

FORM NO – 21
(See Rule 102 (1))

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO : TA 90 OF 2011 (CWJC 11989/2008)

THIS 19th DAY OF JUNE, 2013

CORAM : **Hon'ble Mr. Justice Raghunath Ray, Member (Judicial)**
 Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)

Pramila Devi, W/o late Motichand Ram,
Resident of Vill & PO: Babura, Dist. Bhojpur,
Present address: Messenger Accounts Office,
CTPS, Damodar Valley Corporation,
P.O. Chandrapur, Bokaro, Jharkhand

..... Petitioner

-VS -

1. Union of India through the Secretary,
Ministry of Defence, New Delhi-110 011
2. The Defence Secretary, Government of India,
New Delhi
3. Chief of Army Staff, Govt. of India,
New Delhi-110 011
4. The Records, Bombay Engineer Group,
Kirkee, Pune-3
5. Civil Defence Account, Allahabad
6. Zila Sainik Kalyan Padadhikari,
Zila Sainik Kalayan Karyalaya, Bhojpur, Arrah.

..... Respondents

For the petitioner : Mr. Subhash Chandra Basu, Advocate

For the respondents : Mr. B.K.Das, Advocate

O R D E R

Per Lt. Gen. K.P.D, Samanta, MEMBER (Administrative)

This matter was originally filed before the Hon'ble Patna High court as a writ petition (No. CWJC 11989 of 2008), which later was transferred to this Tribunal by operation of Sec. 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as TA 90 of 2011.

2. The factual matrix of the matter in brief is that the applicant, Smt. Pramila Devi, is the second wife of a retired army personnel (late Sepoy Motichand Ram) of Bombay Engineers Group in the corps of engineers. Said Sepoy Motichand Ram was enrolled in the Army on 24.2.1961 and was discharged on 29.2.1976 on fulfilling his terms and conditions of enrolment in accordance with Army rule 13(3)(III(i)). He was in receipt of his normal service pension as per PPO No. S/6483/1976 dt. 5.4.76. Subsequent to his retirement from army, he was employed in the Damodar Valley Corporation (DVC) as a Security Guard. Unfortunately, he died in an accident on 20.4.1983 while on re-employment in DVC.

3. Subsequent to his death, the army authorities sanctioned family pension to his wife, Smt. Sheojhari Devi, who as per records available with the Records office is the only legally married wife, though submitted in the ibid petition as the first wife of the applicant's late husband Sepoy Motichand Ram. Smt. Sheojhari Devi had no issue from her wedlock with the applicant's husband, late sepoy Motichand Ram.

4. After retirement of the said Sepoy, he, as submitted by the applicant, married her (Smt. Pramila Devi) on 28.4.1977 after obtaining consent of the first wife Smt. Sheojhari Devi, since she could not bear any child. Therefore, late Sepoy Motichand Ram married the applicant for the second time in the life time of his first wife and such marriage was solemnized after the soldier had retired from service. The army authorities were not informed by the pensioner (Sep Motichand Ram) about this occurrence. The applicant bore two children out of her wedlock with the said late Sepoy- viz. one son Prabhakar Kumar @ Saroj Kumar) and one daughter (Sandhya Kumari), as is evident from annexure-A2 wherein a genealogical chart has been attached by the applicant.

5. The first wife of the deceased Sepoy, who was in receipt of family pension, died on 30.5.1998. Thereafter, the present applicant, as the second wife of the deceased soldier, submitted a petition on 2.7.01 (Annexure-A4) and subsequently entered into correspondence with the army authorities with a prayer for grant of family pension as is evident from Annexures-5, 6 and 7.

6. It is submitted by the applicant that subsequent to death of her husband, the DVC authorities allowed family pension and other such death benefits in her favour i.e. (Pramila Devi) on the basis of mutual consent between the two wives. The necessary compromise petition filed in the Court of Ld. Addl. Munsif, Bermo in TS No. 45 of 90, which is dated 23.3.1992, is at annexure-A15 of the affidavit-in-reply.

7. The case of the applicant is that since the first wife is no more, she (the applicant), though the second wife of the deceased Sepoy, is entitled to family pension which must be granted to her without any further delay. Moreover, it is submitted that she has two children born out of her wedlock with the deceased Sepoy, who were born on 7.5.79 (boy child) and on 13.6.81 (girl child) respectively.

8. Mr. Basu, Id. adv. for the applicant while arguing the case submitted that family pension should be treated as one unit and be ideally divided amongst the applicant, who is the surviving widow of the deceased army person and the two children in an equitable manner with effect from 30.5.1998 when the first wife expired.

