

A.F.R.
Court No. 2
Reserved Judgment

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 288 of 2013

Thursday this the 24th day of August, 2017

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

Smt. Sarabjeet Kaur, Wife of Late Chanan Singh,
R/o House No.3, Ashoka Road, New Cantt,
Allahabad.

..... **Applicant**

By Legal Practitioner: Shri P.K.Khare, Advocate
Learned Counsel for the Applicant.

Versus

1. Union of India through Ministry,
New Delhi.
2. The Officer Incharge, Signals Records,
Posts Bag No.5,
Jabalpur (M.P.) 482001.
3. C.C.D.A. Pensions,
Allahabad.

..... **Respondents**

By Legal Practitioner: Shri Namit Sharma,
Learned counsel for the Respondents

ORDER

Per Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

1. The instant Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed by Smt. Sarabjeet Kaur, wife of L/Havaldar Late Chanan Singh (herein after referred to as the 'Applicant') with the following prayers :-

“(i) To issue an order or direction in the nature of mandamus commanding the respondents to allow the payment of family pension to the applicant from the date of death of her husband till date of actual payment and further to pay the arrears of the pension alongwith 18% interest to the applicant.

(ii) to issue any other suitable order or direction which this Hon'ble court may deem fit and proper under the facts and circumstances of the case.

(iii) to award cost of the application.”

2. In this case, counter, rejoinder, supplementary counter and supplementary rejoinder affidavits have been filed.

3. The claim of the Applicant in the Original Application is that she is the legally wedded wife of Late L/Havaldar Chanan Singh, who was enrolled in Indian Army (Corps of Signals) on 31st January 1949 and discharged from service w.e.f. 25th January 1965. Late L/Havaldar was in receipt of pension. On 08.01.2001, Chanan Singh died leaving behind the applicant as his widow. Applicant has sent several representations to the respondents for sanctioning her family pension, but the authorities have not taken any action on the representations of the Applicant, hence the present O.A..

4. In this O.A., the Applicant has not made any mention of the first wife of L/Havaldar Late Chanan Singh named Smt. Joginder Kaur whereas in Annexure No.3 of the O.A., a letter dated 11.04.2001 of Record Office addressed to the applicant has been

filed, whereby she was informed, that on scrutiny of service records, it is found that Smt. Joginder Kaur is the legally wedded wife of the Late L/Havaldar Chanan Singh and that she can receive family pension. Enquiry about where-about of Smt. Kaur it as asked that in case she had died/divorced by the deceased, death certificate/divorce deed of Smt. Joginder Kaur in original attested by Zila Sainik Welfare Office be forwarded. Applicant was also asked to send her marriage certificate. Thus, the fact that Smt. Joginder Kaur, as per the records of the Army, was the first wife of Late L/Havaldar Chanan Singh was in the knowledge of the Applicant, but inspite of that, she claimed herself to be the only legally wedded wife of L/Havaldar Late Chanan Singh in the O.A.

5. In the counter affidavit, it was averred that L/Havaldar Late Chanan Singh was enrolled in the Army on 31st January 1949 and was discharged from service on 25th January 1965. As per service document, he had married to Smt. Joginder Kaur and had nominated her as his NOK for heir to estate and also for grant of family pension. It is further averred that as per Regulation 220 of Pension Regulation, Part-I, 1961, Smt. Joginder Singh is eligible for family pension. When the Applicant was asked to produce the documentary evidence to prove that she is the legally wedded wife of Late L/Havaldar Chanan Singh, she could only produce her Voter's I.D. card before the competent authority and it is specifically mentioned in the counter affidavit that in the said Voter's I.D. card, which was issued on 01.01.1995, the name of the husband of the applicant was mentioned as "S.I.Singh".

6. Thereafter a rejoinder affidavit was filed by the Applicant, wherein she has stated that Smt. Joginder Kaur was former wife of the Applicant L/Havaldar Late Chanan Singh, who left the house of L/Havaldar Late Chanan Singh in the year 1970 without divorce and after that Smt. Joginder Kaur has not turn up till date. The Applicant and Late L/Havaldar Chanan Singh remarried in December 1989 and

thereafter she lived in her husband's house even after the death of Late L/Havaldar Chanan Singh. It is also averred that Late L/Havaldar Chanan Singh, the husband of the applicant sent an application in July 1994 through registered post vide receipt no.1665 and furnished all the details required by the Signals Records Office, Jabalpur, but it is not known whether the aforesaid information was recorded in the record of the Signals Records Office, Jabalpur or not? It has also been stated that according to the version of L/Havaldar Late Chanan Singh, Smt. Joginder Kaur was teacher by profession and being a lady of dominating nature, L/Havaldar Late Chanan Singh could not compromise, as a result Smt. Joginder Kaur immediately after retirement of L/Havaldar Late Chanan Singh, left her house without divorce and never turned up till date.

