

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

O.A.NO.99/2013

THIS THE 17th DAY OF JANUARY, 2017

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**HON'BLE JUSTICE S.S.SATHEESACHANDRAN, MEMBER (JUDICIAL)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)**

APPLICANT(S) : SWETA SONY, WIFE OF LATE MAHESH KUMAR PATHAK,
PRESENTLY RESIDING AT HER PARENTAL HOUSE AT
VILLAGE AND P.O.-LOMA, P.S.-TISHIAUTA,
DISTRICT-VAISHALI, BIHAR, PIN – 844505.

-versus-

- RESPONDENT(S)
1. UNION OF INDIA, SERVICE THROUGH THE SECRETARY,
MINISTRY OF DEFENCE, SOUTH BLOCK,
R.K.PURAM, NEW DELHI – 110 011.
 2. CHIEF OF THE ARMY STAFF, INTEGRATED HEADQUARTERS
OF MINISTRY OF DEFENCE (ARMY), DHQ PO,
NEW DELHI – 110 011.
 3. THE SECRETARY, DEPARTMENT OF EX-SERVICEMEN
WELFARE, 5-A, SOUTH BLOCK, R.K.PURAM,
NEW DELHI-110 011
 4. ARMY GROUP INSURANCE FUND, AG'S BRANCH,
INTEGRATED HQ OF MOD (ARMY), AGI BHAWAN,
RAO TULA RAM MARG, P.O. - VASANT VIHAR,
NEW DELHI – 110 057.
 5. CONTROLLER GENERAL OF DEFENCE ACCOUNTS,
R.K.PURAM, NEW DELHI – 110 011.
 6. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNT (PENSION),
DRAUPADI GHAT, ALLAHABAD – 211001, U.P.
 7. COMMANDING OFFICER, CIF HQ(R) SIGNAL REGIMENT,
PIN – 918391, C/O 56 APO.

*8. SMT.MAMTA DEVI, M/O LATE SIGNALMAN MAHESH KUMAR
PATHAK, VILL-KALIACHAK, P.O.-KHARIKA (KALYANPUR),
DISTRICT – VAISHALI, BIHAR – 844504.

*9. SHRI RAM NATH PATHAK, F/O LATE SIGNALMAN MAHESH
KUMAR PATHAK, VILL- KALIACHAK, P.O.-KHARIKA
(KALYANPUR), DISTRICT – VAISHALI, BIHAR – 844 504.

(*AMENDED AS PER ORDER DT. 09-04-2015)

FOR THE APPLICANT(S) : ANIRUDDHA DATTA, ADVOCATE

FOR THE RESPONDENT(S) : R1 TO R7 – MR. ANAND BHANDARI, ADVOCATE
R8 & R9 - MR.S.K.CHOUDHURY

ORDER

Satheesachandran, Member (J):

The applicant viz Smt. Sweta Sony, who claims to be the widow of late Mahesh Kumar Pathak (Service No. 15713033 H), Signalman attached to CIF HQ (R)Signal Regiment, who died on 03.01.2013 in service, has filed the above application under Section 14 of the Armed Forces Tribunal Act (for short 'the Act') for issue of directions to the respondents to grant her all death and terminal benefits of her husband and also to provide her a suitable job in the army on compassionate grounds.

2. Her case in brief can be summed up thus: She was married

to late Mahesh Kumar Pathak on 24.02.2011 as per Hindu rites and customs. After the marriage ceremony, both of them went to his house and their marriage was consummated. Soon after the marriage, demanding dowry her husband and in-laws ill-treated her both physically and mentally and ultimately she was thrown out of her matrimonial home. After 3 months and 5 days of her marriage she moved a representation before the military authorities seeking grant of maintenance allowance from her husband, and pending consideration of such representation her husband passed away on 03.01.2013. Her request for grant of terminal and death benefits of her husband and also to provide her compassionate employment having not been considered and acted upon, she has filed the above O.A. for the reliefs stated supra.

