

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

ORIGINAL APPLICATION No. 223 of 2021

Wednesday, this the 01st December, 2021

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

Miss Krishna Bora D/O Ex Late Nb Sub JC- 182849 Hira Singh R/o House No. 224 Ram Asre Purva, Gorakhnath Mandir, Post –Malaisiya Mau, Gomtinagar, Lucknow (UP)-226010.

..... Applicant

Ld. Counsel for the : **Shri DS Tiwari, Advocate.**
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of the Army Staff, IHQ, Sena Bhawan, New Delhi-110011.
3. Officer –in-Charge, AMC Records, PIN -900450, C/O 56 APO.
4. The Principal Controller Defence Accounts (Pensions), Draupadi Ghat, Allahabad (UP)-211014.

.....Respondents

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

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). The Hon’ble Tribunal may be pleased to set aside the impugned order dated 22/01/2021 (Annexure No.1)

(II). The Hon’ble Tribunal may be pleased to direct the respondents to grant family pension to the applicant after necessary correction in Part II order in the records.

(III). Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.

2. Brief facts of the case are that Ex Late Nb Sub Hira Singh, father of the applicant was enrolled in the Army on 02.12.1965 and discharged from service on 01.01.1992 after rendering 26 years of service on completion of terms of engagement. He was granted service pension for his services rendered in the army vide PPO dated 23.09.1991. Father of the applicant died on 03.09.2003. Ex Late Nb Sub Hira Singh was married to Smt Devaki Devi on 04.06.1969. Couple was blessed with two daughters and one son. Son died in 1997 and after death of the son Smt Devaki Devi left the house of

Ex Late Nb Sub Hira Singh. Ex serviceman submitted decree of divorce with first wife Smt Devaki Devi dated 09.10.2001 issued by Judicial Upper Division, Family Court, Lucknow and latter on Smt Devaki Devi died on 06.11.2009. Ex Late Nb Sub Hira Singh solemnised second marriage with Smt Damyanti Devi on 22.06.1998. Out of this wedlock Couple was blessed with one daughter named Miss Krishna Bora born on 08.08.2002 and one son named Master Mohit Singh Bora born on 30.04.2003 and casualty to this effect was published. After death of the father of applicant, Smt Devaki Devi, first wife was granted family pension till her life time upto 06.11.2009. After Death of first wife, Smt Damyanti Devi, second wife applied for family pension but her documents were returned by the respondents with observation. Then the applicant submitted representation for granting her family pension which were also returned by the respondents with some observations. This O.A. has been filed by daughter of the deceased ex serviceman for grant of Ordinary Family Pension from the next date of death of Smt Devaki Devi, the first wife.

3. Learned counsel for the applicant pleaded that after death of father of the applicant, Smt Devaki Devi, first wife was granted Ordinary Family Pension till her life time i.e.

06.11.2009. After death of Smt Devaki Devi the first wife, applicant is authorised for grant of family pension from the next date of death of Smt Devaki Devi the first wife till attaining the age of 25 years. Applicant submitted representation requesting for grant of family pension. She was asked to submit certain documents for granting family pension. Applicant submitted all papers duly completed but till date family pension has not been granted to her. Learned counsel for the applicant pleaded that directions be issued to respondents for grant of Family Pension to applicant from the next death of Smt Devaki Devi, the first wife till attaining the age of 25 years.

4. On the other hand, submission of learned counsel for the respondents is that Ex Late Nb Sub Hira Singh was married to Smt Devaki Devi on 04.06.1969. Couple was blessed with two daughters and one son. Both daughters are above 25 years of age and son died on 01.06.1997. After death of the son, Ex serviceman submitted decree of divorce with first wife Smt Devaki Devi dated 09.10.2001 issued by Judicial Upper Division, Family Court, Lucknow. Ex serviceman re-married with Smt Damyanti Devi on 22.05.2002 and Part II order to this effect was published vide order dated 02.11.2002. Ex Serviceman died on 03.09.2003. After death

of Ex Serviceman Smt Damyanti Devi approached respondents for grant of family pension. Her documents were scrutinised and it was revealed that Ex Late Nb Sub Hira Singh re-married to Smt Damyanti Devi on 22.06.1998 and not on 22.05.2002 and she has got two children from this wedlock. Daughter Named Miss Krishna Bora was born on 08.08.2002 and son named Master Mohit Singh Bora was born 30.04.2003 from wedlock of Smt Damyanti Devi and Ex Late Nb Sub Hira Lal. It is not possible that Smt Damyanti Devi got married on 22.05.2002 and daughter Miss Krishna Bora was born on 08.08.2002 and son Master Mohit Singh Bora born on 30.04.2003. Hence marriage with the deceased soldier was null and void for receiving pensionary benefits. However children born from this wedlock are entitled to family pension till they attain the age of 25 years. Therefore, claim of the applicant for grant of family pension was forwarded to her to submit requisite documents as sought for duly authenticated by Zila Zainik Board. Some observations were raised and applicant was directed to re-submit the same duly rectified for adjudication of her claim. In the meantime Master Mohit Singh Bora also submitted application for grant of family pension which was scrutinised and Master Mohit Singh Bora was asked to rectify observations. Master Mohit

Singh Bora was issued reminders to forward the above documents through Zila Sainik Board but he has not submitted the same till date. Case of the applicant is held up for want of required documents. Learned counsel for the respondents submitted that case of the applicant will be submitted to PCDA (P), Allahabad on receipt of above documents from the applicant. Now daughter of deceased ex serviceman (applicant) has filed instant O.A. for granting her family pension after necessary correction in Part II Order.