9. The respondents have contested the case by drawing our attention to para 6 of Army Instructions of 1980 issued in respect of regulation 86 of Pension Regulations for the Army, Part-1 (1961), which is relevant in the instant case. It is provided therein as under:-

“6. Family for the purpose of Family Pension means:

- (a) Wife in the case of male Government servant, or husband in the case of a female Government servant;
- (b) A judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.;
- (c) Son/Daughter up to the date of his/her marriage or till the date he/she starts earning, or till the age of 25 years, whichever is earliest;

- (d) Unmarried/widowed/divorced daughter, up to the date of marriage/remarriage or till the date she starts earning whichever is earliest;
- (e) Parents who were wholly dependent upon officer when he/she was alive, provided the deceased officer has left behind neither a widow nor a child, and;
- (f) Dependent disabled siblings (i.e. brothers/sisters).

Note.- Eligible son/daughter includes a posthumous child as well as step child.

Note 2: Children adopted legally after retirement. **Children born out of a void or voidable marriage.** Children born from divorced wife when conception took place before divorce.

7. The pension will be admissible:

- a) To a widow or widower up to the date of death or remarriage whichever is earlier;
- b) Son/Daughter (including widowed daughter) up to the date of his/her marriage/remarriage or till the date he/she starts earning or till the age of 25 years, whichever is earlier.

Provided that if a son or daughter is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of 25 years, the ordinary family pension shall be payable to such son or daughter for life.

- (c) Unmarried/widowed/divorced daughter, not covered by (b) above, up to the date of marriage/remarriage or till the date she starts earning or up to the date of death, whichever is earlier.
- (d) Parents up to the date of death or till the period of income does not exceed Rs. 3500/- p.m. whichever occurs earlier.
- (e) Disabled siblings for life if unable to earn a living even after attaining to age of 25 years. “

Further, in terms of GOI, MoD No. 17(4)/2008(2)/D (Pen-Policy) dated 12.11.2008, it is provided as under:-

- 1. For the purpose of grant of family pension, ‘Family’ shall be categorized as under :-

Category -1

- (a) Widow or widower up to the date of death or re-marriage, whichever is earlier;
- (b) Son/daughter (including widowed daughter) up to the date of his/her marriage/remarriage or till the date he/she starts earning or till the age of 25 years, whichever is earlier.

Category-II

- (c) Unmarried/Widowed/Divorced daughter, not covered by Category-I above, up to the date of marriage/remarriage, or till the date she starts earning or up to the date of death, whichever is earlier.
- (d) Parents who were wholly dependent on the Armed Forces personnel when he/she was alive provided the deceased personnel had left behind neither a widow nor a child.
Family pension to dependent parents unmarried/divorced/widowed daughter will continue till date of death.

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..... Grant of family pension to children in respective categories shall be payable in order of their date of birth and younger of them will not eligible for family pension unless the next above him/her has become ineligible for grant of family pension in that category.”

10. The respondents have also drawn our attention to para 333 of Regulation for Army, 1982 (annexure-R5 at page 23) wherein the conditions under which a person can enter into second marriage has been clearly indicated. On this count, the respondents submit that the second marriage of the deceased Sepoy during the life time of the first wife was illegal. Therefore, the second marriage is to be treated as void. As per the records available with the authorities, as has been annexed at annexure-R1 of the affidavit-in-opposition, it is very clear that the deceased Sepoy Motichand Ram was married only to one lady, viz. Smt. Sheojhari Devi [@ Sujara Devi] at the time of his enrolment. The occurrence of

the second marriage, even it was contracted after the deceased Sepoy went on pension, should have been intimated by him to his unit/Record office so that necessary amendment could have been carried out in his service record, provided such marriage was legal and requisite documents would have been furnished by the said deceased Sepoy Motichand Ram in due manner. None of these was done, and therefore, as per army record, Smt. Sheojhari Devi remained the only wife of the deceased Sepoy. Accordingly family pension was awarded to Smt Sheojhari Devi after the demise of her husband Sep Motichand Ram.

11. Mr.B.K.Das, Id. adv. for the respondents during his oral submissions, submitted that the applicant's husband i.e. late Sepoy Motichand Ram was, perhaps, aware of the rule position, and therefore, did not take any step to declare to the army authorities regarding his second marriage and birth of two children through the second wife (applicant).

