
(2012) 07 DEL CK 0520
In the Delhi High Court
Case No : Writ Petition (C) 4174 of 2012

Smt. Suman Naruka

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Citation : (2012) 7 AD 24 : (2012) 191 DLT 359 : (2013) 2 SLJ 67

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : J.S. Mann and Mr. C.S.S. Pillai, for the Appellant; Barkha Babbar, Advocate and Mr. M.P. Singh, Advocate for UOI, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—Instant petition pertains to an order dated 19.04.2012 passed by the Armed Forces Tribunal allowing OA No. 270/2011 filed by the petitioner, but not in full. Granting substantive relief prayed for i.e. to restore family pension paid by the Indian Air Force, proportionate to the service rendered by Corporal Naruka Narendra Singh, husband of the petitioner, the Tribunal has directed payment to be made only with effect from February 20, 2011, for the reason the petitioner had applied to the Indian Air Force on said date. The peculiar facts of the instant case require the petitioner to be paid family pension from a retrospective date on account of the reason there was an issue whether Air Force personnel, in receipt of service pension, on being re-employed in a civilian service, on their death; would or would not entitle the family to the family pension. We highlight that these persons were otherwise being paid pension by the Indian Air Force. Notwithstanding the Government of India issuing a notification dated July 27, 2001, the Air Force Authorities were not releasing the family pension till a clarificatory circular was issued on May 14, 2010 which reads as under:

In view of the amendment in the CCS (Pension) Rules, 1972 and in exercise of the authority vested, it is hereby notified that w.e.f. 27th July, 2001, the family

Pension under the General Insurance (Employees) Pension Scheme, 1995 shall be allowable to a person even if he is already in receipt of family Pension under any other rules of Central/State Government or Public Sector Undertakings/Autonomous Bodies/Local Fund under the Central/State Government or the Armed Forces of Union of India.

It is further clarified that the benefit of such second Family Pension shall be admissible in those cases also where Retirement/Death of the re-employed Pensioner took place prior to 27th July, 2001 although the said benefit shall be available only for the period commencing from 27th July, 2001 i.e. the date of issuance of the aforesaid Notification amending the CCS (Pension) Rules, 1972.

2. Suffice would it be to state that in view of the clarificatory circular, the petitioner made a representation on February 20, 2011; and suffice would it be to further state that clarificatory circulars do not create a right inasmuch as they clarify on an existing right. The second paragraph of the circular dated May 14, 2010, clearly clarifies that family pension has to be paid with effect from July 27, 2001 i.e. the date on which the Government of India had issued the original notification. The petitioner made a representation only when the clarification was issued on May 14, 2010.

3. No other point is involved.

4. The petition stands disposed of modifying the direction issued by the Tribunal as per the order dated April 19, 2012 by directing the Air Force Authorities to grant family pension to the petitioner with effect from July 27, 2001. No costs.