

E-Court**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 694 of 2020****Tuesday, this the 24th day of August, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt. Jahroon Nisha, wife of Army No 1540876 Ex Spr Late Ishtyaf Ahmed, resident of village-Kusahawan, Post-Ahirauli Bazar, District-Kushinagar, U.P.-274402.

.... Applicant

Ld. Counsel for the: **Shri Sadab Haider**, Advocate.
Applicant

Versus

1. Union of India through the Secretary Ministry of Defence, Defence Head Quarters, Post Office South Block, New Delhi.
2. Chief of Army Staff, Army Head Quarters, South Block, New Delhi.
3. The Officer Incharge Records, B.E.G. Records Kirkee, Pune, 908796, C/O 56 APO.
4. Zila Sainik Kalyan Evam Punarvasan, Kushi Nagar, U.P.
5. The Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad.

... Respondents

Ld. Counsel for the : **Shri Yogesh Kesarwani**, Advocate
Respondents. Govt Standing Counsel

ORDER (Oral)

1. By means of this O.A. applicant Smt Jahroon Nisha, second wife of No. 1540876 Ex Spr Late Ishtyaf Ahmed, has prayed for the following :-

(a) That this Hon'ble Tribunal may kindly be pleased to direct the opp. Parties concerned to grant and pay the family pension to the petitioner from the due date i.e. 23.01.2013 onwards and also interest @ 18% per annum thereon and to pay continuous pension each and every months, in the interest of justice.

(b) That any other order or direction which this Hon'ble Court may deem just and proper under the circumstances of the case.

(c) That this Hon'ble Court may kindly be pleased to allow the Original Application with costs.

2. No. 1540876 Ex Spr Ishtyaf Ahmed (now late) was enrolled in the Indian Army on 31.12.1970 and discharged from service w.e.f. 31.12.1985 on fulfilling terms and conditions of service. He was granted service pension vide PPO No. S/C/33048/1985 dated 20.12.1985. During course of service, he solemnized marriage with Nurshaba Nisha (first wife) on 18.10.1971. Ishtyaf Ahmed again got married with Smt Jahroon Nisha (second wife) on 17.06.1980 during life time of his first wife without obtaining decree of divorce from his first wife, who later expired on 11.12.1984. After death of Ishtyaf Ahmed on 22.01.2013, applicant moved several representations for grant of family pension. When nothing tangible could be achieved, she has filed this O.A. for grant of family pension.

3. Submission of learned counsel for the applicant is that since names of Smt Jahroon Nisha and her children are entered in service documents of the deceased soldier, she is entitled to receive family pension after death of her husband on 22.01.2013. His further submission is that since applicant's name is duly entered in family register of the deceased soldier which is indicative of applicant being legally wedded wife of the deceased soldier, therefore, she is entitled to receive Ordinary Family Pension being NOK as her name is entered in service records including PPO and Corrigendum PPOs in respect of the deceased soldier.

4. Per contra, submission of learned counsel for the respondents is that as per service record, the deceased soldier was married with Smt Nurshaba Nisha (first wife) on 18.10.1971. During his life time the deceased soldier again solemnized marriage with Smt Jahroon Nisha (second wife) on 17.06.1980 without obtaining decree of divorce from first wife. His further submission is that Smt Nurshaba Nisha (first wife) died on 11.12.1984 as per declaration certificate dated 17.07.1985 submitted by Ishtyaf Ahmed during his service period. His other submission is that since Ishtyaf Ahmed contracted 2nd marriage with Smt Jahroon Nisha (second wife) on 17.06.1980 and Smt Nurshaba Nisha was then alive, therefore claimant's marriage comes under clause 'plural marriage' in accordance with para 333 (b) of Regulations for the Army, 1987 (Revised Edition) and hence applicant is not entitled to receive Ordinary Family Pension. He pleaded for dismissal of O.A.

5. Heard learned counsel for the parties and perused the material placed on record.

6. From the pleadings on record we find that No. 1540876 Ex Spr Ishtiyaf Ahmed (now late) was enrolled in the Indian Army on 31.12.1970 and discharged from service w.e.f. 31.12.1985 on fulfilling terms and conditions of service. He was granted service pension vide PPO No. S/C/33048/1985 dated 20.12.1985. During course of service, he solemnized marriage with Nurshaba Nisha (first wife) on 18.10.1971 and later contracted second marriage with Jahroon Nisha (second wife) on 17.06.1980 in violation of para 333 (b) of Regulations for the Army, 1987 (Revised Edition) and without obtaining decree of divorce from his first wife. A legal notice dated 15.05.2017 (Annexure R-9) from applicant's counsel sent to Records BEG, Kirkee for grant of Ordinary Family Pension was replied on 31.05.2017 (Annexure R-10) stating that marriage of applicant solemnized with late Ishtiyaf Ahmed is considered as 'plural marriage' in terms of para 333 (b) of Regulations for the Army, 1987 (Revised Edition). For convenience sake, extract of letter dated 31.05.2017 is reproduced as under:-

"1. Reference legal notice dated 15 May 2017 served by you on behalf of the Smt Jahroon Nisha, widow of the above deceased soldier.