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

6. A short question that arises for consideration in this Original Application is whether the applicant is entitled to get family pension, if not who is entitled for family pension?

7. As far as grant of family pension is concerned, in this regard, para 219 of Pension Regulations for the Army, 1961 (Part-I) is relevant, which for convenience sake is reproduced as under:-

“Conditions of eligibility for a family pension

219. A relative specified in Regulation 216 shall be eligible for the grant of family pension, provided;

General

(i) he or she is not in receipt of another pension from Government;

(ii) he or she is not employed under Government

Widow

(iii) a widow has not remarried.

This condition shall not apply to a widow who remarried her deceased husband's brother, and continues to live a communal life with and/or contributes to the support of the other living eligible heirs.

Son.

(iv) a son is below the age of 25 years.

Daughter

(v) a daughter until she attains the age of 25 years or marriage whichever is earlier."

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. In the counter affidavit respondents have conceded that Smt Damyanti Devi (second wife) was asked to submit required documents for grant of family pension but she did not submit the same. Then her daughter Miss Krishna Bora submitted her representation for grant of family pension. Miss Krishna Bora, daughter of the deceased Ex serviceman is entitled for grant of

family pension till attaining the age of 25 years in case Smt Damyanti Devi (second wife) is not found eligible for grant of family pension. Thus, keeping in view of aforesaid provision Smt Damyanti Devi (second wife) has first right for grant of family pension after death of first wife.

10. In the instant case, respondents have published Part II Order of marriage of Ex Late Nb Sub Hira Singh with Smt Damyanti Devi. Respondent cannot deny legal right of Smt Damyanti Devi (second wife) only on the ground that there is some difference in date of divorce with first wife as well as date of birth of children. At least respondents after ascertaining the factual position should assist the widow lady in granting family pension and means of livelihood. The public interest demands that administration must abide by the promises held out to citizens. It is totally improper to go back from the promises held out by the mighty state to the detriment of a small people. Therefore, it is the function of the Courts to see that the citizen's rights should be protected against the mighty state and state should be forced to abide by the promises made to its citizens. Respondents cannot be hard to say that date of divorce with first wife and date of marriage with second wife is different in service documents of the deceased soldier, therefore, they are not under obligation to grant family pension. Accordingly, Smt

Damyanti Devi is entitled for grant of family pension after the next date of death of Smt Devaki Devi, the first wife.

11. We would like to note that ex serviceman contacted second marriage after absconding of first wife Smt Devaki Devi. After divorce with the first wife on 09.09.2001, Ex Late Nb Sub Hira Singh re-married with Smt Damyanti Devi. Name of Damyanti Devi is recorded in service documents of Ex Late Nb Sub Hira Singh as well as Part II Order of her marriage has been published by the respondents. In addition, Smt Damyanti Devi has produced certain documents which indicate that she is legally wedded wife of Ex Late Nb Sub Hira Singh. Accordingly, Smt Damyanti Devi being legally wedded second wife is entitled for grant of family pension after the next date of death of Smt Devaki Devi.

12. Thus, in the result, Miss Krishna Bora, (applicant) is not entitled for any family pension. Respondents are directed to grant family pension to Smt Damyanti Devi, second wife of Ex Late Nb Sub Hira Singh from the next date of death of Smt Devaki Devi, the first wife. Smt Damyanti Devi is directed to submit requisite documents, if any, to the respondents within one month. After receipt of the necessary documents, respondents shall grant Ordinary Family Pension to Smt Damyanti Devi from the next date of death of first wife. 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. The Original Application is **disposed of** accordingly.

13. While passing the above order we are aware that this Original Application has not been filed by Smt Damyanti Devi (second wife) but by her daughter Miss Krishna Bora, who is not entitled to family pension during life time of her mother. But taking a note of the fact that she (Smt Damyanti Bora) is the second legally wedded wife of deceased soldier who had moved application for the grant of ordinary family pension, after the death of first wife Smt Devaki Devi, but her representation was returned with some observation while she was entitled to family pension, the above order is passed to avoid any further delay in the matter and respondents are expected to comply with same without entering any technicality.

14. No order as to cost.

15. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 01 December, 2021
Ukt/-