12. The respondents have also drawn our attention to regulation 216 of Pension Regulations (annexure-R4), which, though relates to Special Family Pension, would be equally applicable in the case of ordinary family pension for the purpose of determining this aspect of eligibility. As per ibid regulation it is provided that "widow/widower lawfully married" is only eligible for pension. The said regulation is quoted below:-

" 216 .The following members of the family of a deceased individual shall be viewed as eligible for grant of a special family pension, provided that they are otherwise qualified:

- a) Widow/widower lawfully married. It includes a widow who was married after individual's release/retirement/discharge/invalidment.

- b) Son actual and legitimate/including validly adopted.
- c) Daughter, actual and legitimate/including validly adopted.
- d) Father
- e) Mother
- f) Brother
- g) Sister. ”

13. As regards the documents available and as have been annexed by the applicant, Mr. Das is of the view that none of them prove that the applicant was ever lawfully married to the deceased Sepoy. Therefore, she would always remain ineligible for any kind of family pension. Thus, according Mr. Das, the prayer made by the applicant has no substance and should be rejected.

14. In reply to the oral submissions made by Mr. Das, Mr. Basu, Id. adv. for the applicant submits that he does not accept the contention of Mr. Das that the applicant is not lawful widow of late Sepoy. In fact, Mr. Basu has submitted that as per amendment of 1976 to Hindu Marriage Act, the circumstances under which second marriage is permissible have been indicated; according to which, marriage of the applicant with late Sepoy during life time of the first wife, who did not have any issue, was valid as it was carried out after obtaining the consent of the first wife. However, Mr. Basu could not submit any decree from a civil court to support such claim. Mere notarized affidavit to this effect affirmed in 1996 i.e. long after the death of the husband i.e. the deceased Sepoy, is not considered adequate to substantiate that the marriage of the applicant was indeed valid and judicially acceptable.

15. Mr. Basu has also submitted that he could go a step further to submit that late Sepoy Motichand Ram was actually married before he joined service and at such point of time, he was below 20 years of age, and, therefore, as per Mr. Basu, his marriage with Smt. Sheojhari Devi should also be treated as void because both partners were under-aged as per Hindu Marriage Act.

16. Be that as it may, we find no substance in this argument of Mr. Basu since both the husband and wife are no more; and their marriage was duly notified in the official documents of the Army authorities and during all these period no such objection was raised against such marriage. Therefore, at this stage, to bring forth the point that such marriage, which was contracted prior to the date when the applicant's husband deceased Sepoy was enrolled in the year 1981 was null and void is absurd and need not be pursued any further.

17. Mr. Basu has put forth an argument that the children born out of second marriage were fathered by the late Sepoy i.e. husband of the applicant Smt. Pramila Devi and according to law and eligibility rule as provided in Pension Regulations, such children are eligible for family pension as category 1 claimant after the death of the first widow even if the applicant is not considered to be eligible for such family pension.

18. Considering the dates of birth of the two children as given by the applicant as 7.5.79 (boy) and 13.6.81 (girl), it is evident that they would be eligible for carried forward family pension from the date of death of the first wife/widow i.e. from 30.5.98 when both these children were below 25 years of age. As per rules, the elder of the two children would be eligible for family pension from the date

when the widow of the soldier died. Once the elder child grows up and becomes ineligible, such family pension would get passed on to the second living child subject to meeting eligibility criteria as per pension rules.

19. Mr. Das had no objection to such prayer, though submitted orally by the Id. Counsel for the applicant; and in a very fair manner he submitted that in case the eligible heirs i.e. children of the late Sepoy apply to the authorities with relevant papers, their case would be considered expeditiously and family pension would be granted to them if found eligible as per rules. He further reiterated that the applicant, who is the second wife of the deceased Sepoy, is not eligible since her status as the wife of the late Sepoy is unacceptable as per law.

20. We have carefully considered the rival contentions and have perused various documents placed on record.

21. The admitted position in this case is that Shri Motichand Ram, the deceased Sepoy, during his life time never intimated to the army authorities about his second marriage with the present applicant, Smt. Pramila Devi, which was contracted during the life time of his recorded first wife Smt. Sheojhari Devi. The respondents, therefore, after the death of the Sepoy Motichand Ram on 20th April, 1983, had sanctioned family pension to Smt. Sheojhari Devi @ Smt. Sujara Devi as per rules. However, she died on 30th May, 1998 and her death certificate has been produced by the applicant.