7. So far as the pleadings of the respondents in the counter affidavit regarding the Voter's I.D. card is concerned, it was only denied in the rejoinder affidavit. The applicant did not prefer to bring on record her Voter's I.D. card. Thereafter a supplementary affidavit was again filed by the Applicant, whereby she has filed her letter dated 15th January 2015 addressed to Incharge, Office Signals Records, whereby she has forwarded certain documents to the authority. She has also filed the copy of the marriage certificate issued by Gurudwara Sri Guru Singh Sabha issued on 09th December 2008 showing that the marriage of the Applicant with L/Havaldar Late Chanan Singh was performed in this Gurudwara on 06.12.1989. She has also filed the death certificate of Smt. Joginder Kaur issued on 17th November 2014 showing that Smt. Joginder Kaur died on 13th August 2004. It is mentioned that it is nowhere the case of the applicant that Chanan Singh during his life time made any effort to search his wife Smt. Joginder Kaur or informed any authority/police that his wife is missing. Admittedly Smt. Joginder Kaur lived with Chanan Singh upto 1970. Her marriage was solemnized prior to his enrolment in Army i.e. 1949. Chanan Singh died in the year 2001.

And that for almost of 31 years, Chanan Singh made no effort to search his wife, nor any information to any authority was given.

8. Thus, according to the rival pleadings, the admitted facts are that Late L/Havaldar Chanan Singh retired on 25.01.1965. He was married to Smt. Joginder Kaur prior to his enrolment in the Army and Smt. Joginder Kaur was nominated in the relevant record as her legal heir for the purpose of family pension. Late L/Havaldar Chanan Singh performed second marriage in the year 1989 while Smt. Joginder Kaur was alive as she has expired in the year 2004. It is also admitted by the Applicant in his pleadings that no divorce had taken place between Smt. Joginder Kaur and Chanan Singh.

9. According to the facts admitted by the Applicant, she married L/Havaldar Late Chanan Singh during continuance of his first marriage, therefore, the question arises whether the Applicant is the legally wedded wife of L/Havaldar Late Chanan Singh or her marriage with Chanan Singh is void? The parties are Hindus and as such are governed by the Hindu Marriage Act, 1955.

10. Section 11 of the Hindu Marriage Act, 1955 reads as under :

“Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.”

Clause (1) of Section 5 of the Act mentioned in the above quoted Section 11 reads as under :

“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

..... ..”

11. Applicant’s marriage with L/Havaldar Late Chanan Singh was solemnised while L/Havaldar Late Chanan Singh had a spouse who

was alive and was not divorced. Therefore, the marriage of the Applicant with L/Havaldar Late Chanan Singh is void marriage.

12. Before proceeding further, we would like to mention that inspite of the specific pleadings in the counter affidavit filed by the respondents that in the Voter's I.D. card filed by the Applicant, the name of her husband was mentioned as S.I.Singh the Applicant in her rejoinder affidavit has only denied this fact. She had the best piece of evidence to show that such averment made in the counter affidavit was false by filing the copy of the Voter's I.D. card before this Tribunal. The said Voter's I.D. card was issued on 01.01.1995, wherein she was shown to be the wife of S.I.Singh. Thus, the concealment of Voter's I.D. card by the Applicant, in spite of specific averments in the counter affidavit on this point, gives rise to an adverse inference against the Applicant.

13. Hon'ble Calcutta High Court in the case of **Smt. Pratima Chaudhury vs. Director of Pension & ors.** (2010 SCC OnLine Cal 1615) in a similar circumstances has observed in paragraphs 18 and 22 as under :

“18. Mr Chakraborty has argued that since the marriage was void, the petitioner was not entitled to claim family pension under the Scheme. He has relied on Smt Yamunabai Anantrao Adhav vs. Anantrao Shivaram Adhav, AIR 1988 SC 644; Rameshwari Devi v. State of Bihar & Ors., AIR 2000 SC 735; Savitaben Somabhai Bhatiya v. State of Gujarat & Ors., AIR 2005 SC 1809; and an unreported Single Bench decision of this Court dated November 10, 2003 in W.P.No.12346(W) of 2003.”

“22. It is, therefore, evident that the petitioner's marriage with Gour solemnized after the commencement of the Hindu Marriage Act, 1955 at a time when Gour had his first wife living was a void marriage. It was solemnized in contravention of the condition specified in cl.(i) of s.5 of the Hindu Marriage Act, 1955. As has been held by the Supreme Court in the above-noted three decisions such a marriage as the one of the petitioner is of no consequence at all.”

