FORM NO – 4

(SEE RULE 11 (1)

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORDER SHEET

APPLICATION No : T A 25/2011

APPLICANT (S)	Kali Charan Dehury
RESPONDENT (S)	Union of India & Anr
Legal Practitioner of applicant	Legal Practitioner for Respondent (s)
Mr. S.C.Hazra	Mr. D.K.Mukherjee

NOTES OF THE REGISTRY	**ORDERS OF THE TRIBUNAL** Order Sl. No. : 15 Dated : 07.11. 2012
	The Transferred Application is taken up today for hearing. We have heard Mr. S.C.Hazra, ld. adv. for the applicant and Mr. D.K.Mukherjee, ld. adv. for the respondents at length. This writ petition was originally filed before the Hon'ble High Court at Orissa as WP (C) 8092 of 2010 by the applicant, who is a retired army pensioner, seeking a direction on the respondents to include the name of his wife Smt. Basanti Dehury in the service records for family pension in the event of his demise. After the establishment of the Armed Forces Tribunal, the matter has been transferred to this Bench for disposal and accordingly it has been re-numbered as TA 25 of 2011. The case of the applicant, in brief, is that he was enrolled in the Indian Army on 5.10.61 as a soldier and was discharged on 31.10.83 on completion of terms and conditions of service. He had married a lady named Chhaya Devi on 15.3.60 i.e. before he was enrolled. A casualty to this effect was also admitted by the respondents and had been recorded in part II order of ASC. It is submitted by the applicant in the writ petition that subsequent to his retirement from Army service, he married one Smt.

	Basanti Devi and such second marriage was contracted due to pressure from his first wife to marry for the second time. In the writ petition at para 3, the applicant has also submitted that his first wife, i.e. Smt. Chhaya had no issue and therefore, the applicant had contacted a second marriage with one Smt. Basanti Devi, who was a cousin of the applicant i.e. maternal uncle's daughter. According to the applicant, this second marriage had to be consumed by him on the insistence of his first wife as she had threatened to become a Sanyasini, if he had not married Basanti. Be that as it may, the marriage had been solemnized on 10.2.84. Subsequently, the first wife, Smt. Chhaya died on 10.2.92. Thus, well after his retirement a casualty to this effect and occurrence of death had also been published by the ASC records. The applicant in his application has further submitted that his wife Basanti had also filed a Civil Suit bearing No. CS No. 84 of 2007 before the court of Ld. Civil Judge (Sr. Div.), Angul, Orissa wherein the suit was decreed in terms of compromise on 9.4.07 and the compromise petition formed a part of the decree. It was declared therein that the marriage between the plaintiff, Smt. Basanti Devi and the defendant/applicant herein is valid and the defendant/applicant herein is the husband of Basanti, the plaintiff. Such compromise decree dated 9.04.07 is annexed annexure A2. In addition to the above, the applicant has also submitted a marriage certificate issued by the Marriage Officer, Angul under the Special Marriage Act, 1954 in which it is certified that the applicant and Smt. Basanti Dehury were married and they have been living together as husband and wife. This certificate is dated 17.9.07 and is annexed at annexure-A3. In consideration of the above facts, the applicant made a representation before the authorities to publish the event of his marriage with Smt. Basanti Devi and for this purpose he also

submitted nomination form so that on demise of the applicant, his legally married wife could receive family pension and other admissible dues. However, the respondents rejected his prayer and returned the documents unactioned by stating as following vide letter dt. 3.2.2006 (Annexure-A to the reply) :-

> " Refer to Zila Sainik Board Dhenkanal letter No. 102/ZSBD/SP/Vol-I/2006 dated 05 Jan 2006.
>
> On scrutiny of complete documents for publication on part II order regarding 2nd marriage it is observed that you got married with Smt. Basanti Dehury on 10 Feb 1984 when your 1st wife Smt. Chhaya Dehuiry was alive which is not accepted being plural marriage. Hence Encl. received are returned herewith unactioned."

Being aggrieved by such inaction of the respondents, the applicant had approached the Hon'ble Orissa High court by filing the instant writ petition, which has since been transferred to this Tribunal, as already sated above.

