

GAHC010131622013



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/5476/2013**

SAHADEV SARAN  
S/O LT. PUTHAN SARAN, R/O EBW GREF, C/O 99 APO, PIN-931642

VERSUS

THE UNION OF INDIA AND 5 ORS  
THROUGH THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF  
SURFACE TRANSPORT AND COMMUNICATION, NEW DELHI-1

2:THE SECRETARY  
TO THE GOVT. OF INDIA  
MINISTRY OF DEFENCE  
DPGC  
206  
"A" WING SENA BHAWAN  
NEW DELHI

3:THE DIRECTOR GENERAL  
BORDER ROADS ORGANISATION GOVT. OF INDIA  
HEAD QUARTER  
DIRECTOR GENERAL BORDER ROADS  
SEEMA SARA BHAWAN RING ROAD  
DELHI CANT  
NEW DELHI-11-10

4:THE COMMANDANT  
1642 PIONEER COY GREF  
C/O.99 APO

5:ASSTT. ADMINSTRATIVE OFFICER  
OFFICER COMMANDING  
1642 PIONEER COY GREF

C/O.99 APO

6:PCDAP  
ALLAHABAD  
DRAUPATI GHAT  
ALLAHABAD-211014  
UTTAR PRADES

**Advocate for the Petitioner** : MS.L H BARUAH

**Advocate for the Respondent** : MR. R K D CHOUDHURY

**BEFORE**  
**HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

**ORDER**

**Date : 21/12/2023**

Heard Mr. S. C. Biswas, learned counsel for the petitioner. Also heard Mr. R. K. Dev Choudhury, learned deputy Solicitor General of India.

2. This writ petition has been filed by the petitioner who is claiming the arrears of the family pension payable to the late parents of the petitioner in respect of the family pension payable from 10.05.1996 to 18.10.2003 as they were dependent on his late brother, who expired while in service under the GREF.

3. The pleaded case of the petitioner is that his elder brother, namely, late Bhim Saran was working as a Sepoy under 1642 Pioneer Coy CGREF, C/o 99 APO. He died in harness on 10.05.1996 leaving behind his parents and the petitioner. His late brother was a bachelor at the relevant point in time.

4. The parents of the petitioner being dependent on his elder brother, late Bhim Saran was entitled to get family pension as dependents but during their lifetime the said amount was never paid. The father of the petitioner, late Puthan Saran was expired on 21.08.2002 and the mother of the petitioner, late

Saptami Saran also expired on 18.10.2003. As such, the petitioner is the only next of kin of late Bhim Saran and that makes him entitled to get the family pension payable on account of his deceased brother which was actually payable to his late parents for the period from 10.05.1996 to 18.10.2003 during their life time. Although Pension Payment Order (PPO) being No. C/C/GREF/221/96 was prepared and issued in favour of the father of the petitioner, late Puthan Saran, the family pension was never received as in the meantime the father of the petitioner expired on 21.08.2002. Subsequently, the mother of the petitioner also expired on 18.10.2023. The petitioner represented before the concerned authority raising this issue and requesting for release of the arrear of the family pension payable to his late parents, during their life time for the period from 10.05.1996 to 18.10.2003

5. The respondent authorities in response to the representation preferred, directed the petitioner to file necessary documents in support of his claims. These papers were subsequently submitted before the authorities. However, the Pension Payment Order (PPO) being No. C/C/GREF/221/96, which was made in his favour on 03.04.2006 was cancelled on 05.04.2006 due to non receipt of the Legal Heirs Certificate. The Legal Heirs Certificate was subsequently obtained on 21.08.2013 and the same was submitted to the authorities concerned but the claim of the petitioner of the arrear family pension was not released.

6. The petitioner, in the meantime was also appointed under the GREF as a Sepoy with effect from 1998. The learned counsel for the petitioner submits that inspite of the submission of the Legal Heir Certificate and Death Certificate and other necessary documents, family pension was not released in favour of either of the late parents of the petitioner or the petitioner.

7. Per contra, Mr. R. K. Dev Choudhury, learned deputy Solicitor General of

India submits that the respondents have filed their counter affidavit objecting to the claims raised by the petitioner. In their affidavit the respondents have contended that since the parents of the petitioner expired in the meantime, there was no question of grant of family pension to the petitioner as he is no longer dependent on the deceased brother.

8. The further contention of the respondent is that the petitioner was employed prior to the expiry of both the parents, who were earlier shown to be dependent on the late brother of the petitioner, namely, late Bhim Saran. The respondents dispute the contentions of the petitioner that the late parents were wholly dependent on his late elder brother rather it is contended that pursuant to the demise of the late brother and subsequent to the petitioner himself being appointed on compassionate ground in GREF since December, 1998, the late parents were dependent on the petitioner and not on the deceased elder brother. Under such circumstances, the claims made for arrear family pension were not maintainable.