3. Application was initially filed against respondents 1 to 7, Union of India and military authorities and also Army Group Insurance Fund. Parents of late Pathak, later got themselves impleaded as additional respondents 8 and 9 in the O.A.

4. In the reply affidavit sworn to on behalf of respondents 1

to 3, it is contended that late signalman Mahesh Kumar Pathak did not inform the unit of his marriage with the applicant and pursuant to a complaint/representation received from the applicant he was directed to resolve the matter and also to produce necessary documents for publication of his marriage in Part II order. He did not produce the documents, but made a representation that he was cheated into marrying the applicant after showing him another girl earlier. At the time of actual marriage he was tricked into marrying the applicant and later she refused to live with him and left the matrimonial home. He was thereupon directed to resolve the marital dispute amicably, and, while on leave, he met with a road accident and succumbed to the injuries on 3rd January 2013. Claim for maintenance from him preferred by the applicant earlier lapsed in view of his death. Since the name of the applicant has not been recorded in the service records of the deceased soldier as his wife and in view of the objections raised by the parents of the soldier and dispute over the status of the applicant subsisting and yet to be resolved and thus sub judice, these respondents are not in a position to include the name of the applicant in the service records of late soldier as his wife in the absence of a decree from a

competent civil court, according to the respondents.

5. Army Group Insurance Fund, respondent No.4 in the O.A., has raised some preliminary objections questioning the jurisdiction of the Tribunal to adjudicate the claims/disputes involving that Fund on the premise that the Tribunal constituted under the Act can deal only with service matters of armed service personnel and appeals arising from court martials and not over any matter dealing with the benefits provided by the Fund. Maintainability of the application is also impeached by the above respondent contending that it is a civil dispute. However, without prejudice to the above contentions, stating that late Shri Mahesh Kumar Pathak had nominated his father to receive the insurance benefit and was insured for a sum of Rs.20 lakhs, these respondents would state that since he was found to be married to the applicant his earlier nomination has become invalid and the applicant has become eligible to receive the full insurance and death benefit under the scheme. Non production of claim documents and also because of dispute between legal heirs of the deceased, death benefits are held up in full, and it will be released immediately on adjudication of the case, according to this

respondent.

6. Parents of the deceased, respondents 8 and 9, resisted the claim of the applicant filing a reply affidavit through the mother of the deceased soldier. While conceding that the deceased soldier was married to the applicant as per Hindu rites, these respondents would contend that the marriage was not valid since during marriage negotiations held two months before the youngest sister of the applicant was shown as the proposed bride and later their son was tricked into marrying the applicant. The applicant was married to their son against her will and, therefore, she declined to lead a conjugal life with him. She had a love affair prior to the fraudulent marriage and even after the marriage she continued to maintain relationship with her lover. When her husband advised her she threatened him and on one occasion attempted to commit suicide. She used to leave the matrimonial house without informing her husband and other family members. Her father and his associates had assaulted their son and he was also implicated in a criminal case with allegations of misbehaviour and cruelty to the applicant. Disputing the claim of the applicant for the terminal and death

benefits, these respondents would contend that as next of kin of the deceased soldier they are entitled to all service benefits of the soldier, including the benefits of Army Group Insurance Fund.

7. We heard the counsel on both sides.

8. Before advertng to the merit of the claim canvassed by the applicant and challenged by the party respondents 8 and 9, parents of the deceased soldier, over his service and terminal benefits, the objections raised by the Army Group Insurance Fund, 4th respondent, over the jurisdiction of the Tribunal to adjudicate and decide upon matters touching upon Army Group Insurance Fund Scheme are to be considered. Any claim or dispute relating to Insurance Fund under the Army Group Insurance Fund Scheme for the welfare of the Army personnel is outside the scope and ambit of the Tribunal constituted under the Act, is the case of the 4th respondent. Challenge raised on such premise, turned down by another Regional Bench of the Tribunal, is still pending before the High Court of Punjab and Haryana under a Writ Petition filed by this respondent is also canvassed banking upon a stay order, Annexure

