

**Reserved****Court No 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****O.A. No. 505 of 2017 inre M.A. No 276 of 2015**Friday, this the 29<sup>th</sup> day of April, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Smt. Jayanti Devi W/o Ex. Late Nk Anoop Singh No. 9204581 R/o Village – Malli Riyuni, Post Office-Majkhali, District-Almora (Uttarakhand)

Learned counsel for the : **Shri K.K.S. Bisht, Advocate**  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, south Block, New Delhi-110011.
2. Officer –in-Charge, Defence Security corps records, Pin 901277, C/o 56 APO.
3. Chief Defense, Assistant Commandant (Pension), G-3/11 Section, Allahabad (U.P).
4. State Bank of India, Branch at Ramnagar, District Nainital, through its Branch Manager.
5. Sushri Jamuna Devi @Sushri Jayanti Devi, D/o Shri Bhagwat Singh, Presently R/o Village-Malli Riyuni, Post Office-Majkhali, District-Almora (Uttarakhand)

**.....Respondents**Learned counsel for the: **Dr. Gyan Singh, for**  
Respondents. **Respondents No 1 to 4 and**  
**Shri Gyan Singh Chauhan for**  
**Respondent No 5**

**ORDER**

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

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (i) *Quash the impugned order dated 07.05.1990 passed by Assistant Record Officer for OIC records DSC as well as the impugned order passed in the year 1991 of the Account Officer(P) (annexure no.1 to this application) and direction may given to authority concerned to made necessary correction in the service record of No. 9204581 Ex. NK Late Anoop Singh.*
- (ii) *Give direction to the respondent Bank i.e. to provide family pension to the applicant on account of death of her husband i.e. No. 9204581 Ex. Nk Late Anoop Singh.*
- (iii) *Pass any other order direction, which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.*
- (iv) *Award the cost of the application to the applicant.*

2. Briefly stated fact of the case is that Ex Late Nk Anoop Singh was enrolled in the Indian Army on 20.07.1962 and he retired from service on 30.06.1979. He died on 01.04.2013. He was granted service pension for his services rendered in the army. Name of Smt Jayanti Devi as Next of Kin was recorded in service documents of deceased soldier. After death of Ex Late Nk Anoop Singh, Smt Jayanti Devi filed M.A. No 276 of 2015 at Armed Forces Tribunal, Circuit Bench, Nainital for grant of family pension which was allowed vide order 16.02.2017. Smt Jamuna Devi @ Sushri Jayanti Devi/ Respondent No 5, (2<sup>nd</sup> wife)

filed M.A. No 566 of 2017 with prayer to recall the order dated 16.02.2017 passed in M.A. No 276 of 2015, and to issue direction to bank concerned not to grant family pension to anyone during the pendency of the present application and grant her family pension. Prayer of respondent No 5 to recall order dated 16.02.2017 was allowed vide order dated 09.09.2017 and order was passed to both the parties to produce entire service record of deceased soldier. Now the applicant has filed O.A. No 505 of 2017 to grant her family pension.

3. Learned counsel for the applicant submitted that Ex Late Nk Anoop Singh was married to Smt Jayanti Devi and her name was recorded in service documents of deceased soldier. The deceased soldier did not ever gave divorce to Smt Jayanti Devi. During service period Ex late Nk Anoop Singh started living with Susri Jamuna Devi @ Jayanti Devi/ Respondent No 5 at Ramnagar, District- Nainital. Zila Sainik Kalyan Punarvas Karyalaya, Almora issued Identity Card bearing No 4180053 to Susri Jamuna Devi @ Jayanti Devi (Respondent No 5) which was later on cancelled. After death of Ex Anoop Singh, Smt Jayanti Devi (1<sup>st</sup> wife) filed M.A. No 276 of 2015 before AFT, Nainital for grant of family pension which was allowed vide order dated 16.02.2017. Applicant applied for grant of family pension to the authority concerned and she was advised to approach Pension Disbursing Agency at Nainital and concerned Bank but family pension was not granted to her. Applicant is an unhealthy senior citizen and

facing hardship for her livelihood due to non grant of family pension. The applicant was granted demand draft dated 19.06.2013 for funeral expenses of Ex Late Nk Anoop Singh. Applicant came to know that Respondent No 5 Susri Jamuna Devi is also trying to get family pension after death of her husband Ex Late Nk Anoop Singh with the name of applicant i.e. Smt Jayanti Devi as such applicant again applied for grant of family pension. She was issued Identity Card by Zila Sainik Kalyan Punarvas Karyalaya, Almora (Uttarakhand) and Identity Card No 4180054 issued to Susri Jamuna Devi @ Jayanti Devi, which was erroneously issued, was cancelled. Learned counsel for the applicant pleaded that directions be issued to concerned authority to grant family pension to her in terms of impugned order dated 16.02.2017 passed by this Tribunal.

