

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

**Original Application No. 699 of 2020**

**Friday, this the 3<sup>rd</sup> day of December, 2021**

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

Smt. Sabuli Devi Wife of No. 4051080-K Rfn (Late) Kishan Singh, R/o C/o Shri Umed Singh Panwar, Village & Post - Gwaldam, Dist: - Chamoli Garhwal ( Uttarakhand)-246441.

**.... Applicant**

Ld. Counsel for the: **Shri Shailendra Kumar Singh,**  
Applicant **Advocate.**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi 110011.
2. Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block, New Delhi-110011.
3. Addl. Dte Gen Pers Services (PS-4), Adjutant General's Branch, IHQ of MoD(Army), Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi-110001.
4. OIC Records, Garhwal Rifles, PIN 900400, C/o 56 APO.
5. PCDA (A) (Army), Draupadi Ghat, Allahabad (UP)-211014.

**..... Respondents**

Ld. Counsel for the: **Shri Amit Jaiswal,**  
Respondents. **Central Govt Counsel**

**ORDER**

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

*(a) To quash or set aside the Respondent letter dated 25 Jan 2017 9 annexure A-1) being unjust and suffers from vice or arbitrariness.*

*(b) to issue order or direction to the Respondents to grant SPECIAL FAMILY PENSION to the applicant wef 05.01.2005 for life along with the arrears of said SPECIAL FAMILY PENSION, with suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal, after adjusting the amount of ORDINARY FAMILY PENSION already paid to her sons from 11.05.1979 to 04.01.2005.*

*(c) Any other relief as considered deemed proper including imposing costs by this Hon'ble Tribunal in the nature and circumstances of the instant case be awarded in favour of the applicant.*

2. Brief facts of the case giving rise to this application are that the husband of the applicant Late Ex Rfn Kishan Singh was enrolled in the Indian Army on 15.02.1971. Late Ex Rfn Kishan Singh was married to Smt Bachuli Devi who eloped with Shri Balwant Singh in the year 1975 who later died on 08.10.1976. Late Ex Rfn Kishan Singh remarried to Smt Sabuli Devi on 03.07.1977. Out of wedlock between Smt Bachuli Devi

and Ex Late Rfn Kishan Singh one son named Raghuvir Singh (DOB 20.02.1972) was born before she left Ex Late Rfn Kishan Singh and one son named Shri Yashpal Singh (DOB- 05.01.1980 was born with wedlock of Sabuli Devi and Ex Late Kishan Singh. Ex Rfn Kishan Singh died in Command Hospital Pune on 10.05.1979 due to 'MALIGNANT COCHEXIA'. As per discharge book, death of the Ex serviceman was aggravated due to military service. Case of the applicant for grant of special family pension was rejected on the ground that death of deceased soldier was neither attributable to nor aggravated by military service. Ordinary Family Pension was sanctioned to Shri Raghuvir Singh for the period from 11.05.1979 to 19.12.1997 and Shri Yashpal Singh was granted Ordinary Family Pension from 20.12.1997 to 04.01.2005. Applicant represented her case for grant of family pension which was rejected by the respondents vide letter dated 17.07.1980 on the ground that Ex Late Kishan Singh married to Smt Sabuli Devi without taking divorce from first wife as well as date on certificates of marriage submitted by Smt Sabuli Devi are different. This O.A. has been filed by the applicant for grant of Special Ordinary Family Pension wef 05.01.2005 i.e. date on which Shri Yashpal Singh (son) completed 25 years of age.