R5, passed by the High Court to buttress the challenge over jurisdiction. Annexure R5 order would only indicate of stay of operation of the order passed by the Tribunal. Order passed by the Tribunal has been stayed does not in any way show that the Tribunal has no jurisdiction. Order passed by the Tribunal continues to be effective, but its implementation alone is stayed. The Apex Court in **State of U.P. v. Mohammed Nooh** (AIR 1958 SC 86) considering the pendency of an appeal against decree over its operation and effect has held thus:

“There is nothing in the Indian Law to warrant the suggestion that the decree or order of the Court or tribunal of the first instance becomes final only on the termination of all proceedings by way of appeal or revision. The filing of the appeal or revision may put the decree or order in jeopardy but until it is reversed or modified it remains effective.”

The stay granted in the appeal against the order of the Tribunal would interdict the implementation of its order, but the order continues to remain effective unless and until it is reversed.

9. A Regional Bench of the Tribunal considering the various facets of the issue has resolved that the Tribunal has jurisdiction to

decide disputes over the claims governed by the Army Group Insurance Fund Scheme, and we do not find any reason to hold otherwise. Definition of service matter under Section 3(o) of the Act envisages disputes of 'any other matter' as well affecting conditions of service of Armed Forces personnel. A separate body has been constituted to administer and apply the funds of an insurance scheme evolved for the welfare of the Army personnel does not postulate that any dispute relating to any claim under the scheme is outside the domain of the Tribunal. Such insurance scheme has been evolved solely for the Armed Forces personnel. Whether or not it is mandatory for such personnel to join such scheme benefits are conferred thereunder exclusively to the Armed service personnel and their kith and kin. When that is so, it has to be viewed as forming part of the 'service matter' of the armed service personnel amenable to the jurisdiction of the Tribunal. We also do not find any merit in the objection that the issue covered in the O.A. can be adjudicated and resolved only by a civil court. Parents of deceased soldier admit the marriage of their son with applicant, but, challenge her entitlement to claim service benefits. The 4th respondent has categorically admitted that the deceased soldier was married to

applicant. When such be the case, we are of the view that the Tribunal has jurisdiction to examine the disputes raised in the case and there is no need to direct the parties to approach the civil court for adjudication.

10. For the official respondents (respondents 1 to 3), the only objection raised in approving the claim of the applicant for the terminal benefits of deceased soldier is non-recording of her name as his wife in the service records and the opposition raised by the parents of the deceased soldier disputing her status as the widow of the soldier. Parents of the deceased soldier, respondents 8 and 9, while conceding the marriage of their son with the applicant resist her claim on the ground that the marriage was vitiated by fraud contending that the youngest sister of the applicant was shown as the bride when marriage talks were held and that their son was deceived to marry the applicant who was in love with another. They also impute various acts of cruelty by applicant and her relatives in ill-treating her husband accusing her of driving her husband to suffer severe mental problems and fall a prey to alcoholism. She had set up a claim for maintenance before the military authorities

imputing false allegations against her husband, but that claim remained not resolved and decided upon at the time of his death, and, her parents and relatives caused severe injury to late Pathak and to these respondents filing false criminal cases against them, according to them. Applicant is not entitled to claim any benefits of her late husband and the respondents who were dependent on him for their sustenance are legally entitled to all his terminal benefits, is their case.

11. First of all, it has to be noticed that the contesting respondents, parents of the deceased soldier, do not dispute the marriage of the applicant with their son. Their only challenge is that the marriage is vitiated by fraud as the consent of their son was obtained through impersonation, showing the youngest sister of the applicant when marriage talks were held. Even assuming that there was such impersonation where the marriage of the applicant with their son had taken place and further none has a case that it was not consummated, how far the challenge against the validity of marriage of the applicant with late Pathak and entitlement of the applicant to claim the status of wife, and later as

