

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decided on : 21.07.2015

+ **W.P.(C) 1098/2015**

NILIKA LALL

..... Petitioner

Through: Ms.Ferida Satarawala, Advocate

versus

UNION OF INDIA & ORS.

..... Respondent

Through: Mr.Amit Mahajan, CGSC for UOI
Mr.Rakesh Mittal, Adv. for DDA

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

1. The plaintiff claims to be aggrieved by the delayed payment and disbursement of pension dues. Her husband Major S.K.Tandon of the Armoured Corps., Central India Horse (CIH) was wounded during the Indo-Pakistan conflict in 1965 and consequently succumbed to his injuries. The late Major Tandon was declared as a 'Battle Casualty' on 11.09.1965. This entitled the petitioner, then a young widow to Liberalised Family Pension. One of the conditions of such 'Liberalised Family Pension' was that the recipient should continue to remain unmarried or at best marry her brother-in-law only ("real brother-in-law/real brother of deceased") in which eventuality the pension was permitted to continue. The petitioner remarried on 21.10.1968. This led to reduction in her pension; she was given Ordinary Family Pension. The Pension Rules, 2005 applicable to the army personnel were amended and the Liberalised Family Pension Rules came into force on 24.06.2005. Yet, the petitioner's entitlement as the recipient of Ordinary Family Pension continued. When she became aware about the discrepancy

and the short fall in her pension, she represented to the respondents in October, 2013. The latter replied on 19.02.2014. Eventually, on 08.07.2014 the Liberalised Family Pension was restored to her with effect from 24.06.2005. The petitioner has also received the arrears constituting the difference between the amount received by her till date and what was due with effect from 24.06.2005. It is submitted that in these circumstances the respondents owe her a duty to pay interest @ 12% per annum. The respondents stated, at the outset, that this court lacks jurisdiction given the mandate of Section 2 of the Armed Forces Tribunal Act. It is submitted without prejudice, however, that since now the petitioner has been disbursed all arrears, no cause survives and that in any event there is no provision for payment of interest on amount withheld or belated payment of pension.

2. The question of jurisdiction at least in this case in our opinion ought not to be legitimately urged by the respondents. Concededly, it was their duty to ensure due compliance of the rules instead of waiting for the petitioner who does not live in Delhi to approach them and then disburse the payment and arrears. It has been held repeatedly by the Courts that pension is not bounty but is in fact deferred salary in ***D.S.Nakara & Others v. Union of India 1983 SCR (2) 165*** and ***R.Kapur vs. Director of Inspection 1994 (6) SSC 589***.

3. It has been also repeatedly held that pensioners who are entitled to arrears of pension or whose amounts are wrongly withheld, are entitled to interest. See ***Nalini Kant Sinha vs. State of Bihar & Others 1993 Supp (4) SCC 748***, ***Dr.L.P.Agarwal vs. Union of India and Others 1992 AIR 1872***, ***R.R.Bhanot vs. Union of India 1994 (2) SCC 406***.

4. In these circumstances, having regard to the fact that though the petitioner was entitled to refixation of pension with effect from June, 2005, the circumstance that she became aware of it much later and approached the respondents in 2013 also has to be kept in mind.

5. Having regard to these factors, we are of the opinion that the justice of the case demands that arrears should be granted at least to the commencing three years from the date the first demand was made i.e. in October, 2013. Consequently, we direct the respondents to ensure that payment of interest on the arrears disbursed to the petitioner is made over to her at 12% per annum with effect from 01.07.2010 within six weeks from today. The direction to that effect is issued.

6. Similar direction is issued in respect of the 6th Central Pay Commission pension revision arrears. Respondents' authorities are directed to ensure strict compliance with the present order and give necessary instructions to the bank in this regard.

7. Petitioner also claims certain relief against the Delhi Development Authority. We are of the opinion that merits of those claims cannot be gone into in these proceedings. It is open to the petitioner to file a fresh writ petition in this regard. Liberty granted.

8. The writ petition is allowed in the above terms.

Order *dasti*.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JULY 21, 2015/rb