4. Per contra, learned counsel for Respondent No 5 submitted that Ex late Nk Anoop Singh was enrolled in Mahar Regiment on 20.07.1962 and discharged on 31.07.1967. Thereafter, he got enrolled in DSC on 25.06.1968 and discharged from service on 30.06.1979. He was granted service pension vide PPO No S/C/3077/79. After demise of Ex Late Nk Anoop Singh, One lady named Smt Jayanti Devi filed M.A. No 276 of 2015 before AFT, Nainital for grant of family pension illegally showing herself as first wife on the frivolous and manipulated facts. He submitted that alleged applicant who had filed the Original Application is Smt Janki Devi wife of Anoop Singh @ Manop Singh

resident of Village Malli Rewni, Post – Majakhali, Vikash Khand Dwarhat, Tehsil Ranikhet, District- Almora. The applicant was drawing old age pension from the concerned administration of Almora. The applicant misled the Tribunal and got the order ex parte in her favour. He submitted that Respondent No 5 is real Smt Jayanti Devi wife of Ex Late Nk Anoop Singh and the same is recorded in Army Record of her husband with joint photograph of her husband. Marriage of the Respondent No 5 with Ex Late Nk Anoop Singh was solemnized in the year 1960 at Kotdwar in presence of relatives, common friends and inmates of both the families. The applicant Smt Jayanti Devi @ Smt Janki Devi is living with Narain Singh in the separate house of Narain Singh since the marriage of respondent No 5. Five children were born with the wedlock of Respondent No 5 and Ex Late Nk Anoop Singh and son Naveen Singh was born in Army Hospital Bareilly. Smt Jamuna Devi is nick name of Respondent No 5. Ms. Prema Devi is daughter of Narain Singh and not daughter of Ex Late Nk Anoop Singh. Respondent No 5 applied for grant of family pension which was denied by the Pension Disbursing Agency, SBI Ramnagar. Learned counsel for Respondent No 5 prayed that order of this Tribunal dated 16.02.2017 be set aside and family pension be granted to Respondent No 5.

5. Learned counsel for the respondents No 1 to 4 submitted that name of Smt Jayanti Devi @Smt Janki Devi (1<sup>st</sup> wife) is recorded in

service documents of Ex Late Nk Anoop Singh hence she is legally wedded wife of deceased soldier. Ex Late Nk Anoop Singh solemnized 2<sup>nd</sup> marriage with Smt Jamuna Devi @ Jayanti Devi without giving divorce to 1<sup>st</sup> wife, hence as per Section 5 of Hindu Marriage Act 1955, marriage of Smt Jamuna Devi @ Jayanti Devi is devoid marriage.

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

7. The question which needs to be answered is who is real wife of Ex Late Nk Anoop Singh, the applicant Smt Jayaanti Devi who has filed M.A. No 276 of 2015 or respondent No 5?

8. As per 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. Second marriage of Ex Late Nk Anoop Singh with Smt Jayanti Devi (Respondent No 5) during life time of his first wife without any legal separation, is a null and void marriage in terms of Section 5 of the Hindu Marriage Act 1955. For ready reference, Section 5 of the Hindu Marriage Act is reproduced as under:-

**“5. Conditions for a Hindu marriage.**—*A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—*

***(i) neither party has a spouse living at the time of the marriage;***

***(ii) at the time of the marriage, neither party—***

*(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or*

*(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or*

*(c) has been subject to recurrent attacks of insanity*

*(iii) the bridegroom has completed the age of 2 [twenty-one years] and the bride, the age of 3 [eighteen years] at the time of the marriage;*

*(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;*

*(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.”*

11. On perusal of record, it is evident that Ex Late Nk Anoop Singh solemnized marriage with Smt Jayanti Devi (DOB 01.07.1943), D/o Late Hayat Singh in the year 1959 and her name was recorded in service document of deceased soldier. Deceased soldier was living with Smt Jamuna Devi (Respondent No 5) without giving divorce to Smt Jayanti Devi. After death of Ex Anoop Singh, Smt Jayanti Devi (1<sup>st</sup> wife) filed petition before AFT, Nainital for grant of family pension which was allowed and PPO was issued in favour of Smt Jayanti Devi.

12. In the meantime, Smt Jamuna Devi @ Jayanti Devi (Respondent No 5) filed M.A. No 566 of 2017 before this Tribunal stating that applicant Smt Jayanti Devi got the order dated 16.02.2017 in M.A. No 276 of 2015 submitting the wrong facts and wrong personating. Smt Jamuna Devi (Respondent No 5) submitted that real name of applicant is Janki Devi, w/o Manop Singh. Smt Jamuna Devi (Respondent No

5) submitted that her correct name is Sushri Jayanti Devi and her nickname is Jamuna Devi. In support of her contention she has produced certain documents i.e. affidavit, Joint photo graphs with Ex Late Nk Anoop Singh, Canteen Card, Pass book and service book of Ex Late Nk Anoop Singh.

