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ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW
COURT NO. 2

O.A. No. 214 of 2010**Thursday, this the 11th day of August, 2016**

"Hon'ble Mr. Justice D.P.Singh, Judicial Member
Hon'ble Air Marshal Anil Chopra, Administrative Member"

Smt Maisar Bano aged about 40 years daughter of late
Smt Noor Jahan wife of Aneesh Ahmad resident of village
Malikpur Post Dakhrauli Tahsil Lambhua Distt
Sultanpur.....**Applicant**

Versus

1. Union of India, through Principal Secretary, Ministry of
Defence, New Delhi
2. Principal controller Defence Account (Pension),
Draupadi Ghat, Allahabad.
3. Chief Record Officer AMC (Pension),
Lucknow.....**Respondents**

**Ld. Counsel appeared for the Applicant - Shri Umesh Chand Chaurasia,
Advocate**

**Ld. Counsel appeared for the Respondents - Shri D.K.Pandey,
C.G.S.C
Assisted by Col Kamal Singh -OIC Legal Cell.**

ORDER

(Perse by Hon. Devi Prasad Singh, Member (J))

1. Present Application has been preferred by Applicant Noorjahan, wife of late Subedar Tafazzul Hussain, under section 14 of the Armed Forces Tribunal Act 2007, being aggrieved with the denial of family pension. During pendency of the present O.A, Applicant Noorjahan, who was aged 85 years, breathed her last and in consequence, Smt Maisar Bano came to be substituted as Applicant in the aforesaid O.A on the dint of Will executed by Smt Noorjahan, to claim arrears of family pension for the period from 06.08.2008 to 17.09.2012 alongwith interest.

2. We have heard Shri Umesh Chand Chauraisia counsel for the Applicant and Shri D.K.Pandey, learned counsel for the respondents at prolix length assisted by OIC Legal Cell. We have also been taken through the materials on record.

3. From a perusal of the record, it would transpire that late Shri Tafazzul Hussain was enrolled in the Indian Armed on 17.02.1953. In the official record i.e. Army Sheet Roll, name of Smt. Alimul was recorded as his first wife. Late Shri Tafazzul Hussain divorced his first wife, namely, Smt. Alimul, by written Talaqnama dated 15.10.1957. After being divorced, Smt Alimul

contracted second marriage with one Taufiq Ahmad who was serving in police department working in the Headquarters Lucknow on the post of Peon. Aforesaid Taufiq Ahmad died in the year 1972 and after his death on 31.10.1999, Smt Alimul began receiving family pension.

4. Learned Counsel for the Applicant has brought on record Talaqnama, (Annexure 4 to the OA) and the PPO of late Taufiq Ahmad. It was in the above background that late Shri Tafazzul Hussain had tied nuptial knots with Smt Noorjahan on 11.11.1963. A copy of Nikahnama as well as registered certificate of Nikahnama have been annexed to the present OA as Annexure 5.

5. Late Shri Tafazzul Hussain was discharged on superannuation from Military service on 28.02.1981 and his pension was sanctioned vide PPO No. 11333 of 1981 which is annexed as Annexure CA 1 to the counter affidavit. It would appear that during his life time, Late Tafazzul Hussain admittedly moved several applications before competent authority for correction of kindred portion of his service sheet Roll but the same elicited no response. Rather, he received a letter dated 20.10.2001 (Annexure SA 2 to the Supplementary affidavit) by which he was required to

submit decree of divorce betokening divorce between him and his first wife namely Smt Alimul. The letter dated 20.10.2001 received in response to his Application dated 05.10.2001 was duly replied by late Tafazzul Hussain vide Application dated 26.11.2001 submitting therein that his first wife after being divorced had contracted second marriage with one Taufiq Ahmad and after his death she was receiving family pension attended with averment that Smt. Alimul also died on 31.10.1999 and that it was now impossible to obtain decree of divorce. The respondents again sent a letter dated 12.01.2002 informing therein that since more than three years have passed casualties cannot be published in NE series Part II Orders. By means of letter dated 16.06.2002, late Tafazzul Hussain was informed by AMC Records Lucknow to file affidavit alongwith details. (Vide letter annexed as Annexure SA 6 to the Supp Affidavit). In observance of the said letter, late Shri Tafazzul Hussain submitted the details enclosing all necessary documents alongwith letter dated 07.05.2003 which included details of material facts relating to divorce, re-marriage and death of his first wife and also about his second marriage attended with the request to correct the record by including the name