14. In another case **Smt. Chanda Hinglas Bharati vs. State of Maharashtra & ors.** (2015 SCC OnLine Bom 6679), Hon'ble

Bombay High Court has expressed the following view in paragraphs 8 and 13 as under :

“8. It is clear from a combined reading of the provisions of Sections 5, 11 and 17 of the Hindu Marriage Act considers a marriage by a party with a spouse living at the time of the marriage to be void. Since the Hindu Marriage Act was brought into force on 18.5.1955, the marriage by a Hindu with a spouse living at the time of the marriage is held to be null and void. Section 17 of the Hindu Marriage Act provides that the provisions of Sections 494 and 495 of the Penal Code pertaining to bigamy would apply to a marriage between two Hindus after the commencement of the Hindu Marriage Act on 18.5.1955, if on the date of such marriage, either party has a husband or wife living. It is, thus, apparent from the provisions of the Hindu Marriage Act as referred to herein above that a marriage between two Hindus where either party has a spouse living at the time of the marriage is void and punishable.”

“13. The Hon’ble Supreme Court has held from time to time that a woman marrying a Hindu male during the subsistence of his marriage and during the life time of his wife would not be entitled to family pension after the coming into force of the Hindu Marriage Act on 18.5.1955. It would be worthwhile to refer to the decision reported in (2000) 2 431 (Rameshwari Devi...Versus...State of Bihar and others) in this regard. In our considered view the judgment reported in 2015 (2) Mh.L.J. 328, (Union of India and another Versus Jaywantabai wd/o Ramrao Kewoo) would not be applicable to the case in hand.”

15. Effect of void marriage has to be considered in view policy laid down in the Pension Regulations. According to the Regulation 216 of the Pension Regulations for the Army, 1961 only a lawfully married wife is entitled to receive family pension. Regulation 216 reads as under :

“The following members of the family of a deceased individual shall be viewed as eligible for the 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 individuals release/retirement/discharge/invalidment.
- (b)
- (c)
- (d)
- (e)
- (f)
- (g) ”.

It clearly comes out that the regulation recognizes only a lawful marriage. Regulation 218 deals with grant of pension to the

nominee in the records of the Army. Admittedly, the name of Smt. Joginder Kaur, the first wife of the Applicant was entered in the Army records as wife of L/Havaldar Late Chanan Singh. Therefore, the prayer of the Applicant does not fall within the Regulation of 218 of the Pension Regulations, hence the Applicant is not entitled to get family pension under Regulation 218 of the Pension Regulations. For the argument sake only, if it is assumed that there was no nomination, then the case of the Applicant has to be considered under Regulation 219 of the Pension Regulations. Regulation 219 states that a relative specified in Regulation 216 shall be eligible for the grant of family pension. As quoted above, Regulation 216 pre-supposes the existence of a lawful marriage which as discussed earlier is missing in the present case.

16. Learned counsel for the Applicant has argued that in the year 1994 Late L/Havaldar Chanan Singh had sent a representation for correction of nomination in the record, but this fact does not emerge from the records produced. Late L/Havaldar Chanan Singh had expired in the year 2001 but there are no documents to prove that he pursued the matter thereafter. Infact it comes out that he did not make any effort to ensure that this application for change of nomination has reached the Record Office and necessary action has been taken. The Ld. Counsel for the applicant has not been able to produce any record/document to establish any follow up action by Late L/Hav Chanan Singh.

17. Learned counsel for the applicant has also argued that a competent civil court has issued succession certificate in her favour, which supports the applicant's claim that she is the legally wedded wife of L/Havaldar Late Chanan Singh. We are not impressed with this submission. The purpose of succession certificate is very limited. On this point, we would like to quote the observation of the Hon'ble Supreme Court in the case of **C.K.Prahalada and others**

vs. State of Karnataka and others (2008) 15 SCC 577). In paragraph 17 of this judgment, Hon'ble Supreme Court has observed as under :

“17. A succession certificate is granted for a limited purpose. A court granting a succession certificate does not decide the question of title. A nominee or holder of succession certificate has a duty to hand over the property to the person who has a legal title thereto. By obtaining a succession certificate alone, a person does not become the owner of the property.”

18. Learned counsel for the Applicant has also argued that L/Havaldar Late Chanan Singh was the only earning member. The applicant has two minor children and that her family is at the verge of starvation. This argument appears to have been raised only to gain sympathy of the Tribunal, because the documents filed by the applicant show that after obtaining the succession certificate, she has received several lacs of rupees of L/Havaldar Late Chanan Singh, who was running a Company. Apart from it, she has also received Rs.11,50,000/- as sale consideration of the house by executing a sale deed of the house of Chanan Singh situated in Allahabad.

19. In view of the discussions made above, it is crystal clear that under the Pension Regulations for the Army, 1961 the family pension can be granted only to a legally wedded wife. The Applicant is not a legally wedded wife of L/Havaldar Late Chanan Singh and her marriage with L/Havaldar Late Chanan Singh was a void marriage, therefore, the competent authority has rightly denied the family pension to her.

20. Thus, O.A. lacks merit, deserves to be dismissed and is accordingly dismissed.

(Lt Gen Gyan Bhushan)
Member (A)

Dated: August , 2017.

PKG

(Justice S.V.S.Rathore)
Member (J)