

**A.F.R.**  
**Court No. 1 (List B)**  
**Reserved**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Original Application No. 177 of 2015**

**Friday this the 10<sup>th</sup> day of March, 2017**

**Hon'ble Mr. Justice D.P. Singh, Member (J)**  
**Hon'ble Lt Gen Gyan Bhushan, Member (A)**

Smt. Gopuli Devi W/o Late Shri Bachiram, Village : Chaura, Post :  
Jakheri, Tehsil : Gangolighat, Distt : Pithoragarh, State Uttrakhand,  
PIN 262534.

..... **Applicant**

By Legal Practitioner : Shri VK Lakheda, Learned  
Counsel for the applicant.

Vs.

1. Union of India through The Secretary, Ministry of  
Defence, South Block, New Delhi-110011.
2. The Senior Record Officer and O.I.C. EME Records  
Secundrabad-500021.

..... **Respondents**

By Legal Practitioner : Dr Shailendra Sharma Atal,  
Ld.Counsel for the respondents.

**ORDER**

**Per Hon'ble Lt Gen Gyan Bhushan, Member (A)**

1. The instant Original Application has been filed on behalf of the alleged second wife of Late Nk Bachiram under Section 14 of the Armed Forces Tribunal Act, 2007 whereby she has claimed following reliefs :-

*“(a) The Hon'ble Tribunal be pleased to quash and set aside the impugned letter 27.05.2013 (under challenged) issued by the Respondent No. 2 respectively. and grant me family pension with effect from 16.06.2004.*

*(b) Direct the Respondents to sanction and pay family pension to the applicant forthwith as applicant is senior citizen with ailing health.*

*(c) Pending the hearing and final disposal of the original application the Impugned letter more particularly described in prayer clause (a) (b).*

*(d) Ad interim in terms of the prayer clause (a) above.*

*(e) The Cost of this Application be provided alongwith legal and other incidental expenses for in-favouring of the Applicant.*

*(f) Interest on the held up pension @ 18% be ordered to the Applicant or deemed fit and proper by the Hon'ble Tribunal.*

*(g) Applicant be granted all consequential benefits.”*

2. The factual matrix of the case is that No.7045989 Late Nk Bachiram was enrolled in the Army on 15.05.1961 and was discharged from service with effect from 09.07.1979 under Rule 13(3) Item III (iv) of the Army Rules and died on 16.06.2002. During life time, he married the applicant Smt. Gopuli Devi on 23.12.1963. However, Late Nk Bachiram had earlier married Smt. Koshali Devi, who died on 19.01.1996. The applicant, who is allegedly the second wife, of Late NK Bachiram approached the respondents for grant of family pension,

but the same was denied to her. Aggrieved, the applicant filed the present Original Application.

3. Heard Shri V.K.Lakheda, Learned Counsel for the applicant, Dr Shailendra Sharma Atal, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the applicant submitted that Late Nk Bachiram had earlier married one Late Smt. Koshali Devi and her name was recorded as nominee in the service record of Late Nk Bachiram. The said marriage could not be consummated by Late Nk Bachiram as Smt. Koshali Devi deserted him within one year after marriage and was residing with her parents in her native village continuously till her death. It is further submitted that Late Nk Bachiram entered into second marriage with the present applicant Smt. Gopuli Devi after a gap of eight years of the first marriage when his first wife Smt. Koshali Devi was alive, but the first wife never stayed with Late Nk Bachiram. It is further submitted that names of the two children of applicant Smt.Gopuli Devi were entered in the service records of Late Nk Bachiram, but unfortunately the name of the applicant had not been entered.

