

RESERVED
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(Circuit Bench, Nainital)**

Original Application No. 142 of 2020

Tuesday, this the 23rd day of March , 2021

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

Smt. Parwati Devi W/o Number J C – 21394 Ex (late) J C Ratan Singh, R/o Village – Alkanya, Shaikhola, Post Office – Kanda, Tahsil – Kanda, District Bageshwar.

.... Applicant

Ld. Counsel for the: **Shri K.N.S. Rautela**, Advocate and
Applicant **Ms. Vandana Singh**, Advocate

Versus

1. Union of India Through Secretary, Ministry of Defence, Central Civil Secretariat, New Delhi.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), New Delhi.
3. The Senior Record Officer, Sena Sewa Corps, Pashu Parivahan, A.S.C. Record (A.T.) Pin 900493, C/o 5 A.P.O. through The District Sainik Kalyan & Punarvas Adhikari, District – Bageshwar.
4. The P.C.D.A. (Pension), Allahabad.

... Respondents

Ld. Counsel for the: **Shri Neeraj Upreti**, Advocate
Respondents. Assisted by **Capt. Nitesh Chauhan**,
Departmental Representative

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

1. By means of this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:-

- 8.1. *That the Hon’ble Tribunal may graciously be pleased to quash the impugned order dated 5 January 2015 passed by the respondents no – 03 and call the entire record.*
- 8.2. *That the Hon’ble Tribunal may graciously be pleased to direct the respondents to grant the family pension to the applicant alongwith the arrears with effect from 09.11.2014.*
- 8.3. *That the Hon’ble Tribunal may graciously be pleased to pass such other further order(s) as deemed just and proper in the circumstances of the case to meet the end of justice in the interest of justice.*

2. Briefly stated, the applicant’s husband (IO-21394 Late Risaldar Rattan Singh) was enrolled in the Indian Army on 15.06.1924 and was discharged from service with effect from 06.12.1944 being unfit for further service under Item III (IV) of IAA Rule 13-B. The husband of applicant died on 11.09.1980. The husband of the applicant, during subsistence of his first marriage with one Smt. Motima Devi, who as per pleadings on record died on 09.11.2014, had solemnized second marriage with the applicant Smt. Parwati Devi on 28.02.1946 under the customs and traditions prevailing at that time in his society. Since after marriage both the wives and children from the applicant had been

living jointly. Both the marriages were solemnized before the commencement of the Hindu Marriage Act, 1955 (25 of 1955). In support of his submission the applicant has filed copies of applicant's marriage credential countersigned and issued by Tahsildar, Tahsil – Kanda, District – Bageshwar, Uttarakhand and Family Register. After death of the first wife of the applicant's deceased husband she made representation dated 02.12.2014 to the respondents seeking family pension for herself which was rejected vide letter dated 05.01.2015. It is in this perspective that the applicant has preferred the present Original Application and has prayed that being only surviving wife of deceased soldier family pension be paid to her.

3. Ld. Counsel for the applicant pleaded that since both the marriages of deceased soldier were solemnized before the commencement of the Hindu Marriage Act, 1955, under the traditions and usage prevalent at the relevant time in the society of the applicant wherein plural marriage was permissible, therefore the applicant, who is the second wife, is entitled to family pension. His further submission is that provisions of Regulation 333 of Defence Service Regulations is not applicable in the present case, as the second marriage was solemnized in the year 1946 and *ibid* Regulations have come into force later on. In support of the pleas, the Ld. Counsel has placed reliance on the case of ***Smt. Radhika Devi Versus Union of India and Others***, Original Application No. 48 of 2017, decided by this Tribunal on 20.09.2018.

