

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Court No 1****ORIGINAL APPLICATION No. 704 of 2020**

Wednesday, this the 22nd day of September, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt Jafrul Nisha, W/o Late Mohd Hassan, Ex Nb Sub
JC-75604, R/o Vill- Alipur, PO- Pandri Kustarka, Tehsil- Patti,
District – Pratapgarh(U.P.).

Counsel for the Applicant : **Shri Parijaat Belaura,
Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence,
Govt of India, New Delhi.
2. Chief of the Army Staff, Army Headquarters, Ministry of
Defence, Govt of India, South Block, New Delhi –
110011.
3. The Chief Record Officer, ASC Records (South),
Bangalore - 07.
4. The Principal Controller of Defence Accounts (Pension),
Draupadighat, Allahabad-211014.

.....Respondents

Counsel for the Respondents : **Shri Vishvesh Kumar,
Central Govt. Counsel**

ORDER**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

“(I). To delete the name of Noor Mohammad and Zulekha from the service records of husband of the applicant.

“(II). To enter the name of applicant and her 5 children in the service records of applicant’s husband and issue Part II Order.

“(III) To grant family pension to the applicant w.e.f. next date of death of Husband of applicant i.e. 16.07.2008.

“(IV) To pay arrear of Family Pension along with 12% interest from the next date of death of applicants Husband i.e. 16.07.2008 till it is actually paid.

“(V). Any other suitable relief this Hon’ble Court deems fit and proper may also be granted.”

2. Counter affidavit filed by the respondents is taken on record.

3. Facts giving rise to Original Application in brief are that alleged husband of applicant JC-75604 Ex Late Nb Sub Mohd Hassan was enrolled in the Army on 18.02.1953 and was discharged from service on 01.12.1977 on completion of terms of engagement. Ex Nb Sub Late Mohd Hassan was granted service pension vide PPO No S/48338/77. During service

applicant's husband married to Smt Fatima who died on 27.12.1977. After death of first wife applicant's husband married to applicant Smt Jafrul Nisha on 18.09.1980 as per Muslim Law. Two sons namely Mohd Usman and Mohd Rukshan and three daughters Batul Nisha, Jaibun Nisha and Laikun Nisha were borne out of bed lock of applicant and her husband. Husband of the applicant died on 15.07.2008. Succession Certificate dated 09.04.2010 and Domicile Certificate dated 18.12.2015 showing applicant to be wife have been issued by competent authority. On 03.09.2016, applicant Smt Nafrul Nisha sent a representation for publication of occurrence regarding her marriage and birth of her children as well as for grant of family pension to her. She was asked to submit certain documents to clarify that she is legally wedded wife of Ex Late Nb Sub Mohd Hassan. Applicant was asked to forward certain documents to clarify that first wife Smt Fatima died on 27.12.1977, she was issueless and applicant married to her husband on 18.10.1980 after death of first wife i.e. Smt Fatima. She submitted succession certificate and domicile certificate to respondents but part II order was not published. Her prayer for grant of family pension was rejected by the respondents vide letter dated 31.03.2019. Applicant filed Writ Petition before Hon'ble High Court Allahabad which was

dismissed on 19.03.2018 on the ground of alternate remedy. Being aggrieved, the applicant has filed instant O.A. for grant of family pension.

4. Learned counsel for the applicant submitted that deceased soldier Ex Late Nb Sub Mohd Hassan during service time was married to Smt Fatima who died on 27.12.1977. After death of first wife deceased soldier married to applicant on 18.09.1980 as per Muslim Law. Two sons namely Mohd Usman and Mohd Rukswhan and three daughters namely Batul Nisha, Jaibun Nisha and Laikun Nisha were born out of bed lock of applicant and her husband. Husband of the applicant died on 15.07.2008. Applicant has produced Succession Certificate dated 09.04.2010 and Domicile Certificate dated 18.12.2015 showing to be wife of Ex Late Nb Sub Mohd Hassan. After death of her husband, applicant prayed the respondents for grant of family pension. She was asked to produce required documents to prove that she is legally wedded wife of Ex Late Nb Sub Mohd Hassan. She produced required documents and clarified that First wife Smt Fatima of Ex Late Nb Sub Mohd Hassan died on 27.12.1977 and applicant married to her husband on 18.09.1980 after about three years of death of first wife of her husband. He further submitted that due to clerical mistake date of death of Fatima was show as 31.07.1996.