his widow, has to be examined in accordance with the personal law applicable to the parties and also the general principles of law of the land. Parties who are shown to be Hindus are governed by the Hindu Marriage Act (for short 'the H.M. Act'). Section 5 of the H.M. Act lays down the essential conditions to have a valid Hindu marriage. A valid marriage under the Hindu law after the commencement of the H.M. Act must fulfill three of the conditions specified in Section 5. The three conditions are that: (i) neither party has a spouse living at the time of marriage; (ii) parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two, and (iii) the parties are not *sapindas* of each other, unless the custom or usage governing each of them permits the marriage between the two. Where there is non-fulfillment of any of the aforesaid conditions in a marriage solemnized after the commencement of the Act it is treated as null and void from its inception and either party to such marriage can obtain a decree of nullity from the court. A marriage solemnized after commencement of the H.M. Act shall be voidable on grounds that the marriage has not consummated on incapacity of either spouse, want of mental capacity of the spouses, absence

of free consent of the parties or of a guardian in marriage in case of a bride who had not completed the age of 18 years at the time of marriage and *suppressio veri* by a woman, who was pregnant at the time of marriage. In a case where marriage is not void but voidable it remains valid and binding and continues to subsist for all purposes unless a decree is passed by the court annulling the same on any of the grounds covered by the H.A. Act. Section 12 of the H.M. Act spells out in what cases a marriage shall be voidable and be annulled by a decree of nullity. Respondents 8 and 9 impeach the status of the applicant as the wife and later widow of their son and, thus, her entitlement to claim his service benefits contending that there was fraud and deceit in the marriage in as much as the youngest sister of the applicant was previously shown as the bride. At best that imputation would only indicate that there was fraud as to any 'material fact' connected to the marriage and that there was no free consent of late Pathak to marry the applicant. Such a case essentially falls under Section 12(c) of the H.M. Act which is one among the grounds provided to annul a marriage which is voidable. Section 12(1)(c) of the H.M. Act reads thus:

“12.(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:--

- (a)
- b).
- (c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or to any material fact or circumstances concerning the respondent;”

Absence of free consent or consent obtained by fraud concealing any material fact concerning one of the parties to the marriage at the most would render the marriage voidable at the instance of the party whose consent was obtained by fraud or deception, but it would not render the marriage void *ipso jure*. Annulment of such voidable marriage can be exercised only by a party to the marriage whose consent has been obtained by fraud or deception and that too by presentation of a petition to the competent court not more than one year after the discovery of the fraud or deception practised. Where a party to the marriage whose consent was obtained by

fraud or deception has acquiesced in the marriage as husband and wife after having knowledge of the fraud or deception practised no challenge against such marriage as voidable would survive.

12. A challenge against marriage of the applicant with late Mahesh Kumar Pathak on the ground canvassed by respondents 8 and 9, parents of the deceased soldier, which at best would render the marriage voidable, could have been raised only by late Pathak and none other. His marriage with the applicant was on 24.02.2011 and no challenge was raised by him till his death on 03.01.2013 before any competent court questioning his marriage with her on any ground whatsoever. Even assuming that the youngest sister of the applicant was shown as the proposed bride when marriage talks were held, on solemnization of the marriage with the applicant her husband and his parents would have realised the fraud or deception practised from the date date of the marriage itself. Marriage of the applicant solemnized with late Pathak in accordance with the rites and ceremonies had consummated and they lived as husband and wife though they fell apart later for whatever reasons that be. When no petition was presented before any court of law by late Pathak

within one year from the date of his marriage ground of attack raised by his parents now to resist the claim of applicant to have his terminal benefits is devoid of value. Further late Pathak had acquiesced in the marriage with the applicant living with her as husband and wife. Objections raised by respondents 8 and 9 to challenge the status of the applicant as the wife of late Pathak and later as his widow, to deny her his terminal benefits, has no merit. Needless to point out that the ground canvassed by them to impeach the marriage of the applicant with late Pathak is available only to their son and not to any other.