4. Per contra, Ld. Counsel for the respondents pleaded that consequent to discharge Late Risaldar Rattan Singh was granted Disability Pension w.e.f. 07.12.1944 for life. The said JCO died on 11.09.1980 and thereafter, the widow of late JCO Smt. Motima Devi (first wife) was granted Ordinary Family pension till widowhood with effect from 12.09.1980 vide P.P.O. dated 22.09.1986, which was revised from time to time. The applicant filed an application alleging herself to be second wife of deceased Risaldar Rattan Singh vide her application dated 27.01.2001 claiming to be married to him after retirement on 28.02.1946, as such, to grant 50% of the family pension from the Ordinary Family Pension being drawn by the first wife i.e. Smt. Motima Devi which was duly replied by the respondents stating that in Army records Smt. Motima Devi is recorded as legally wedded wife of deceased soldier and she is still alive and drawing ordinary family pension sanctioned to her, therefore, division of family pension was not permissible to her under Rules. Thereafter, a petition dated 30.06.2009 was received from Smt. Motima Devi, (first wife) widow of Late Risaldar Rattan Singh along with joint-photograph of Smt. Motima Devi (first wife) and Smt. Parwati Devi (alleged second wife) stating that she is very old and aged 97 years and has no objection if Ordinary Family Pension granted to her is transferred in favour of applicant (second wife) which was rejected by the respondents stating that there is no rule on transfer of family pension to second wife when the first wife is still alive vide letter dated 31.07.2009. After lapse of almost five

years, the applicant approached the respondents with another application enclosing death certificate of Smt. Motima Devi (first wife), who expired on 09.11.2014, to sanction ordinary family pension in her favour. However, the respondents vide letter dated 05.01.2015 communicated to the applicant that as per the service record held with ASC Records (AT) Smt. Motima Devi is the legally wedded wife of IO-21394 Late Risaldar Rattan Singh, as such, when first wife was alive, marriage with another lady is null and void under Hindu Marriage Act, 1955 and therefore, the applicant is not entitled for family pension.

5. We have heard Ld. Counsel of both sides and perused the material placed on record. The only question which needs to be answered in this case is whether there is any proof of second marriage and, if so, "whether the alleged second marriage solemnized by the applicant during life time of the first wife can be treated to be null and void marriage even if it was solemnized before the commencement of the Hindu Marriage Act, 1955?"

6. On going through the record it reveals that Marriage Certificate of the applicant on account of which she is claiming to be married with deceased soldier has been issued by the Gram Pradhan of the Village. It is well known fact that no Marriage Register is maintained at the level of Gram Sabha. When no Marriage Register is maintained at the level of Gram Sabha then the basis on which the said marriage certificate was issued by the Gram Pradhan in the year 2018, for a marriage which was allegedly solemnized on 28.02.1946, is not clear. Moreover, said

certificate has not been issued by the competent authority. It casts doubts with regard to alleged second marriage, specially when it is claimed to be solemnized prior to Hindu Marriage Act, 1955 coming into force.

7. Further, in the Pariwar Register, the name of applicant (Smt. Parwati Devi) is mentioned as wife of deceased soldier Rattan Singh, along with one Bhagwan Singh. The said Bhagwan Singh has been shown son of deceased soldier Rattan Singh and the Son's date of birth has been shown as 25.08.1966. The birth of this child after 20 years of alleged marriage appears to be a little unnatural and unbelievable. In army plural marriage is not permissible. In any case, if second marriage was solemnized, even after discharge of Late Rattan Singh, it ought to have been recorded in the service record. But, there is no record of second marriage in the records of the Army. Finally it emerges that there is no concrete proof of marriage of the applicant to the deceased soldier. In absence of any concrete proof of marriage of deceased soldier with the applicant (alleged second wife) it cannot be held that alleged marriage was true, even if it is to be believed that it was solemnized then on 28.02.1946. Besides as no concrete and convincing proof of alleged second marriage is available, the question of treating it lawful assuming it was solemnized before the commencement of the Hindu Marriage Act, 1955 does not arise. Further, in the event of second marriage, being solemnized, after the commencement of the Hindu Marriage Act, 1955, the same would be null and void in view of Section 5(1) of Hindu

Marriage Act, 1955. In any case the alleged second marriage cannot be taken as lawful so as to grant family pension to the applicant.

8. The Judgment rendered in the case of ***Smt. Radhika Devi Versus Union of India and Others*** (Supra) is not applicable in the present case as the facts and circumstances of this case are different as in the that case there was a report of Zila Sainik Kalyan and Punarvas Adhikari, Bageshwar stating that Smt. Radhika Devi was the real wife of late Sep. Sher Singh her case for grant of family pension was genuine and recommended and in the present case there is no such report.

9. In view of the above, the Original Application is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

10. No order as to costs.

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

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

Dated: 23 March, 2021

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