5. On the other hand, Learned Counsel for the respondents submitted that as per entry recorded in the service documents of Late Nk Bachiram, name of Smt. Koshali Devi is entered as legally wedded wife and next of kin to receive all the benefits upon the death of the deceased soldier. It is further averred that the individual had married the applicant on 23<sup>rd</sup> December 1963, whereas as per death certificate of the first wife issued by the Gram Panchayat, the death of Smt. Koshali Devi had

occurred on 19<sup>th</sup> January 1998. It is evident that during life time of his first wife, Late Nk Bachiram had performed second marriage with Smt. Gopuli Devi. Marriage Part-II Order in respect of the applicant has not been published. He further submitted that as per record, a son named Rajendra Prasad was born out of Smt. Koshali Devi on 24<sup>th</sup> April 1969, hence the averment of the applicant that Smt. Koshali Devi had deserted the individual within one year of marriage and stayed with her parents till her death, due to which the individual had performed second marriage with the applicant, does not seem to be correct. It is further submitted that since second marriage was solemnized by the deceased soldier with Smt. Gopuli Devi i.e. the applicant during the life time of his first wife Smt. Koshali Devi without any legal separation, the marriage is null and void in terms of Section 5 of the Hindu Marriage Act 1955, hence Smt. Gopuli Devi is not entitled for grant of family pension.

6. For ready reference, Section 5 of the Hindu Marriage Act, 1955 is quoted as under :

*“5. Conditions for a Hindu marriage- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-*

- (i) *neither party has a spouse living at the time of the marriage;*
- (ii) *at the time of the marriage, neither party-*
  - (a) *is incapable of giving a valid consent to it in consequence of unsoundness of mind; or*
  - (b) *though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or*
  - (c) *has been subject to recurrent attacks of insanity*
- (iii) *the bridegroom has completed the age of (twenty-one years) and the bride, the age of (eighteen years) at the time of the marriage;*
- (iv) *the 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;*
- (v) *the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.”*

7 We have gone through the relevant rules and regulations on this issue. Learned counsel for the respondents relied upon a decision of Hon’ble The Apex Court rendered in the case of **Khursheed Ahmad Khan vs. State of U.P. & others** (Civil Appeal No.1662 of 2015) decided on 9<sup>th</sup> February 2015. Hon’ble The Apex Court held that a second marriage during the lifetime of one’s wife cannot be regarded as an integral part of Hindu religion nor could it be regarded as practicing or professing or propagating Hindu religion. The relevant paragraph nos.9, 11 and 14 are quoted as under :

*“9. As regard the charge of misconduct in question, it is patent that there is no material on record to show that the appellant divorced his first wife before the second marriage or he informed the Government about contracting the second marriage. In absence thereof the second marriage is a misconduct under the Conduct Rules. The defence of the appellant that his first marriage had come to an end has been disbelieved by the disciplinary authority and the High Court. Learned counsel for the State has pointed out that not only the appellant admitted that his first marriage was continuing when he performed second marriage, first wife of the appellant herself appeared as a witness during the inquiry proceedings and stated that the first marriage was never dissolved.*

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*11. As already mentioned above, there is adequate material on record in support of the charge against the appellant that he performed second marriage during the currency of the first marriage. Admittedly, there is no intimation in any form on record that the appellant had divorced his first wife. In service record she continued to be mentioned as the wife of the appellant. Moreover, she has given a statement in inquiry proceedings that she continued to be wife of the appellant. ....*

*14. In **Javed vs. State of Haryana** (2003) 8 SCC 369, this Court dealt with the issue in question and held that what was protected under **Article 25** was the religious faith and not a practice which may run counter to public order, health or morality. Polygamy was not integral part of religion and monogamy was a reform within the power of the State under **Article 25**. This Court upheld the views of the Bombay, Gujarat and Allahabad High Courts to this effect. This Court also upheld the view of the Allahabad High Court upholding such a conduct rule. It was observed that a practice did not acquire sanction of religion simply because it was permitted. Such a practice could be regulated by law without violating **Article 25**. This Court observed : .....*

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8. From the discussions, made herein above, it clearly emerges that neither the applicant is legally wedded wife of Late Nk Bachiram, nor there is any evidence that Late Nk Bachiram had divorced his first wife Late Smt. Koshali Devi. Simply saying that she was living with Late Nk Bachiram and two children were born out of Late Nk Bachiram, does not establish the fact that she is legally wedded wife of Late Nk Bachiram. Even if we take it for granted that the submission of the learned counsel for the applicant is true, it comes out that the second marriage was performed during the currency of the first marriage, admittedly there is no record to prove that the first wife was divorced. The applicant has not been able to prove this fact, hence she is not entitled to get the family pension of Late Nk Bachiram.