The application has been contested by the respondents by filing a counter affidavit in which they have disputed the averments made in the writ petition. Para 10 of the counter affidavit is relevant. It is stated therein that the applicant was married to Smt. Chhaya Devi on 15.3.60 according to the Hindu Rites and a son named Kumud Dehury was also born to them out of the said wedlock on 29.3.1981. However, the applicant had re-married to Smt. Basanti Dehury on 10.2.84 during the lifetime of his first wife. Though a son named Kumud Dehury was born to them out of their wedlock, he has stated that since he had no issue with his first wife, he married to Smt. Basanti Dehury. Thus, the statement of the petitioner is false and baseless as he himself had made declaration stating that a son was born to him and Smt. Chhaya Devi i.e. first wife and this fact was also recorded in the service record. Moreover, only after the death of his first wife on 10.2.92, the applicant had approached the

competent authority for change of his nomination for receiving family pension in the event of his death to her second wife. However, since the petitioner had married to Smt. Basanti Dehury on 10.2.84 during the life time of the first wife, his marriage with second wife was null and void in terms of Sec. 5 of Hindu marriage Act. It is also stated in the counter affidavit, that the applicant had three sons from the second marriage. It is further disclosed that after his retirement, the applicant had been granted pension and other admissible benefits. Therefore, question of inclusion of the name of Smt. Basanti as his wife does not arise at this stage.

Mr. D.K.Mukherjee, ld. adv. for the respondents has argued with much vehemence that the applicant has not come before this court with clean hands. He has given false statement stating that he had no issue from his first wife i.e. Smt. Chhaya Devi although it is clearly borne out from record that he had a son named Kumud Dehury from his first wife. Only on this ground the application is liable to be dismissed based on well known principle of law that a person claiming equity should come with clean hands. Mr. Mukherjee has also submitted that since the second marriage was contracted with Smt. Basanti Devi during the lifetime of the first wife, such second marriage was void ab-initio in terms Sec. 5 of the Hindu Marriage Act. So far as the compromise decree issued by the Ld. civil Judge is concerned, Mr. Mukherjee submitted that it was a decree in personem and not in rem and therefore, it is not binding on the respondents. His other contention is that the second marriage was registered under the Special Marriage Act in 2007 but it was given effect to from the date of marriage, which is inadmissible under the law. He has also contended that Indian Army cannot take responsibility of the family of a person who has married illegally. Mr. Hazra, Ld. adv. for the applicant, during oral submission has

conceded that the applicant had a son from his first marriage. However, he contended that the case of the applicant is not governed by Hindu Marriage Act but by Army rules and regulations since he is a army pensioner. He urged that the marriage between him and Basanti is valid and Smt. Basanti Devi is the legally married wife of the applicant and, therefore, her name should be included in the Army Records.

We have given our thoughtful consideration to the rival contentions and have carefully gone through the documents placed on record.

During the oral argument, Mr. Mukherjee, ld. adv. for the respondents, besides highlighting all the factual aspects that have been mentioned in the counter affidavit, has also brought to our notice the following points of law :-

1) The decree that has been relied upon heavily by the applicant is actually a decree in personem and not a decree in rem. Therefore, Mr. Mukherjee submitted it would not be binding upon any other party except between the parties i.e. the applicant and his second wife.

2) According to Mr. Mukherjee, since the second marriage was contracted by the applicant with Smt. Basanti Devi during the life time of his first wife, Smt. Chhaya, such marriage was void in terms of Sec. 5 of the Hindu Marriage Act and, therefore, cannot be considered as a valid legal marriage and as such, Smt. Basanti Devi cannot be treated as legally wedded wife of the applicant.

