

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2813 OF 2024

Union of India & Anr ...Petitioners

Versus

Usha Menon (Tipnis) ...Respondent

Mr. Kedar B. Dighe, for the Petitioners.

Ms. Uroosa Shaikh, for Respondent.

CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.

DATE : OCTOBER 15, 2024

PC :

1. The above Writ Petition is filed by the Union of India challenging the impugned order dated 28th March, 2023 passed by the Arms Forces Tribunal, Regional Bench, Mumbai (for short "**AFT**"). By the impugned order, the AFT declared that the Applicant (the Respondent herein), Mrs. Usha Menon (Tipnis), is eligible for grant of Special Family Pension with effect from 11th August, 1968. However, due to the law of limitation, arrears of Special Family Pension will be limited to three years before the filing of the Original Application, and which was filed on 13th January, 2020. The Petitioners herein were directed to pay the arrears of the Special Family Pension and issue the necessary

Pension Payment Order for continuation of the Special Family Pension. In case of default in such payment, interest was also provided. Additionally, by the impugned order, the children of Respondent-widow namely, Arun Tipnis and Vikram Tipnis, and who were also the children of the deceased Officer late lieutenant Commander Satish Tipnis, were eligible for a special children allowance with effect from 11th August, 1968 (for Arun Tipnis) and with effect from 15th December, 1968 (for Vikram Tipnis) till they attained 18 years of age.

2. Though many grounds are set out in the Petition, the learned Advocate appearing on behalf of the Petitioner (Union of India) basically challenged the impugned order on two grounds. The first ground of challenge was that the late lieutenant commander Satish Tipnis was traveling from the Naval Headquarters at Delhi to his official residence, not by the transport provided by the Government but by his private transport. This would disentitle his widow, the Respondent, to any Special Family Pension. The second ground on which the order is assailed is that, in any event, the widow could not be entitled to the Special Family Pension because she got remarried in the year 1972. It is basically on these two grounds that the impugned order is assailed.

3. We have heard the learned Counsel appearing on behalf of

the Petitioners as well as learned Advocate appearing on behalf of Respondent. As far as the argument regarding the Petitioners not traveling by the official transport but by his personal transport is concerned, we find that the same is squarely covered by Navy Order No.08/03. In this order, the definition of the term “duty” for the purposes of determining the attributability and entitlement to disability and family pensionary awards in case of accidents, is set out. Clause 2(e) (wrongly mentioned as clause 2(f) in the impugned order) clearly states that when a Navy personnel journeying by a reasonable route from one’s official residence to and back from the appointed place of duty, irrespective of the mode of conveyance, whether private or provided by the Government, would be deemed to be on duty. The relevant portion of the Navy Order No.08/03 is reproduced hereunder:-

“2. The definition of the term “Duty” for the purpose of determining Attributability and entitlement to disability and family pensionary awards in case of accidents, is laid down in Govt of India. Min of Def letter No. 1(1)/81/Pen-C dated 22 Nov 83 as amended from time to time. A person subject to the Navy Act is considered to be ‘on duty’ : ----

(a)

(b)

(c)

(d)

(e) When journeying by a reasonable route from one's official residence to and back from the appointed place of duty irrespective mode of convenience, whether private or provided by the Government.

(f)”

4. We find that in the impugned order, the AFT has also relied upon this very Navy order to negate the contentions of the Petitioners to deny the Respondent the Special Family Pension. We do not find any reason to interfere with the finding given by the AFT on this aspect.

5. The second contention raised by the Petitioners is that the Respondent was not entitled to any Special Family Pension because she got remarried in the year 1972. This aspect of the matter has been dealt with by the AFT in paragraph 27 and 28 of the impugned order. In fact what was relied upon by the Petitioners to debar the Respondent from claiming the Special Family Pension was Regulation 63 of the Navy (Pension) Regulations, 1964. Admittedly, this Regulation bars payment of Special Family Pension upon remarriage. However, we find that the Government of India, Ministry of Defence, has issued a policy letter No.1(2)/97/1/D (Pen-C) dated 31st January, 2001 in pursuance of the Government decisions on the recommendations of the fifth Central Pay Commission and after sanction of the President of India, whereby

certain Rules/Regulations concerning pensionary benefits (including Special Family Pension) were modified. Paragraph 5.8 of this policy letter clearly states that the Special Family Pension on remarriage of a widow, shall be regulated (a) for Commissioned Officers if the widow has children and if she continues to support the children after remarriage. The relevant portion is reproduced hereunder:-

“5.8. Special Family Pension on Remarriage of Widow: - Special Family Pension on remarriage of widow, shall be regulated as follows:

(a) Commissioned Officers

(i) if she has children

(aa) If she continues to support children after remarriage

Full Special Family Pension to continue to widow

*... ..
... ..”*

6. Initially, this policy letter was applicable to Armed Forces Personnel who were in service on 1st January, 1996. However, by a subsequent letter No. 1(1)/2001/D (Pen-C) dated 20th January, 2009 the limitation of 1st January, 1996 was removed and the provisions of letter dated 31st January, 2001 were made applicable to widows who were remarried even prior to 1st January, 1996. Once this is the position, we find that the AFT has correctly appreciated and applied the relevant

rules and regulations to grant pensionary benefits, namely, the Special Family Pension to the Respondent-widow. As far as the pensionary benefits granted to the children is concerned, that has not even been challenged before us.

7. Considering all these facts and circumstances, we find that no ground whatsoever is made out for interfering with the impugned order passed by the AFT. We find that the same is a well reasoned order. In these circumstances, the above Writ Petition is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

8. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[B. P. COLABAWALLA, J.]