9. In certain communities, there are traditions and practices where a lady leaves her husband and go to other, lives like a husband and wife and has been recognized as husband and wife as envisaged in Section 5 of the Hindu Marriage Act, 1955. The burden lies on the person who claims so to establish the practices and traditions of such divorce and marriages, which the applicant has failed to establish.

10. To the contrary, learned counsel for the respondents submitted that on scrutiny of the documents produced by the second wife Smt. Gopuli Devi of Late Nk Bachiram, it has been found that both the children named Rajendra Prasad and Shankar Lal have already attained the age of 25 years, hence the children of the applicant were also not entitled for family pension as per Rules in force and the said fact was communicated to the applicant.

11. We have considered the rival submissions made by parties' counsel and perused the relevant Rules. In our opinion, the children of the applicant cannot be denied family pension or other legitimate claims whatever are permissible to them under the Rules, provided they are successful in establishing their case for such legitimate claims before the authority concerned. A Full Bench of Allahabad High Court, Lucknow Bench, Lucknow in a case of **Smt. Chawali vs. State of U.P. & others** (Misc. Bench No.9470 of 2014) decided on 16<sup>th</sup> January 2015 with regard to right of illegitimate children held as under :

*“38. Hon'ble Supreme Court rightly had declined to grant benefit over the property to a lady having live-in relationship in a case reported in [2008(4) SCC 520] Tulsa versus Durghatiya. However, Hon'ble Supreme Court granted share in the property of parents to the child born from live-in relationship vide (2010)11 SCC 483 Bharatha Matha and another versus R. Vijaya Renganathan and others.*

*39. In 1992 Supp(2) SCC 304 S.P.S. Balasubramanyam versus Suruttayan alias Andali Padayachi and others, Hon'ble Supreme Court held that man and woman continuously living together under the same roof and cohabiting for a number of years would raise presumption of living as husband and wife. Non-mentioning the name of the wife in the will and compromise deed under which share in the family properties devolved on her husband not relevant to destroy the presumption and cannot be held against legitimacy of the children of the spouse. Such children being legitimate is entitled to share in the properties devolving on their father by virtue of settlement thereof made by the father in their favour.*

*40. In (2000)2 SCC 431 Rameshwari Devi versus State of Bihar and others, Hon'ble Supreme Court held that the children born out of second marriage are legitimate though the marriage itself is void. Minor children from second marriage shall be entitled to family pension but not the second widow during survival of first wife/widow.*

*41. In (2006)9 SCC 612 Neelamma and others versus Sarojamma and others, Hon'ble Supreme Court held that illegitimate child cannot acquire or claim as of right any share in Joint Hindu family property but such child is entitled to share in self-acquired property of parents.”*

12. In view of the above, we converge to the view that the applicant is not entitled to family pension as per policy, rules and law laid down, but so far as the claim of her children is concerned, we give 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 Nk Bachiram. On receipt of such claim, the respondents within three months thereafter, shall consider and settle the claim in accordance with rules and policy and keeping in view the observations made in the body of the present order.

13. Subject to the observations and directions, the relief is moulded, as observed above, **allowing O.A.No.177 of 2015 partly** and decided accordingly.

(Lt Gen Gyan Bhushan)  
Member (A)

(Justice D.P. Singh)  
Member (J)

Dated : March ,2017  
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