13. Smt Jamuna Devi (Respondent No 5) alleged that applicant Smt Janki Devi @ Smt Jayanti Devi was getting old age pension till the life time of Ex Late Nk Anoop Singh and just after death of Ex Late Nk Anoop Singh, she stopped receiving old age pension and fraudulently started managing forged documents to get the pension and other benefits in the property of Ex Late Nk Anoop Singh. Smt Jamuna Devi @ Smt Jayanti Devi (Respondent No 5) was getting family pension after the death of Ex Late Nk Anoop Singh till 28.05.2015 through State Bank of India which was stopped on objection by the applicant. She lodged an FIR dated 20.02.2014 of forgery against Smt Janki Devi @ Smt Jayanti Devi and Smt Janki Devi @ Smt Jayanti Devi was summoned by the Learned Judicial Magistrate, Ranikhet and the case is still pending. Learned counsel for Smt Jayanti Devi (Respondent No 5) prayed that order of this Tribunal dated 16.02.2017 passed in M.A. No 276 of 2015 be quashed and family pension be granted to her.

14. In the instant case, both the parties have produced certain documents. On perusal of documents it appears that Ex Late Nk

Anoop Singh was married to Smt Jayanti Devi daughter of Hayat Singh in the year 1959 and her date of birth is 01.07.1943 and her name was recorded in service documents of Ex Anoop Singh. Deceased soldier without obtaining any decree of divorce got remarried to Smt Jamuna Devi @ Jayanti Devi, daughter of Bhagwat Singh Mehra i.e. Respondent No 5 in the year 1972 and started living with her at Ramnagar, District- Nainital. Service record of Ex Anoop Singh was held with Jamuna Devi @ Smt Jayanti Devi (Respondent No 5) and she managed to prepare forged documents. Ex Anoop Singh while submitting the form of endorsement of family pension, affixed the photograph of Smt Jamuna Devi @ Smt Jayanti Devi, Respondent No 5 in place of Smt Jayanti Devi (1<sup>st</sup> wife). Smt Jayanti Devi (1<sup>st</sup> wife) filed a petition in Armed Forces Tribunal, Circuit Bench Nainital which was allowed on merit. After death of Ex Anoop Singh, both the ladies started claiming family pension. The matter was investigated by Tehsildar Ranikhet and it was revealed that applicant Smt Jayanti Devi (1<sup>st</sup> wife of Ex Late Nk Anoop Singh) is permanently residing at Tehsil- Ranikhet, District- Almora. District Soldier Board, Almora issued Identity Card to Smt Jayanti Devi (1<sup>st</sup> wife) after verifying from Village Panchayat Development Officer Riyuni. On perusal of documents it emerges out that Smt Jayanti Devi (1<sup>st</sup> wife) is the legally wedded wife of deceased soldier. Her name was recorded in service documents of deceased soldier. Smt Jayanti Devi (1<sup>st</sup> wife) filed a petition before

Armed Forces Tribunal Circuit Bench, Nainital. Notice was sent to Smt Jamuna Devi (Respondent No 5) twice but she never appeared before the Tribunal. Petition was allowed on merit vide order dated 16.02.2017. On investigation by competent authorities, it was revealed that Ex Late Nk Anoop Singh in his life time prepared fake documents in favour of Smt Jamuna Devi @ Smt Jayanti Devi (respondent No 5) to enable her to grant family pension.

15. Since, marriage of Ex Late Nk Anoop Singh with Smt Jamuna Devi @ Smt Jayanti Devi (Respondent No 5) was solemnized without giving divorce to applicant i.e. (1<sup>st</sup> wife), as such, Smt Jamuna Devi @ Smt Jayanti Devi (Respondent No 5) is not entitled for grant of family pension. It appears that Respondent No 5 is trying to get the family pension by way of misrepresenting herself to be Smt Jayanti Devi. No solid proof was produced by Respondent No 5 before the Court which can ascertain that Smt Jamuna Devi @ Smt Jayanti Devi i.e. Respondent No 5 is legally wedded wife of Ex Late Nk Anoop Singh, hence impugned order dated 16.02.2017 to grant family pension to applicant was passed by Armed Forces Tribunal, Circuit Bench, Nainital.

16. In view of the facts and circumstances of the case, we are of the considered view that Ex Late Nk Anoop Singh solemnized 2<sup>nd</sup> marriage with Jamuna Devi @ Jayanti Devi (Respondent No 5) without giving divorce to Smt Jayanti Devi, hence marriage of respondent No 5 with

deceased soldier is void and she is not entitled for grant of family pension. Since name of Smt Jayanti Devi (1<sup>st</sup> wife) daughter of Hayat Singh is recorded in service documents of Ex Late Nk Anoop Singh, as wife and not the name of respondent No 5 and, she is the 1<sup>st</sup> wife of the deceased soldier, hence she is legally wedded wife of deceased soldier and she is entitled for grant of Family Pension from the next date of death of her husband and objection raised by the respondent No 5 is overruled.

17. Thus, in the result, Original Application succeeds and is **allowed**. Applicant is directed to submit documents, if any, asked by the respondents, immediately. Respondents are directed to grant family pension to the applicant from due date as per rules on the subject. 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.

18. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated: 29 April, 2022

Ukt/-