

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH NAINITAL)**

O.A. No. 520 of 2017

Monday, this the 2nd day of August, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt Krishna Thapa wife of late Kehar Singh Thapa (No 5736304), Village-Daunwala, Post Office-Mathorowala, District-Dehradun (Uttarakhand), Pin-248001.

..... Applicant

Ld. Counsel for the: **Shri Kishore Rai**, Advocate
Applicant holding brief of **Shri Lalit Kumar**, Advocate

Versus

1. Union of India Through Secretary, Ministry of Defence, South Block, New Delhi.
2. Addl Dte Gen MP/MP 8 (I of R), Adjutant General's Branch, Army Headquarters, West Block, RK Puram , New Delhi-110066.
3. PCDA (Pensions), Draupadi Ghat, Allahabad (UP).
4. Chief Records Officer, Records, 58 Gorkha Rifles, Happy Valley, Shillong-7 (Meghalaya).
5. Chief Records Officer, Records, The Defence Security Corps, PIN-901277, C/O 56 APO.

..... Respondents

Ld. Counsel for the : **Ms Pushpa Bhatt**
Respondents Central Govt Counsel.

ORDER (Oral)

1. The instant Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed by the applicant with the following prayers :-

“(i) To quash and set aside the impugned order dated 17.06.2014 passed by Respondent No 3.

“(ii) To direct the respondents to grant ‘Ordinary Family Pension’ to the applicant with effect from the date of the death of her husband, i.e., from 9th September 2011 and to pay the arrears of the same alongwith interest.

“(iii) To grant any other relief or reliefs which the Hon’ble Tribunal may deem fit and proper in the interest of justice and in the facts and circumstances of the case.

2. Brief facts of the case are that No 5736304 Sep Kehar Singh was enrolled in the Army on 21.11.1955 and during course of service he was promoted to the rank of Havildar. He was discharged from service w.e.f. 30.11.1976 and granted service pension vide PPO No. S/10725/1977. Later, he got him re-enrolled in DSC on 17.03.1977 and discharged from service w.e.f. 10.02.1979. During service on 25.04.1965 he was married with Raj Kumari who is alleged to have eloped in the year 1982 and died on 07.01.2009. It is stated that on elopement of his first wife, Kehar Singh got married with Krishna Thapa in the year 1984. It is also stated that Raj Kumari died on 07.01.2009 and later Kehar Singh also died on 26.09.2011. This O.A. has been filed by Krishna Thapa, who is Kehar Singh’s second wife, for grant of Ordinary Family Pension after demise of Hav Kehar Singh.

3. Learned counsel for the applicant submitted that deceased soldier's first wife Raj Kumari had eloped with Tilak Bahadur in the year 1982 and applicant Smt Krishna Thapa (second wife of the deceased soldier), was married with Hav Kehar Singh in the year 1984 on the advice of village Panchayat. His further submission is that Hav Kehar Singh obtained customary divorce from his first wife Raj Kumari on his elopement and tried to get occurrence published with regard to elopement of his first wife Smt Raj Kumari as also solemnizing second marriage but it could not be done due to some reasons or the other. His further submission is that after elopement of first wife of Hav Kehar Singh, he got married with Krishana Thapa on the advice of village panchayat. His argument is that since deceased soldier's first wife Raj Kumari is no more, applicant who is second wife of the deceased soldier is entitled to receive Ordinary Family Pension.

4. Per contra, submission of learned counsel for the respondents is that Raj Kumari, who is first wife of Hav Kehar Singh and whose particulars are entered in Army service records, is entitled to receive ordinary family pension after demise of pensioner Kehar Singh. His further submission is that second wife Krishana Thapa is only entitled to receive Ordinary Family Pension after death of Kehar Singh if marriage in respect of first wife Raj Kumari has been dissolved by a court of law prior to their marriage and casualty to this effect has been published. Respondents' learned counsel further submitted that after receipt of claim of Ordinary Family Pension from applicant, the pension sanctioning authority had rejected the claim

on the ground that the second marriage, which took place when first marriage was subsisting, is void. Concluding his submission, learned counsel for the respondents pleaded for dismissal of O.A. and submitted that applicant Krishna Thapa is not entitled to Ordinary Family Pension.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. It is not disputed that Hav Kehar Singh was enrolled on 20.11.1955 and was discharged from service on 30.11.1976. During service period he got married with Raj Kumari on 25.04.1965 who, as per applicant, eloped with Tilak Bahadur on 09.07.1982. In the year 1984, Kehar Singh got married with Krishna Thapa but during his life time he never tried to get decree of divorce with respect to his first wife from the court of law. As per law, he could only get married with Krishna Thapa after getting divorce from his first wife. He married with second wife Krishna Thapa when his first marriage was subsisting.

7. In this connection on subsistence of first marriage an individual may apply for contracting second marriage on any one or more of the following grounds :-

- (a) His wife has deserted him and there is sufficient proof of such desertion;
- (b) His wife has been medically certified as being insane;
- (c) Infidelity of the wife has been proved before a court of law;

8. We observe that Raj Kumari (first wife) had deserted on 09.07.1982 and Kehar Singh contracted second marriage with

Krishna Thapa (second wife) on 02.11.1984 when his first marriage was subsisting. In regard to second marriage, it has been brought on record that second marriage was contracted in the year 1984 on the basis of customary law of village panchayat. In the instant case, we observe that after absconding Raj Kumari, Kehar Singh should have applied the following procedure to validate the second marriage in accordance with AO 44 /2001 if there was no decree of divorce:-

“An individual whose marriage is alleged to have been dissolved according to any customary law 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 alleged custom or personal law. Existence and validity of the same, 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, thereafter will not be required to obtain sanction for contracting the second marriage.”

9. There is nothing to show that in such circumstances, the first marriage of Raj Kumari with Kehar Singh came to an end when Kehar Singh solemnized marriage with Krishna Thapa in the year 1984. It could not be disputed by the learned counsel for the applicant that the second marriage under Hindu Marriage Act is null and void. The first wife was very much alive on the date of the marriage of the applicant with Kehar Singh and even the record further shows that Raj Kumari eloped on 09.07.1982 with Tilak Bahadur while according to the applicant her marriage with Kehar Singh was solemnized on 02.11.1984. Unless and until there is

divorce/cancellation of first marriage, no pensionary benefit may be given to the applicant.

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

11. No order as to costs.

12. Pending miscellaneous applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 02nd August, 2021
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