family pension being stopped to her daughter-in-law on her remarriage, is in our considered view entitled to the family pension under Regulation 219 of the Pension Regulations for the Army 1961 (part I), in the absence of any claim by the father, who is said to be bed-ridden. Point is answered accordingly.

6(a) At this point of time, the Honourable Member (Administrative) would also agree and emphasize that in this particular instance, the award of Family Pension to the petitioner under circumstances of the Widow having remarried within one year of the petitioners sons death would justify invocation of Regulation 219 of the Pension Regulations for the Army, 1961 (part-I) in totality.

7. In fine, the petition is allowed as prayed for and the petitioner is entitled to the family pension as per Regulation 219 of the Pension Regulations for the Army 1961 (part I) from the date of stoppage of pension to her daughter-in-law Sudharani. No costs. Time for compliance four months from today.

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