of his second wife (Applicant Noorjahan). AMC Records Lucknow then required him to submit two copies of Appendix -1 and Appendix -2 vide letter dated 15.06.2002 which late Shri Tafazzul Hussain did alongwith Application dated 08.07.2002. The AMC records then returned the Appendix -1 and II vide letter dated 12.09.2002 without taking any action thereon, now requiring him to intimate the whereabouts of Smt Alimul. The AMC Records again sent a letter dated 17.09.2002 requiring him to submit the Appendix 1 And Appendix II in reply to which late Tafazzul Hussain sent the documents in a duly completed form vide letter dated 22.10.2002. By means of letter dated 27.11.2002 the AMC records Lucknow called upon late Shri Tafazzul Hussain to submit certain documents including decree of divorce with the first wife. Late Shri Tafaazul Hussain again submitted all the documents except the decree of divorce vide Application dated 04.03.2003 but AMC by means of letter dated 08.07.2003 insisted to supply decree of divorce. By means of letter dated 17.07.2003, late Taffazzul Hussain requested the AMC to get police verification done to ascertain his second marriage with Smt Noorjahan and he resubmitted all the documents afresh but AMC Records Lucknow

returned all the documents to the late Subedar. Thereafter, Tafazzul Hussain breathed his last on 06.08.2008.

6. In the facts and circumstances of the case, the mechanical approach and callous apathy of the authority that be, is writ large. It would clearly crystallize that the deceased addressed various communications and complied with the directions by submitting and resubmitting the required documents from time to time but the AMC Records did not budge from demanding decree of divorce relating to divorce of his first wife. Smt Noorjahan, the second wife of the late Subedar having drawn blank from all quarters was constrained to file the present OA in the year 2010. It is shocking that she too died at the age of 85 years without drawing a single penny from the family pension. The facts of the case are too obvious to be ignored. The authorities seem to have shut their eyes to the glaring fact that Smt Alimul the first wife of the late Subedar had contracted second marriage with one Taufiq Ahmad and after death of her husband, she was receiving pension from police department. Was this glaring fact not enough to galvanize the authorities into action. It is quite disquieting and makes one sadder to think of the extremity of harassment to the

soldier and to his family who has served the Nation with utmost dedication.

7. Yet another glaring fact remains to be cited here. After the death of late Shri Tafazzul Hussain, Smt Noorjahan applied for succession certificate which was granted to her by the Civil Court on 29.03.2010 for withdrawal of a sum of Rs 45000/- from the Bank in the account of late Shri Tafazzul Hussain. A copy of succession certificate has been annexed as Anneuxre 7 to the Supplementary affidavit filed by the Applicant. Armed with succession certificate, it would transpire, Smt Noorjahan again applied for grant of family pension on 08.06.2010 enclosing therewith copies of divorce, certificate, marriage certificate, death certificate and heir-ship certificate (Annexure 1 to the OA). In response to the said Application, AMC records Lucknow again notified Smt Noorjahan to submit decree of divorce of first wife. At the time of her last communication, Smt Noorjahan was bed-ridden on account of suffering from cancer and she ultimately died on 17.09.2012 during pendency of the present O.A.

8. It is settled position in law that pension is not a bounty and has been described as a property in terms of Article 300 A of the Constitution of India. It leaves

no manner of doubt that after the death of late Tafazzul Hussain, Smt Noorjahan who was his legally wedded wife, was entitled to family pension which was denied to her during her life time without any valid justification. In view of the will that Smt Noorjahan executed in favour of Smt Maiser Bano, and succession certificate issued by the Civil Courts, she is now entitled to arrears of pension.