3. Learned counsel for the applicant pleaded that Ex Late Rfn Kishan Singh was enrolled in army on 15.02.1971. He married to Smt Bachuli Devi who left him in 1975 and married to Shri Balwant Singh. Smt Bachuli Devi died on 08.10.1976. Late Ex Rfn Kishan Singh remarried to Smt Sabuli Devi on 03.07.1977. Out of wedlock between Smt Bachuli Devi the first wife and Ex Late Rfn Kishan Singh one son named Raghuvir Singh (DOB 20.12.1972) was born and one son named Shri Yashpal Singh (DOB- 05.01.1980) was born with wedlock of Sabuli Devi and Ex Late Kishan Singh. Ex Rfn Kishan Singh died in Command Hospital Pune on 10.05.1979 as a case of 'MALIGNANT COCHEXIA'. Learned counsel for the applicant pleaded that as per discharge book, death of Ex Late Rfn Kishan Singh was considered as aggravated by military service. Claim of the applicant for grant of special family pension was wrongly rejected on the ground that death of deceased soldier was neither attributable to nor aggravated by military service. Ordinary Family Pension was sanctioned to Shri Raghuvir Singh for the period from 11.05.1979 to 19.12.1997 and Shri Yashpal Singh was granted Ordinary Family Pension from 20.12.1997 to 04.01.2005. Applicant represented her case for grant of family pension which was rejected by the respondents on the ground that Ex Late Kishan Singh re-married to Smt

Sabuli Devi without taking divorce from first wife as well as dates on marriage certificate produced by Smt Sabuli Devi (second wife) are different. Then the applicant approached Hon'ble High Court of Uttarakhand at Nainital by filing Writ Petition No 810 (S/S) of 2009 which was transferred to this Tribunal. On 27.07.2016, the petition was allowed with cost of Rs. 10,000/- and direction was issued to PCDA (P), Allahabad to take fresh decision on the representation of the applicant by a reasoned and speaking order. The representation of the applicant was rejected by the respondents. Learned counsel for the respondents prayed that direction be issued to respondents to grant Special Family Pension to the applicant wef 05.01.2005 i.e. date on which Shri Yashpal Singh (son) completed 25 years of age.

4. On the other hand, submission of learned counsel for the respondents is that Ex Late Rfn Kishan Singh was married to Smt Bachuli Devi who eloped with Shri Balwant Singh and re-married to Shri Balwant Singh. Couple was blessed with one son named Raghuvir Singh. Ex serviceman re-married with Smt Sabuli Devi on 03.07.1977. Ex Serviceman died on 10.05.1979. After death of Ex Serviceman family pension was granted to Shri Raghuvir Singh for the period from 11.05.1979 to 19.12.1997 and Shri Yashpal Singh was granted Ordinary

Family Pension from 20.12.1997 to 04.01.2005. Then the applicant represented her case for grant of family pension. Applicant has submitted three marriage certificates to ascertain her marriage. In first marriage certificate dated 12.02.1981 issued by Gram Pradhan Gwaldam, date of marriage is shown as 03.05.1972. In second marriage certificate issued by Gram Pradhan, Gwaldam, date of marriage is shown as 20.07.1975. In third marriage certificate submitted by the applicant, date of marriage is shown as 03.07.1977.

5. Claim of the applicant for grant of special family pension was submitted to respondents which was rejected on the ground that death of the husband of the applicant was neither attributable to nor aggravated by military service. In Discharge Book, death of deceased soldier has wrongly been mentioned as aggravated by military service. Respondents have also stated that marriage of Smt Sabuli Devi with Ex Late Rfn Kishan Singh is null and void, as ex-serviceman has not produced divorce certificate with first wife. Under the provisions of Para 97 of Pension Regulation for the army 1961 (Part-I), second wife is not eligible for pension if the first marriage is subsisting. Smt Sabuli Devi being not eligible for grant of family pension, ordinary family pension was

sanctioned in favour of Shri Raghuvir Singh, son born from first wife Smt Bachuli Devi and Shri Yashpal Singh, son born from second wife Smt Sabuli Devi.

6. In certificates authenticating her marriage with Ex Late Rfn Kishan Singh different dates have been shown. As per rules, if her marriage took place prior to death of Smt Bachuli Devi, then it renders Smt Sabuli Devi illegal wife and decree of divorce is required to legalise her marriage with Ex Late Rfn Kishan Singh. Since Ex Late Rfn Kishan Singh has already expired, getting decree of divorce became impractical and thus marriage of Smt Sabuli Devi with Ex Late Rfn Kishan Singh could not be legalised. The applicant filed representation for grant of Special Family Pension with effect from 05.01.2005 for life along with the arrears of Special Family Pension after adjusting the amount of Ordinary Family Pension, already paid to both sons from 11.05.1979 to 04.01.2005 which was rejected by the respondents vide letter dated 25.01.2017. Learned counsel for the respondents submitted that Original Application being bereft of merit and lacking substance, is liable to be dismissed.

