

Court No.2**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****O.A. No. 236 of 2014**

Thursday, this the 21st day of April 2016

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Smt Bhavani Devi, widow of Late Sep Trilok Singh (No. 8007984), resident of village Jaskola, PS. Saring Gaon, Tehsil Gairsaind District Chamoli, Uttrakhand.

...Applicant

Ld. Counsel for the:
Advocate**Shri Shailendra Kumar Singh,
Advocate**

Versus

1. Union of India through Secretary GOI, MoD, New Delhi.
2. The Chief of the Army Staff, Sena Bhawan, New Delhi-110011.
3. The PCDA (P), G-4, Section Allahabad (UP).
4. The OIC, Defence Security Corps Records, PIN-901277, C/O 56 APO.
5. OIC Records, The Pioneer Corps, PIN-900493, C/O 56 APO.

.....Respondents

Ld. Counsel for the :
Respondents**Shri Amit Jaiswal,
Central Govt Counsel assisted by
Lt Col Subodh Verma, OIC Legal
Cell**

ORDER (ORAL)

1. We have heard Shri Shailendra Kumar Singh, Ld. Counsel for the applicant and Shri Amit Jaiswal, Ld. Counsel for the respondents assisted by Col Subodh Verma, OIC, Legal Cell.

2. Applicant Smt. Bhavani Devi, alleged to be widow the of Late Trilok Singh who was enrolled in the Army in Pioneer Corps in the rank of PNR sometimes in the year 1963, has preferred this Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 for payment of family pension and other post retiral duties on account of death of said Late Trilok Singh.

3. According to admitted facts on record Late Trilok Singh married with his first wife Smt Parwati Devi according to local customs in the year 1964-65. After attaining the age of superannuation late Trilok Singh was re-enrolled in Defence Security Corps (DSC) on 30.11.1979 and thereafter he was discharged on 30.11.1979 on completion of approximately seventeen years of service. The above period of approximate seventeen years included service in DSC.

4. Sometimes in the year 1980 after discharge from service late Trilok Singh came to know that his wife (Smt Parwati Devi) had developed illicit relationship with one Shri Bachan Singh of

Tetuna village and thereafter in the year 1981 his first wife deserted him and joined Bachan Singh in Tetuna village. This fact has been established from the copy of Kutumb Register of Shri Bachan Singh. Extract of Kutumb Register also shows that from the wedlock of Bachan Singh, late Trilok Singh's first wife had got two children. On account of desertion by the first wife late Trilok Singh married with applicant (Smt Bhawani Devi) and accordingly her name has been recorded in Army service records. It has not been disputed by Ld. Counsel for the respondents as well as OIC Legal Cell that name of the applicant has been recorded in the Army records and in consequence thereof the applicant is entitled to family pension and post retiral dues of late Trilok Singh.

5. However, Ld. Counsel for the respondents submits that since marriage took place earlier to dissolution of marriage with first wife it is nullity in the eyes of law. While emphatically raising objection, Ld. Counsel could not invite attention of the Tribunal to any material on record which may indicate that averments made in the O.A. to the effect that late Trilok Singh's first wife i.e. Smt Parwati Devi deserted him and joined Bachan Singh and from this wedlock two children were born much earlier. Respondents could not bring any record that at lower echelon of the society, in some sects, deserted destitute ladies after desertion chose other husband and start to live with such person. In such circumstances it may be fairly presumed that divorce took place

between late Trilok Singh and Smt Parwati Devi according to local customs which is approved by Article 5 of the Constitution of India. Ld. Counsel for the respondents also could not give satisfactory reply whether the second marriage of late Trilok Singh with applicant shall be void or voidable. The burden is on the respondents to prove that at what point of time respondents got the information with regard to marriage and who were the persons who complained against the applicant. It is not disputed that first wife has not advanced any claim after the death of late Trilok Singh, obviously being married with Shri Bachan Singh.

6. Ld. Counsel for the respondents also does not dispute that Civil Court granted decree in the year 1995 by its ex parte judgment with regard to dissolution of marriage. Copy of the judgment and decree dated 21.08.1995 of District Judge, Chamoli at Gopeshwar in Original Suit No 16 of 1995 Trilok Singh vs. Smt Parwati Devi and another has been filed as **Annexure 11** to the present O.A. Once the competent Civil Court accepted contention of the husband of the applicant in the year 1995, it may safely be presumed that his first wife deserted him in the manner alleged by the applicant in the present O.A. Accordingly it may be inferred that the applicant had validly married with late Trilok Singh as his second wife on account of desertion and re-marriage of first wife with one Shri Bachan Singh. It is evident from the record as well arguments advanced by the parties that at no stage any decision was taken by the respondents to nullify the marriage or set aside

the entry on record by issuing appropriate notice of show cause to late Trilok Singh. In view of the fact that since the applicant has married with late Trilok Singh which attained finality in view of decree of Civil Court, there appears no reason to deny post retiral dues and family pension after the death of late Trilok Singh.

7. Accordingly we allow the O.A. and direct the respondents to make payment of post retiral dues and family pension to the applicant in accordance with rules with all consequential benefits within four months from the date of presentation of a certified copy of this order.

8. In case arrears of service benefits and family pension as well as regular family pension along with arrears late Trilok Singh is not paid to applicant Smt Bhavani Devi within four months, she will be entitled to 10% interest from the date of death of late Trilok Singh on arrears of dues.

9. O.A. is allowed accordingly.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

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