2. In this connection it is intimated that as per service record held with this office, late Spr Ishtiyaf Ahmed married to Smt Jahroon Nisha on 17 Jun 1980 during the life time of his 1st wife Smt Nurshaba Nisha. Hence, the marriage is considered as 'Plural Marriage' (illegal & void) and as such Smt Jahroon Nisha (2nd wife) is not entitled to family pension.

3. However, children born out of void marriage are eligible for a share of family pension if otherwise in order. To

enable us ascertain the eligibility of children for grant of family pension, the details of children has already been asked for vide this office letter No 1540876/49/F/Pen (DAR) dated 08 May 2017. But the details have not yet been received by this office till date. You may advise the claimant to submit the requisite documents duly completed for our examination.”

7. Thus, in view of above ruling on the subject, applicant does not seem to be entitled to Ordinary Family Pension on the ground of plural marriage as envisaged in aforesaid Army Regulation (supra). However, children born out of first and second wedlock are eligible for grant of share of family pension till they become ineligible, if otherwise in order, according to para 71 of Pension Regulations for the Army, 2008 (Part-I).

8. The Defence Services Regulations are framed under the authority of Section 192 of the Army Act, 1950. Regulation 333 relating to plural marriage reads as under :-

“333.Plural Marriages.- (A) The Special Marriage Act 1954 and Hindu Marriage Act 1955 lay down the rule of ‘Monogamy’ that is, neither party has a souse living at the time of marriage. These Acts also provide for decrees of nullity of marriage, restitution of conjugal rights, judicial separation and divorce and also orders for alimony, and custody of children. The Hindu Marriage Act applies to all Hindus, Budhists, Jains and Sikhs and also applies to all other persons (with certain exceptions), who are not Muslims, Christians, Paris or Jews by religion. Christians, Parsis and Jews are also prohibited under their respective personal laws from contracting a plural marriage. Thus no person who has solemnized or registered his/her marriage under the Special Marriage Act or who is a Christian, Parsi or Jew or to whom the Hindu Marriage Act 1955 applies, can now remarry during the life time of his or her, wife or husband. Sub-para (C) (a) to (c) below apply to such persons only. A Muslim or such other person to whom the Hindu Marriage Act does not apply and whose personal law does not prohibit Polygamy or Polyandry can marry during the life time of his or her, wife or husband and sub-para (B) (a) to (h) below apply to such persons only.

(B) Plural Marriage by persons in whose case it is permissible:-

(a) No person subject to the Army Act except Gorkha personnel of Nepalese domicile can marry again within the life time of his wife without prior sanction of the Government. The circumstances under which such Gorkha personnel can contract a plural marriage are:-

(i) When the wife suffers from incurable insanity (madness);

(ii) When there is no birth till ten years of marriage;

(iii) When the wife is paralysed and cannot move;

(iv) When the wife becomes blind of both the eyes;

(v) When the wife is suffering from an infectious incurable sexually transmitted disease.

(b) An individual may, during the life time of his wife apply for sanction to contract a plural marriage on any one or more of the following grounds:-

(i) his wife has deserted him and there is sufficient proof of such desertion;

(ii) his wife has been medically certified as being insane;

(iii) infidelity of the wife has been proved before a court of law; and

(iv) any other special circumstances which in the opinion of the brigade or equivalent commander would justify contracting a plural marriage.

(c) Applications will state the law under which the subsisting marriage was solemnized, registered or performed and will include the following details where applicable:-

(i) Whether the previous wife will continue to live with the husband;

(ii) If the previous wife does not propose to live with the husband, what maintenance allowance is proposed to be paid and in what manner; and

(iii) Name, age and sex of each child by previous marriage and maintenance allowance proposed for each in case any such child is to live in the custody of the mother.

In all the cases, the applicant will render a certificate to the effect that he is not a Christian, Parsi or Jew by religion, that he had not solemnized or registered his previous marriage under the Special Marriage Act, 1954 and that the Hindu Marriage Act, 1955 is not applicable to him.

(d) Applications will be forwarded through normal channels and each intermediate commander will endorse his specific recommendations. Such recommendations will be signed by the commander himself or be personally approved by him. Before making his recommendations a commander will satisfy himself that the reasons given for the proposed plural marriage are fully supported by adequate evidence.

(e) An individual whose marriage is alleged to have been dissolved according to any customary or personal law but not by a judicial decree will report, immediately after the divorce, the full circumstances leading to and culminating in dissolution of the marriage together with a valid proof of the existence of the alleged custom or personal law. The existence and validity of the alleged custom or personal law, if considered necessary, will be got verified from civil authorities and if it is confirmed by the civil authorities, action will be taken to publish casualty for the dissolution of the marriage. The individual therefore will not be required to obtain sanction for contracting the second marriage.