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

8. A short question that arises for consideration in this Original Application is whether the applicant being second wife is entitled to get family pension or not?

9. 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.”

10. 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.”*

11. PCDA (P), Allahabad first time rejected the applicant's claim for grant of Special Family Pension on 17.07.1980 on the reason that her marriage with Ex Late Rfn Kishan Singh was solemnised without obtaining divorce from his first wife, Smt Bachuli Devi despite being established during inquiry that Smt Bachuli Devi had deserted Ex Late Rfn Kishan Singh and remarried before applicant's marriage.

12. This act of PCDA (P), Allahabad was criticised by this Bench while deciding T.A. No 118 of 2012 and directing PCDA (P), Allahabad to decide the claim again keeping in mind that Smt Bachuli Devi being died on 08.10.1976, it was not possible for the Ex serviceman to seek divorce with her. The Bench had also imposed cost of Rs. 10,000/- to be recovered from the officer who had dealt with the matter, if alive.

13. Despite aforesaid, the PCDA (P), Allahabad has again dismissed the claim of the applicant saying applicant has represented three marriage certificates showing three dates of

marriage that is 03.05.1972, 20.07.1975 and 03.07.1977 and if first two dates are believed the applicant's marriage being solemnised during subsistence of first marriage, her marriage becomes null and void.

14. The reasons assigned by the PCDA (P), Allahabad for denying applicant's claim of family pension are not acceptable more so when applicant has come up with a specific plea that her marriage with Ex Late Rfn Kishan Singh had taken place on 03.07.1977 ie after Smt Bachuli Devi deserted and married to Shri Balwant Singh and after death of Smt Bachuli Devi on 08.10.1976. The PCDA (P), Allahabad should not have denied the claim on the reason that he had granted family pension to Raghuvir Singh, the son born from the wedlock of Ex Late Rfn Kishan Singh and his first wife Smt Bachuli Devi, for the period from 11.05.1979 to 19.12.1997 and then to Shri Yashpal Singh, the son born from the wedlock of Ex Late Rfn Kishan Singh and the applicant for the period from 20.12.1997 to 04.01.2005. The applicant's claim for grant of family pension was wrongly denied by the PCDA (P), Allahabad and it was granted to Shri Raghuvir Singh and Shri Yashpal Singh for which applicant cannot be punished.

15. Special Family Pension cannot be granted merely on being mentioned in Discharge book that cause of death of Ex

Late Rfn Kishan was aggravated by military service. Fact that death was aggravated by military service can be certified by medical opinion and that being not available in the case in hand, the claim of applicant for grant of Special Family Pension cannot be granted.

16. Respondent cannot deny legal right of Smt Sabuli Devi (second wife) only on the ground that there is difference in date of marriage certificates produced by the applicant. At least respondents after ascertaining the factual position should assist the widow lady in granting family pension and means of livelihood. Respondents cannot be hard to say that date of marriage mentioned in marriage certificates produced by the applicant is different, therefore, they are not under obligation to grant family pension. Accordingly, Smt Sabuli Devi is entitled for grant of family pension from after the next date of death of Smt Devki Devi, the first wife.

17. Considering applicant is the legally wedded second wife of Ex Late Rfn Kishan Singh and has right to get family pension upon the death of her husband and her claim of family pension has been wrongly denied by the PCDA (P), Allahabad not once but twice, O.A. deserves to be **allowed** with direction to respondents to grant family pension to applicant from 05.01.2005, the day when it was stopped, with interest @ 8%

per annum till actual payment. Smt Sabuli Devi is directed to submit requisite documents, if any, to the respondents within one month. 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. The Original Application is **allowed** accordingly.

18. No order as to cost.

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

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 03 December, 2021  
Ukt/-