9. In (1978) 1 SCC 248: Msr. Maneka Gandhi. Vs. Union of India and another, while reiterating the principle enunciated in Royappa's case (supra) and other cases, their lordships held that equality and arbitrariness both are sworn enemies. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of [Article 14](#) which strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades [Article 14](#) like a brooding omnipresence and the procedure contemplated by [Article 21](#) must answer the test of reasonableness in order to be in conformity with [Article 14](#).

10. In the case reported in (1971) 2 SCC 330: Deokinandan Prasad. Vs. The State of Bihar and others, their lordship held that right to receive pension is property under [Article 31 \(1\)](#) and by a mere executive order the State had no powers to withhold the same. Hon'ble Supreme Court observed as under:

"27. The last question to be considered, is, whether right to receive pension by a Government servant is property, so as to attract Articles 19 (1) (f) and 31 (1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under [Article 32](#). To this aspect, we have already adverted to earlier and we now proceed to consider the same.

28. According to the petitioner the right to receive pension is property and the respondents by an executive order, dated June 12, 1968, have wrongfully withheld his pension. That order affects his fundamental rights under Articles 19 (1) (f) and 31 (1) of the Constitution...."

Hon'ble Supreme Court further observed that pension is not to be treated as bounty payable on sweet will and pleasure of the Government and the right to superannuation pension including its amount is a valuable right vesting in a Government servant."

11. In the case reported in (1973) 1 SCC 120: State of Punjab. Vs. K.R. Erry and Sobhag Rai Mehta, Hon'ble Supreme Court ruled that right of Government servant to receive pension is property under [Article 31 \(1\)](#) and by mere executive order the State Government did not have power to waive the same.

12. In the case reported in (1983) 1 SCC 305: D.S. Nakara and others. Vs. Union of India, the leading judgment of Hon'ble Supreme Court with regard to twin grounds for test of reasonable classification and rational principle co-related to the object sought to be achieved. The burden of proof lies on the State to establish that these twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlate it to the objects sought to be achieved.

13. Hon'ble Supreme Court relying upon the Deokinandan Prasad (supra) and State of Punjab (supra) observed that antiquated notion of pension being a bounty, a gratuitous payment depending upon sweet will or grace of employer has been swept under the carpet by the decision of Constitution Bench in Deokinandan Prasad (supra). It shall be appropriate to reproduce relevant portion of para 20 and 22 from the judgment of D.S. Nakara (supra), as under:

"20. The antequated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in [Deokinandan Prasad v. State of Bihar](#): 1971 (Supp) SCR 634: (AIR 1971 SC 1409) wherein this Court authoritatively ruled that pension is a

right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in [State of Punjab v. Iqbal Singh](#), (1976) 3 SCR 360: (AIR 1976 SC 667).

*22. In the course of transformation of society from feudal to welfare and as socialistic thinking acquired respectability, State obligation to provide security in old age, an escape from undeserved want was recognised and as a first step pension was treated not only as a reward for past service but with a view to helping the employee to avoid destitution in old age. The quid pro quo was that when the employee was physically and mentally alert, he rendered unto master the best, expecting him to look after him in the fall of life. A retirement system therefore, exists solely for the purpose of providing benefits. In most of the plans of retirement benefits, everyone who qualifies for normal retirement receives the same amount (see *Retirement Systems for Public Employees* by Bleakney, p 33)."*

14. In *D.S. Nakara* (supra) their lordships further observed that in welfare State, its political society introduces a welfare measure where retiral pension is grounded on considerations of State obligation to its citizens who having rendered service during the useful span of life must not be left to penury in their old age, but the evolving concept of social security is a later

day development. The term pension is applied to periodic payment of money to a person who retires at a certain age, considered age of disability and the payment usually continues for the rest of the natural life of the recipient. The reason for underlying the grant of pension vary from country. Pension is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to ageing process and, therefore, one is required to fall back on savings. Hon'ble Supreme Court further reiterated that the pension is not a bounty or gracious payment and it does not depend upon the discretion of the Government and the person entitled for pension under statute, may claim it as a matter of right.