3) While contesting the veracity of the marriage certificate, which was inspected by us as well, Mr. Mukherjee drew our attention to the fact that the

	marriage certificate was issued on 17.9.2007 but effect was given from 10.2.84, which, according to him, was highly irregular. 4) Mr. Mukherjee has vehemently argued on the point that factual position has been distorted by the applicant in his application. To cite such a contradiction, Mr. Mukherjee has submitted that the first child was born out of wedlock with the first wife Chhaya (the recorded wife as per Army Record), but the same was not even disclosed in the writ petition. Therefore, the applicant, according to Mr. Mukherjee, went ahead to obtain a civil decree and relied on some manufactured documents to claim that his first wife Chhaya was issueless and forced the applicant to marry Smt. Basanti Devi otherwise she would become a Sanyasin. However, such mutual decree was in personem and not in rem and therefore, cannot be held binding on the respondents. 5) Mr. Mukherjee has also argued to the extent that the Army does not have enough fund to look after or to cater for those who are not legally married wife. Notwithstanding the fact that the applicant has committed many grave errors and also did not disclose important aspects of certain facts in his application, the fact of the matter still remains, as is evident from the records, that – a) The applicant during service period did not contract any plural marriage. He married after his retirement. b) A child was born i.e. Kumud out of the first marriage on 29.3.81 i.e. three years prior to contracting second marriage.

	c) Subsequent to the second marriage that was contracted on 10.2.84, the marriage was registered only in September 2007. d) The Ld. Civil Judge, (Sr. Division), Angul passed a compromise decree although it is a decree in personem, as claimed by the respondents, in which it is clearly declared that the applicant, Shri Kali Charan and Smt. Basanti Devi are husband and wife which was followed by the marriage certificate issued by the Marriage Officer under the Special Marriage Act, 1954 and it was given retrospective effect from the date of marriage i.e. 10.2.84. The above-noted facts cannot be ignored, especially the fact that the lady named Basanti is the wife of the applicant Kalicharan, who is a Defence pensioner. While we agree with the contention of the ld. adv. for the respondents that second marriage during the life time of first wife is not a valid marriage, but we cannot also ignore the fact that the first wife Chhaya had passed away on10.2.92 and as of now, only Smt. Basanti is the only surviving wife of the applicant. Having considered the above factual aspects, which are staring at us, we look at the matter in another angle. Due to certain defects or fault committed by the applicant, the wife of the applicant should not be allowed to suffer by denying her legitimate claim that would accrue to her in the event of death of her husband i.e. the applicant. We can foresee a situation in which, if the matter is not set right at this stage, we will find a destitute wife knocking at the door of justice with no resources for survival for herself and her children procreated by the petitioner, although a court of law has declared her to be the legally married wife of the pensioner/petitioner and the said decree has not been challenged or set aside by any other higher judicial forum. Since

	the marriage between Basanti Devi, the plaintiff and the applicant, the defendant has been declared valid by a competent civil court, the legitimacy of her claim to family pension as a wife of the defence pensioner cannot and should not be resisted by Army Authorities. In fact, the decree of a civil court has a binding effect upon the husband pensioner and he is duty bound to nominate his wife Basanti as a family pensioner. In such a situation, it should be only appropriate in the interest of proper carriage of justice in its holistic manner to consider the applicant's prayer for inclusion of the name of Basanti, the present wife of the petitioner, in the service record in its proper perspective.. At this stage we would like to emphasis that mere interpretation of rules and regulation, which would render a lady to helpless situation in the event of death of her husband, would mean injustice and this humanitarian aspect must be taken into serious consideration while pronouncing our order. We, however, caution the applicant to be very careful in future while approaching a court of law to bring out any facts that are false or are misplaced and not to suppress any material facts while seeking justice from a court of law. It is with due compassion to the wife of the applicant that we have entertained this petition and are inclined to grant relief. In view of what is discussed above, the writ petition is allowed by issuing the following directions :- 1) The respondent No. 1 shall take immediate steps to include the name of Smt. Basanti Deori as the legally married wife of the applicant in the service records and has three children out of the wedlock with the pensioner/petitioner. 2) Nomination for family pension in that regard be

accepted and dues as are admissible under the rules in the event of death of the pensioner should accrue to the wife i.e. Smt. Basanti Devi.

3) The petitioner be intimated about such recording as soon as it is made.

4) The above directions be implemented within three months from the date of communication of this order.

5) There shall be no order as to costs.

6)

Let plain copy of the order be handed over to both the parties.

(LT. GEN K.P.D.SAMANTA)
MEMBER(A)

(JUSTICE RAGHUNATH RAY)
MEMBER(J)