9. Learned counsels for the parties have been heard. Pleadings on record have been carefully perused. From the Office Memorandum dated 27<sup>th</sup> October, 1997 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare, the Governments' decision on recommendation of the Fifth Central Pay Commission and Revision of provisions of the regulating pension/commutation of pension was clarified by this Office Memorandum. In respect of family pension 1964, it is provided that for the purposes of Family Pension 'Family' shall include Parents who were wholly dependent on the Government servant when he/she was alive provided the deceased employee had left behind neither a widow nor a child. From the Office Memorandum, it is clear that under the scheme of Family

pension, 1964 'Family' will include the Parents who were wholly dependent on the Government servant while he was alive subject to the deceased employee not having left behind a widow or a child. The relevant portion of the OM is extracted below:

***“FAMILY PENSION 1964***

*Family pension shall be calculated at a uniform rate of 30% of basic pay in all cases instead of slab system and shall be subject to a minimum of Rs. 1275/- p.m and maximum of 30% of the highest pay in the Government (The highest pay in the Govt. is Rs. 30,000 since 1.1.1996). Rule 54(2) relating to Family Pension, 1964 under Pension Rules shall stand modified to this extent and the existing table thereunder will be no longer operative.*

*7.2 For the purpose grant of Family Pension, the definition of 'Family' shall also include:*

*a. Parents who were wholly dependent on the Government servant when he/she was alive provided the deceased employee had left behind neither a widow nor a child [Classificatory order in regard to determining dependency criteria in case of parents shall be issued separately].*

*b. Son/daughter including widowed/divorced daughter till he/she attains the age of 25 year of upto the date of his/her marriage/remarriage, whichever is earlier (subject to income criterion to be notified separately)."*

10. In the facts of the present proceedings there is no dispute that the deceased elder brother of the petitioner was a bachelor and there is no material to dispute the contention of the petitioner that the late parents of the petitioner at the relevant point in time were not wholly dependent on the deceased elder brother. The elder brother of the petitioner late Bhim Saran expired on 10.05.1996 and the petitioner was appointed on compassionate ground only in

the year 1998 and the late elder brother of the petitioner, namely, late Bhim Saran expired on 10.05.1996 and as such the Office Memorandum dated 27<sup>th</sup> October, 1997 will be applicable as it is reflected in the said Office Memorandum that this revised provisions will be applicable to the Government Servants, who retires/die-in-harness on or after 01.01.1996. The fact that the petitioner was employed on compassionate ground and thereafter the late parents of the petitioner during their lifetime were dependent on the petitioner cannot be a ground to deny the claim of the late parents of the petitioner for grant of family pension for the period during which they were shown to be dependent on the late elder brother till the time the petitioner got employed. The requirement under the OM dated 27.10.1997 is that the family members (which will include the late parents of the petitioner) is required to be wholly dependent on the Government Servant.

11. Under such circumstances, this Court is of the considered view that the late parents of the petitioner ought to have been granted the family pension in terms of the Office Memorandum dated 27<sup>th</sup> October, 1997 read with the CCS (Pension) Rules, 1981 as they were included in the definition of the family and there is no material to counter the submissions of the petitioner that the late parents were not wholly dependent on the deceased elder brother of the petitioner till the petitioner was gainfully employed under GREF in the year 1998. There is also no dispute that the late brother of the petitioner was a bachelor at the time of his demise.

12. In that view of the matter, it must be held that the late parents of the petitioner were indeed wholly dependent on the late elder brother of the petitioner and the late elder having expired as a bachelor, they are included

within the definition of the 'family' in terms of the Office Memorandum dated 27<sup>th</sup> October, 1997 read with the CCS (Pension) Rules, 1981 and therefore, their entitlement for family pension under the Rules cannot be negated. However, the fact remains that as on date both parents have expired and therefore the petitioner being the next of kin being the only surviving member of his late parents is entitled to receive his claim of arrear of the family pension which has payable to the late parents of the petitioner for the period immediately after the demise of the elder brother of the petitioner, namely, Bhim Saran till the period the petitioner was appointed in service, which is 22.12.1998. The department will now calculate the exact amount of family pension, which was required to have been paid to the late parents of the petitioner and release the same, to the next of kin of late Puthan Saran and late Saptami Saran, who were at the relevant point in time the dependent family members of late Bhim Saran, to the present petitioner. The arrears of family pension payable shall include all other such benefits as may be provided for under law.

13. Writ petition accordingly, stands disposed of in terms of the above.

14. The exercise of calculating the arrear family pension to be payable to the present petitioner be duly verified and released within a period of 90 (ninety) days from the date of receipt of a certified copy of this order.

**JUDGE**

**Comparing Assistant**