15. In the case reported in (1987) 2 SCC 179: State of Uttar Pradesh. Vs. Brahm Datt Sharma and another, while reiterating the aforesaid well settled proposition of law with regard to pension, Hon'ble Supreme Court observed that pension is right of property earned by Government servant on his rendering satisfactory service to the State. These principles have been reiterated in the case reported in 1992 Supple SCC 664: (AIR 1992 SC 767) All India Reserve Bank Retired

Officers Association and others. Vs. Union of India and another.

16. In (1999) 3 Supreme Court Cases 601; [Secretary, H.S.E.B. v. Suresh and others](#), the Hon'ble Supreme Court while dealing with labour welfare legislation ruled that beneficent construction of the statutory provision must be given keeping the public interest at large and courts must decide while interpreting the statutory provisions keeping in view the interest of the public inspired by principles of justice, equity and good conscience. (para 14, 17 and 18).

17. In the case reported in (2003) 4 Supreme Court Cases 27; [S.M. Nilajkar and others vs. Telecom District Manager, Karnataka](#), the Hon'ble Supreme Court has held that while interpreting the welfare legislation in case of doubt or two possible views, the interpretation should be done in favour of beneficiaries.

18. In the case reported in (2004) 5 Supreme Court Cases 385; Deepal Girishbhai Soni and others Vs. United India Insurance Co. Ltd. Baroda, the Hon'ble Supreme Court again reiterated that beneficial legislation should be interpreted liberally keeping in view the purpose of enactment and reading entire statute in its totality. The purport and object of the Act

must be given its full effect by applying the principles of purposive construction (para 56).

19. Reverting to the present case, it may be noted here that policy of circular of the Army to call for divorce decree, seems to lose its significance when the first wife marries with other person (supra) and after the death of her second husband, she begins receiving pension from the police department. By fiction of law and factual matrix on record, divorce shall be deemed to be admitted fact between the parties more-so when Smt Alimul started receiving pension from other department on account of death of her second husband. The welfare provisions for payment of pension could not have been interpreted in a manner which may frustrate the statutory and constitutional rights of Smt. Noorjahan who admittedly, received funds of her husband from the bank account on the basis of succession certificate issued by the Civil courts. In such situation, where the first wife marries with other person, who is also a Government servant and this fact is proved beyond doubt, divorce decree loses its relevance that too keeping in view the personal law of Mohammedan. In our firm view, Smt. Noorjahan has been dealt with by the respondents in a manner which has resulted in gross injustice to her. It

appears to be on account of ill-advice of JAG Branch or ignorance of officer concerned by proceeding mechanically.

20. In the above conspectus, O.A filed by Smt Noorjhana, being legally wedded wife and successor of late Subedar Tafazzul Hussain deserves to be allowed and it is held that Smt Noorjahan is entitled to family pension which was denied to her mechanically by the respondents without applying their mind.

21. In the instant case, we would consider whether it would be justified to impose exemplary cost or not. Looking to the fact that the action of the respondents in denying family pension to Smt Noorjahan, who was the legally wedded out and successor of late Subedar Tafazzul Hussain was not only unjustified but denial was mechanical and without application of mind by calling upon late Subedar and his legally wedded wife to submit decree of divorce between late Subedar Tafazzul Hussain and Smt Alimul. There is no denying and it was very much within the knowledge of the authorities through the documents submitted repeatedly by late Subedar and his legally wedded wife that immediately after being divorced Smt Alimul the first wife of the late Subediar Tafazzul Hussain had remarried with one Taufiq Ahmad and was drawing

pension from police Department on account of death of her second husband. If this remains a fact, it is strange and shows gross apathy and mechanical approach of the Authority of the AMC Records.