22. After her death, the applicant preferred a claim for grant of such family pension in her favour being the surviving widow of the deceased Sepoy. However, the respondents rejected her claim as her name was not documented

in the army records. Under such a situation, we do not find any infirmity in the rejection order.

23. Although the Id. advocate for the applicant contended that as per amended Hindu Marriage Act, second marriage during the life time of the first wife is permissible under certain circumstances, viz. when there is no issue from the first marriage, we are inclined to accept the view of the respondents that even in that event, unless there is a decree from civil court in respect of validity of such second marriage, the second wife, i.e. the applicant, cannot be treated as a legally wedded wife of the deceased Sepoy. Therefore, the claim of the applicant cannot be accepted unless she produces a decree from civil court to that effect. Mere affidavit by the first wife sworn long after the death of her husband is of no avail. The compromise petition between the two surviving widows, which has been produced by the applicant, enabled the applicant to receive certain death benefits admissible from the DVC that was the deceased soldier's employer after he retired from the Army. That cannot be taken as a precedence by the applicant to claim pension from the Army which is governed by different statutory provisions as given in the Pension Regulations for the Army 1961, as amended.

24. In view of the above, we hold that the applicant is not entitled to family pension, as claimed, unless and until she obtains a decree from the civil court that her marriage with late Sepoy Motichand Ram was valid and she is the legally married wife/widow of said late Sepoy Motichand Ram.

25. The only prayer made by the applicant in this application is for grant of family pension in her favour. Since we have held that she is not entitled to such

family pension at this stage, the application, as it is, can be dismissed being devoid of any merit.

26. At this stage, however, Id. advocate for the applicant has made an oral prayer that the children of the applicant who are fathered by the late Sepoy Motichand should be paid family pension in case the applicant is not entitled to the same. This prayer has not been seriously contested by the Id. adv. for the respondents. Accordingly, we are inclined to accept such oral prayer as part of the relief claimed in this petition to meet the ends of justice and consider the same on its merit.

27. As already stated, it has been brought on record that from the second marriage, the deceased Sepoy with the present applicant, has had two children born and it appears that both of them were below 25 years on 20th May 1998 when the first wife/widow, who was in receipt of family pension, died. However, it appears from page 45 of the Affidavit-in-reply, which is a certificate issued by Zila Sainik Board Bhojpur dt. 19.6.96, that the elder child named Prabhakar Kumar (date of birth-5.12.77) is the son of late Moti Chand. However, from page 35 of the said A/R, which is a copy of letter issued by DVC forwarding PPO of late Motichand wherein the date of birth of Saroj Kumar (son) is mentioned as 7.5.79. Apparently, there are two dates of birth. Of course, the date of birth i.e. 5.12.77 may not be correct as the second marriage took place on 28.4.77, as stated by the applicant. Such aspects of facts would have to be verified and authenticated by the competent authority before considering any prayer for pension for the children of the deceased soldier.

28. It has been held by the Hon'ble Supreme Court in the case of **Rameshwari Devi –vs- State of Bihar**, 2000(2) SCC 431 that even if the second marriage is void but the children born out of second marriage, according to the Hindu Marriage Act, 1956, are legitimate, and, therefore, such children are entitled to family pension but not the second widow.

29. Para 6 of Army Instruction No. 51 of 1980 giving definition of family in respect of ordinary family pension is quoted above. From note 2 thereof, it is quite evident that children born out of a void or voidable marriage are also included as members of family entitled to get family pension as category 1 claimants. Therefore, they cannot be denied family pension as admissible under the rules after the death of the first wife when she was having no issue.

30. In view of the foregoing, while we reject the claim of the applicant for family pension, but so far as the claim of her children is concerned, we give them liberty to apply to the appropriate authority within one month from the date of this order, with necessary documents about their status as children of late Sepoy Motichand Ram. On receipt of such claim, the respondent authorities, within three months thereafter, shall consider and settle the claim in accordance with rules after necessary amendments in their records. Needless to mention that such family pension will be admissible to the elder child i.e. the son (Prabhakar Kumar @ Saroj Kumar) at the first instance from the date of death of the first wife till he attained 25 years of age, and thereafter such family pension will devolve to the second child i.e. daughter, (Sandhya Kumari), who will be entitled to receive family pension till her marriage as per rules.

31. With the above the observations/directions, the transferred application stands disposed of. No costs.

32. Let a plain copy of this order duly attested by the Tribunal Officer be furnished to both parties on observance of due procedure.

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

(JUSTICE RAGHUNATH RAY)
JUDICIAL MEMBER