

E-Court**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 604 of 2020****Thursday, this the 12th day of August, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

1. Mulu Singh Chauhan (No. 14331834H) S/o Sri Tribhawan Singh Chauhan.
2. K. Sharaddha aged about 18 years.
3. Km. Laxmi aged about 14 years.
4. Km. Jaya aged about 13 years.
5. Master Aditya aged about 10 years.

All applicants no.2 to 5 are son and daughters of Sri Mulu Singh Chauhan, also applicants no.3 to 5 are under the guardianship of their natural father Mulu Singh Chauhan, R/o Mohalla – Bastiram Qasba, Tehsil & Police Station -Chhibramau, District-Kannauj.

.... Applicant

Ld. Counsel for the: **Shri Ashok Kumar**, Advocate.
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Officer Incharge, Records Office, Army Air Defence Records PIN-908803, C/o 56 APO.
3. Principal Controller of Defence Account (Pensions), Draupadi Ghat, Allahabad.
4. Smt. Bitti Devi W/o Mulu Singh Chauhan, R/o Mohalla – Bastiram, Qasba, Tehsil & Police Station – Chhibramau, District – Kannauj.

... Respondents

Ld. Counsel for the **Shri RC Shukla**, Advocate
Respondents. Govt Standing Counsel

ORDER (Oral)

1. The instant Original Application has been filed on behalf of the applicants under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicants have sought following reliefs:-

(a) This Hon'ble Tribunal Court may graciously be pleased to direct the respondent nos.2 & 3 to make publication of the name of applicant no.2 to 5 in service records (Part-II Order) of the applicant no.1 and accordingly treat them as dependents of the applicant no.1 as per rules of respondents department.

(b) This Hon'ble Court may graciously be pleased to direct the respondent no.2 to decide the representation of applicant no.1 dated 5.7.2017 (Annexure No. A-7).

(c) This Hon'ble Court may further be pleased to pass such other and/or further order as deemed fit, proper and necessary in the circumstance of this case.

(d) Award costs to the applicant.

2. Brief facts of the case giving rise to this application are that No. 14331834H Mulu Singh Chauhan was enrolled in the Indian Army on 25.01.1978 as a Sepoy and he was discharged from service on 01.05.1995 in the rank of Havildar. During the course of service, Miss Bitti Devi was married to Mulu Singh Chauhan in the year 1989. After elapse of about 16 years of this wedlock, when no child was born, Smt Bitti Devi gave consent to her husband vide affidavit dated 10.05.1995 for second marriage in respect of her husband and accordingly, Mulu Singh solemnized second marriage after retirement with Rani Devi in June, 1995. Four children were born out of this wedlock viz, Km. Sharaddha, Km. Laxmi, Km. Jaya and Master Aditya. In the year 2013 applicant submitted a representation to Officer-in-Charge Records,

Army Air Defence through State Bank of India, Chhibramau for publication of Part-II Order with regard to notifying birth of children which was denied vide order dated 04.11.2013 on the ground of solemnizing second marriage during life time of 1st marriage without obtaining prior permission. Thereafter, Applicant submitted two representations dated 24.06.2015 and 05.07.2017 which have not been replied as yet. This O.A. has been filed for notifying date of birth of children born out of second wedlock.

3. Learned counsel for the applicant submitted that children born to second wife being legitimate are entitled for notification of their date of birth through Part-II Order even after retirement of the Army Personnel. His further submission is that when no child was born to Smt Bitti Devi even after elapse of 16 years, she gave her consent to Mulu Singh Chauhan to solemnize second marriage vide affidavit dated 10.05.1995. Learned counsel for the applicant pleaded for notifying date of birth in service record of Mulu Singh Chauhan by publication of Part-II Order.

4. On the other hand, learned counsel for the respondents submitted that Mulu Singh Chauhan contracted second marriage with Smt Rani Devi without obtaining the sanction of competent authority duly justifying the actual cause and legality which is considered as an offence in the eyes of law. His further submission is that as per provisions contained in Hindu Marriage Act, 1955, the second marriage contracted during the life time of the first wife without obtaining the decree of divorce from the Court of Law is considered null and void. Hence, it is prima-facie a case of plural marriage as per para 333 of Regulations for the Army, 1987 (Revised Edition) and Army Order 44/2001/DV, Special Marriage

Act, 1954 and Hindu Marriage Act, 1955. Learned counsel for the respondents further contended that the second marriage so solemnized by the applicant is 'plural marriage' and cannot be accepted for publication of birth occurrences of children born from his second wife Smt Rani Devi as per policy constraint and not being in order. He pleaded for dismissal of O.A.

5. We have heard learned counsel for the parties and perused the records.

6. No. 14331834H Sepoy Mulu Singh Chauhan was enrolled in the Army on 25.01.1978 and was discharged from service w.e.f. 01.05.1995 in the rank of Havildar. He is in receipt of service pension vide PPO No. S/016009/95 (ARMY) dated 04.04.1995. During service period in the year 1989 he was married with Smt Bitti Devi. When from this wedlock no children were born even after elapse of 16 years, Smt Bitti Devi gave her consent to Mulu Singh Chauhan to marry again so that he may be able to get son/daughter. Accordingly, Mulu Singh Chauhan solemnized second marriage with Smt Rani Devi and aforesaid four children were born from this wedlock.

7. It is worthwhile to mention that applicant Mulu Singh Chauhan contracted plural marriage in the month of June, 1995 after retirement i.e. on 01.05.1995, therefore, para 333 of Regulations for the Army, 1987 (Revised Edition) and Army Order 44/2001/DV are not applicable in this case as applicant contracted second marriage after retirement. However, second marriage being contracted in contravention of the provisions of Hindu Marriage Act, 1955 is void despite being contracted with consent of first wife Smt Munni Devi.

8. With regard to legitimacy of children born from second wedlock, Section 16 (1) of The Hindu Marriage Act, 1955 provides - notwithstanding that marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976.

9. From the aforesaid, an inference may be drawn that applicant's children born out of second marriage are legitimate and deserve notification of their date of birth by publishing necessary Part-II Order even after retirement of applicant Mulu Singh Chauhan.

10. In view of the above, respondents are directed to publish necessary Part-II Order in respect of Km. Sharaddha, Km. Laxmi, Km. Jaya (daughters) and Master Aditya (son) within a period of three months from today on receipt of requisite documents from Mulu Singh Chauhan. Applicant Mulu Singh Chauhan is directed to submit necessary documents to Record Officer concerned for getting necessary casualty published.

11. No order as to costs.

12. Pending application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 12th August, 2021

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