Learned counsel for the applicant submitted that applicant is illiterate and exact date of birth is not known to her. Her two daughters Smt Baitun Nisha and Smt Laikun Nisha and one son Mohd Rukshan are unmarried. Learned counsel for the applicant submitted that Noor Mohd and Zalekha who have been entered in the service record of husband of applicant are children of his brother and both are married. Since first wife of applicant's husband was issueless as such applicant's husband was taking care of children of his brother. After death of first wife Ex Late Nb Sub Mohd Hassan married to applicant and five children were born to him then his brother started taking care of his children Noor Mohd and Zulekha. After death of Mohd Umar brother of the applicant's husband, Noor Mohd has been substituted as legal heir in the property of his father Mohd Umar. Learned counsel for the applicant pleaded that in view of aforesaid, name of Noor Mohd and Zulekha be deleted from service record of her husband and name of the applicant as well as her children be entered in service record of her husband and direction be issued to respondents for grant of family pension to the applicant from the date of death of her husband.

5. Per contra, learned counsel for the respondents submitted that as per service documents, applicant was married to Smt Fatama on 01.07.1946 and two children named Noor

Mohd and Zulekha were born out of wedlock. After death of Ex Late Nb sub Mohd Hassan on 15.07.2008, the applicant had approached to PCDA (Pension), Allahabad for grant of family pension. Her case was referred to ASC Records, (South), Bangalore. She was advised to intimate whereabouts of Smt Fatima and also forward mandatory documents for examination of the case. Learned counsel for the respondents also submitted that date of death of first wife Smt Fatima was shown as 31.07.1996. However later on rectified as 27.12.1977 which is contradictory. The second marriage being contracted during the life time of 1st wife is void in absence of proper divorce documents on record. Therefore applicant is not entitled for grant of family pension. However, children born out of the void marriage are entitled to family pension if they are unemployed, unmarried and below 25 years of age and meeting all other conditions as laid down. He further submitted that as per documents, Miss Baitun Nisha daughter of applicant whose date of birth is 25.07.1990 is eligible for family pension. Accordingly, ASC Records (South), Bangalore asked the applicant to provide necessary document for examination and publication of birth occurrence in favour of her daughter Baitun Nisha but the same were not provided by the applicant. Ex Late Nb Sub Mohd Hassan entered the name of Noor Mohd

and Zulekha in his service record as his legal heir and name of applicant and her children is not entered in service records of deceased soldier, hence applicant and her children are not entitled for any pension. He pleaded that Original Application being devoid of merit is liable to be dismissed.

6. We have heard Ld. Counsel for the parties and perused the material placed on record.

7. The questions which needs to be answered is that if the name of the applicant and her children are not recorded in service document of deceased soldier, then applicant and her children are entitled for grant of family pension or not?

8. Regulation 66 of Pension Regulation for the Army 1961 (Part-I) as amended in 2008, definition of family has been defined as under:-

DEFINITION OF FAMILY

“66. Family for the purpose of Regulations in this Section shall consist of the following:-

- (i) Wife in the case of male service personnel or husband in the case of female service personnel lawfully married before or after retirement.*
- (ii) A judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.*
- (iii) Unmarried daughters/ unmarried sons (including those legally adopted widowed/ divorced daughters.*
- (iv) Parents who were wholly dependent on the service personnel when he was alive.”*

9. Regulation 63 of Pension Regulation for the Army 1961 (Part-I) as amended in 2008, reads as under:-

(b) Ordinary Family Pension

“Para 63. *Where Service personnel dies in the circumstances mentioned in the Category A of the Regulation 82 of these Regulations:-*

(i) Either while in service, provided he had been found fit after successful completion of the requisite training and medical examination for commission, or at the time of enrolment in the case of Personnel Below Officer Rank, or

(ii) After release/retirement/discharge/invalidment with a pension of any kind under these regulations”

10. In view of the certificates produced by the applicant it transpires that real date of death of first wife Smt Fatima is 27.12.1977 which was erroneously mentioned in certificate as 31.07.1996. Applicant was married with Ex Late Mohd Hassan on 18.09.1980 after about three years of death of first wife, hence her marriage is legal. On the basis of documents produced by the applicant, it appears that Noor Mohd and Zulekha are children of Mohd Usman and not children of Ex Late Nb Sub Mohd Hassan as claimed by the respondents. Zulekha has been married and Noor Mohd has been substituted as legal heir in the property of his late father Mohd Umar, hence they are not entitled for any pension.

11. In view of the facts and circumstances of the case, we are of the considered view that the applicant is entitled for

Ordinary Family Pension from the next date of death of her husband.

12. Thus, in the result, Original Application succeeds and is **allowed**. Applicant is directed to submit all requisite documents as asked by the respondents within one month. After receipt of the necessary documents, respondents shall update their record and grant Ordinary Family Pension to the applicant from the next date of death of Ex Late Nb Sub Mohd Hassan. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 8% on the amount accrued from due date till the date of actual payment.

13. No order as to costs.

14. Pending applications, if any, are disposed of accordingly.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 22 September, 2021

Ukt/-