13. Late Pathak, the soldier, passed away on 03.01.2013 and his marital tie with the applicant continued unsevered till his death. Whatever be the disputes and bickerings between them and cases filed against each other, status of the applicant as his wife and later as his widow after his death, where their marriage has not been annulled or revoked by a court of law is unassailable. She became the wife of late Pathak in a marriage solemnized in accordance with the personal law of the parties and it was consummated. She continued to be his wife at the time of his death. When that be so,

non publication of a Part II order showing her as his wife has little or no consequence. She is entitled to pensionary benefits of late Pathak as his widow, and objections raised by respondents 8 and 9, parents of deceased soldier to resist her entitlement thereto have no merit.

14. Recognising the status of the applicant as the wife of late Pathak (deceased soldier) 4th respondent has contended that previous nomination of the soldier in favour of his father has become invalid and the applicant would be entitled to all the benefits under the insurance scheme. His earlier nomination has become invalid on marriage is correct as per rules of the Scheme but that would not lead to conferring on the wife all insurance benefits under the Scheme. We have not been shown any rule or authority to buttress the case of the 4th respondent that the wife of the deceased soldier would be entitled to the insurance benefits exclusively, excluding the mother, a Class I heir with the wife and child, if any, under the Hindu Succession Act applicable to the parties. Even in a case where valid nomination is in force we need only point out rule 39 of the Army Order No.23/2002/AGI (Annexure R3)

which reads thus:

“39. On receipt of Insurance Claim and relevant documents from the beneficiary the insurance benefits accrued to an individual at the time of his death while in service, shall be paid to the person or persons on whom the right to receive the benefits is conferred by means of a valid nomination. However, the payment will be made subject to clear understanding that she/he will be liable to share and/or part with proportionate share of any other heir to the said property of the deceased according to law of succession applicable in their behalf. In disputed cases between legal heirs the payment will be made in accordance with the law of succession after obtaining approval of the Claims Committee of AGIF.”

To whomsoever be the nomination made, the above rule emphatically states that the nominee is bound to provide the benefits in proportion to other heirs of the deceased according to the law of succession applicable. The rule also states that in the event of disputes between the legal heirs, payment has to be made in accordance with law of succession after obtaining approval of the Claims Committee of the AGIF. The Apex Court has held that the nomination made by the deceased would enable the nominee to receive and collect the benefits but it has to be disbursed in

accordance with the shares available to the beneficiaries entitled to such benefits. (See **Smt.Sarbatui Devi and another v. Smt. Usha Devi (AIR 1984 SC 346)**, **Vishin N. Khanchandani & anr. v. Vidya Lachmandas Khanchandani & anr. (2000) 6 SCC 724** and **Shipra Sengupta v. Mridul Sengupta & ors. (2009) 10 SCC 680**). Where the mother of deceased soldier (respondent No.8) is a Class I heir with the applicant under the Hindu Succession Act, her entitlement to have a share in the insurance benefits whether or not any nomination is in force, cannot be doubted. Division of the insurance benefits under the Army Group Insurance Fund of the deceased soldier equally to the applicant and his mother (respondent No.8) has to be made.

15. We do not wish to express any opinion over the entitlement of the applicant as the widow of the deceased soldier to have compassionate appointment, especially where she has not put forth a claim for such employment before the appropriate authority. In case any such claim is moved, it has to be considered and decided in accordance with rules by the military authorities.

16. In the result, the O.A. is allowed directing the respondents 1 to 3 and 5 to 7 to release gratuity, provident fund etc. of late Signalman Mahesh Kumar Pathak (No.15713033 H) equally to the applicant, his wife, and 8th respondent, his mother, and to provide the applicant (wife) eligible family pension from the next date after the death of her husband. Respondent No.4 is directed to disburse the insurance benefits of late Mahesh Kumar Pathak equally to the applicant and the 8th respondent (mother). Respondents 1 to 3 and 5 to 7 are also directed to consider the claim of the applicant for compassionate employment, if canvassed for, in accordance with the rules applicable.

17. Parties are directed to suffer their costs.

LT GEN GAUTAM MOORTHY,
MEMBER (ADMINISTRATIVE)

JUSTICE S.S.SATHEESACHANDRAN,
MEMBER (JUDICIAL)

hrs.