(f) An application which is not recommended by the Commanding Officer and an authority superior to him need not be sent to Army Headquarters, but may be rejected by the GOC-in-C of the Command concerned.

(g) Cases where it is found that an individual has contracted plural marriage without obtaining prior Government sanction as required in clause (a) above will be dealt with as under:-

(i) Cases of officers will be reported through normal channels to Army Headquarters (AG/DV-2) with the recommendations as to whether ex-post-facto sanction should be obtained or administrative action should be taken against the individual.

(ii) Cases of JCOs and OR will be submitted to the GOC-in-C Command who will decide whether ex-post-facto sanction should be obtained or administrative action should be taken against the individual. In cases, where it is decided that administrative action should be taken against the individual, his service will be terminated under orders of the competent authority.

When reporting cases to higher authorities, intermediate commanders will endorse their specific recommendations with reasons thereof. Here too recommendations will be signed by the Commanders themselves or be personally approved by them.

Also, an opportunity to 'show cause' against the order of termination of service will always be given to the individual concerned.

(h) In no circumstances will disciplinary action by way of trial by Court Martial or Summary disposal be taken against an individual who is found to have contravened the provisions of clause (a) above.

If, however, the individual is also found to have committed another offence connected with his act of contracting a plural marriage, disciplinary action for the connected offence may be taken and progressed in the normal manner.

(C) *Plural Marriage by persons in whose case it is not permissible-*

(a) An individual whose marriage is alleged to have been dissolved according to any recognized custom or special enactment under the provisions of Sec 20 (2), read with Sec 3 (a) of the Hindu Marriage Act, but not by a judicial decree will report immediately after the divorce, the full circumstances leading to and culminating in dissolution of marriage together with a valid proof of the existence of the alleged recognized custom or special enactment. The existence and validity of the alleged custom or special enactment will be got verified from civil authorities and if it is confirmed by the civil authorities that the divorce is valid, action will be taken to publish the casualty for the dissolution of the marriage. The individual thereafter will not be required to obtain sanction for contracting the second marriage.

(b) A plural marriage solemnised, contracted or performed by any such person is null and void and may, on a petition presented to a court of law by either party thereto, be so declared by a decree of nullity. Not only is the plural marriage void but the offence of bigamy is also committed. The offence is, however, triable only on a complaint made to the civil authority by an aggrieved party. The punishment for the offence of a bigamy is prescribed in Sections 494 and 495 of the Indian Penal Code.

(c) When it is found on receipt of a complaint from any source whatsoever, that any such person has gone through a ceremony of plural marriage, no disciplinary action by way of trial by Court Martial or Summary disposal will be taken against him, but administrative action to terminate his service will be initiated and the case reported to higher authorities in the manner laid down in sub-para (B) (g) above. In cases where cognizance has been taken by civil court of competent jurisdiction the matter should be treated

*as **sub judice** and the decision of the court awaited before taking any action. When a person has been convicted of the offence of bigamy or where his marriage has been declared void by a decree of court on grounds of plural marriage, action will be taken to terminate his service under AA Section 19 read with Army Rule 14 or AA Section 20 read with Army Rule 17 as the case may be. No ex-post-facto sanction can be accorded as such marriages are contrary to the law of the land.”*

9. Thus, it is clear that Ishtiyaf Ahmed had contracted plural marriage with Smt Jahroon Nisha (second wife) on 17.06.1980 without obtaining decree of divorce from his first wife Smt Nurshaba Nisha (first wife) which is utter violation of para 333 (b) of Regulations for the Army, 1987 (Revised Edition). Unless and until there is a decree of divorce/cancellation of first marriage, the second marriage being void, no pensionary benefit can be granted to the applicant.

10. The applicant has tried to set up a new case that her marriage had been solemnized after the death of 1st wife Nurshaba Nisha and for that she has filed copy of Parivar Register alongwith rejoinder affidavit wherein date of death of 1st wife has been shown as 12.02.1979 i.e. prior to marriage date of the applicant. However, on scrutiny we find that copy of Parivar Register filed alongwith rejoinder affidavit is fake. In declaration certificate dated 17.07.1985 submitted by the deceased soldier it has been specifically stated that deceased soldier's 1st wife Nurshaba Nisha died on 11.12.1984 and the supplementary copy of Parivar Register has been filed wherein the same date of death is mentioned as given in declaration certificate. This fully establishes that copy of Parivar Register filed by the applicant has been forged by the applicant to get family pension.

11. In view of the above and the fact that the deceased soldier contracted plural marriage with applicant Jahroon Nisha which is not permissible under Army Regulation (supra), she is not entitled to receive Ordinary Family Pension.

12. In view of the above, we find no merit in the present O.A. and the same is **dismissed**.

13. No order as to costs.

14. Pending applications, if any, shall stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 24th August, 2021
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