22. Hon'ble Supreme Court in the case of ***Ramrameshwari Devi and others V. Nirmala Devi and others***, (2011) 8 SCC 249 has given emphasis to compensate the litigants who have been forced to enter litigation. This view has further been rendered by Hon'ble Supreme Court in the case reported in ***A. Shanmugam V. Ariya Kshetriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and others***, (2012) 6 SCC 430. In the case of ***A. Shanmugam*** (supra) Hon'ble the Supreme considered a catena of earlier judgments for forming opinion with regard to payment of cost; these are:

1. ***Indian Council for Enviro-Legal Action V. Union of India***, (2011) 8 SCC 161;
2. ***Ram Krishna Verma V. State of U.P.***, (1992) 2 SCC 620;
3. ***Kavita Trehan V. Balsara Hygiene Products Ltd.*** (1994) 5 SCC 380;
4. ***Marshall Sons & CO. (I) Ltd. V. Sahi Oretrans (P) Ltd.***, (1999) 2 SCC 325;
5. ***Padmawati V. Harijan Sewak Sangh***, (2008) 154 DLT 411;
6. ***South Eastern Coalfields Ltd. V. State of M.P.***, (2003) 8 SCC 648;

7. **Safar Khan V. Board of Revenue**, 1984 (supp) SCC 505;
8. **Ramrameshwari Devi and others** (supra).

23. In the case of **South Eastern Coalfields Ltd** (supra), the apex Court while dealing with the question held as under :

"28. ...Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation".

24. In the case of **Amarjeet Singh V. Devi Ratan**, (2010) 1 SCC 417 the Supreme Court held as under :-

"17. No litigant can derive any benefit from mere pendency of case in a court of law, as the

interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party involving the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court”.

25. The question of award of cost is meant to compensate a party, who has been compelled to enter litigation unnecessarily for no fault on its part. The purpose is not only to compensate a litigant but also to administer caution to the authorities to work in a just and fair manner in accordance to law. The case of Ramrameshwari ***Devi and others*** (supra) rules that if the party, who is litigating, is to be compensated.

26. In the case of ***Centre for Public Interest Litigation and others V. Union of India and others***, (2012) 3 SCC 1, the Hon’ble Supreme Court

after reckoning with the entire facts and circumstances and keeping in view the public interest, while allowing the petition, directed the respondents No 2, 3 and 9 to pay a cost of Rs. 5 crores each and further directed respondents No 4, 6, 7 and 10 to pay a cost of Rs. 50 lakhs each, out of which 50% was payable to the Supreme Court Legal Services Committee for being used for providing legal aid to poor and indigent litigants and the remaining 50% was directed to be deposited in the funds created for Resettlement and Welfare Schemes of the Ministry of Defence.

27. In the case reported in ***National Textile Corporation (Uttar Pradesh) Limited V. Bhim Sen Gupta and others***, (2013) 7 SCC 416 the Hon'ble Supreme Court took note of the fact that the Textile Corporation has not placed the correct facts before the Court and so the contempt petition was dismissed and the cost was quantified at Rs 50,000/-.

28. In the above conspectus, O.A filed by Smt Noorjhana, being legally wedded wife and successor of late Subedar Tafazzul Hussain deserves to be allowed and it is held that Smt. Noorjahan is entitled to family pension which was denied to her mechanically by the respondents without applying their mind. The respondents are directed to pay entire sum of family

pension, which may be found due to Smt Noorjahan. Since she has already died, the arrears of family pension shall be paid to Smt. Maiser Bano for the period from 6th August 2008 to 17th Sept 2012. The entire amount shall be calculated and paid to Smt. Maiser Bano within a period not exceeding four months from the date of submission of the certified copy of the present order.

29. Regard being had to the peculiar facts and circumstances of the case as discussed above, we find it a fit case to impose exemplary cost on the respondents vis a vis their rigid attitude towards late Subedar Tafazzul Hussain and her legally wedded wife which we quantify at Rs 5 lakhs. It is shocking that Smt. Noorjahan continued to run from pillar to post but could not get benefit of family pension inspite of possessing succession certificate. It is all the more shocking that she died of cancer at the age of 85 years without any medical help due to financial hardship and lack of recognition of matrimonial relationship with the deceased army personnel (supra).

30. We have imposed a cost of Rs 5 lakhs on the respondents which shall be deposited with the Registry of this Tribunal forthwith not exceeding three months. The sum of cost so deposited with the Registry shall be

paid to Smt. Maiser Bano through cheque within one week thereafter

31. There shall be no order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

Dated: August 2016

MH/-