

Reserved

E-Court No. 1

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

**ORIGINAL APPLICATION NO. 212 OF 2016**

Friday, this the 11<sup>th</sup> day of March, 2022

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

Smt Vinod, Wife of Late Subdear Yoginder Singh, (JC\_220165) Resident of 230/41 Chandra Lok Colony, Krishna Nagar, Mathura, UP, Presently residing at Village – Lukhrada, Post- Shekhpur, PS- Babugarh Chawni, District- Hapud.

..... Applicant

Learned counsel for the : **Shri KK Misra, Advocate**  
Applicant

Versus

1. Union of India through, Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff Integrated Headquarter of Ministry of Defence (Army), South Block, Po-New Delhi.
3. Senior Record Officer Records.

.....Respondents

Learned counsel for the : **Dr. Shailendra Sharma Atal,**  
Respondents. **Central Govt Counsel**

## **ORDER**

**“Per Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

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

*I) Issue a direction and order to opposite parties to sanction the family pension to the applicant after taking into consideration the requisite documents / certificates sent by the Zila Sainik Kalyan Evam Punarvas Adhiari Mathura, vide its letter No. Zisaka./Pari. Pension / Memo/246-247 / 08 dated 16.02.2008.*

*II) Issue any other order or direction which this Hon’ble Tribunal may deem fit and proper under the facts and circumstances of the instant case in favour of the applicant.*

2. Succinctly stated, husband of the applicant Late Sub Yoginder Singh was enrolled in the Indian Army on 07.05.1974 and died on 27.06.1996 at Army Hospital Delhi due to ‘**Non Small Cell Lung Carcinoma**’. After death of her husband, applicant approached the respondents for grant of family pension but the same was not paid to her. Being aggrieved by denial of family pension, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that husband of the applicant was married to Smt Rajwati daughter of Sri Daryab

Singh but due to some dispute between the husband and wife, they decided to live separate and accordingly, the marriage of Sub Yoginder Singh with Smt Rajwati was dissolved in Panchayat. After dissolving of marriage with Sub Yoginder Singh, Smt Rajwati (1<sup>st</sup> wife) remarried Sri Ram Dhan, son of Sri Megh Shyam, resident of Baruath, Tehsil – Math, District- Mathura. The Applicant i.e. Smt Vinod (2<sup>nd</sup> wife) married Sub Yoginder Singh on 25.11.1989 but due to mistake the name of Smt Rajwati (1<sup>st</sup> wife) could not be deleted by husband of the applicant from his service book. The aforesaid fact came to the knowledge of the applicant after death of her husband Sub Yoginder Singh when applicant moved an application for granting family pension. Applicant was informed that since under Hindu Law second marriage is not permissible, therefore the marriage of the applicant being a second marriage is illegal and family pension cannot be granted to her. An inquiry was held and based on inquiry report, family pension was granted to her son/daughter. Applicant submitted succession certificate dated 27.09.1999 issued by Civil Judge, Mathura in Succession Suit No 155 of 1998 along with certificate of dissolution of marriage with Smt Rajwati (1<sup>st</sup> wife), marriage certificate, photo copy of Pariwar Register, Photo Copy of the voter List and Medical Benefit Certificate in support of her claim for grant of family pension, but family pension has not been granted to her.

Learned counsel for the applicant submitted that the applicant is suffering lot of financial difficulties. Learned counsel for the applicant pleaded that in view of aforesaid, respondents be directed to grant family pension to the applicant.

4. Per contra, learned counsel for the respondents submitted that as per service record, Ex late Sub Yoginder Singh was married to Smt Rajindri Devi before enrolment and she died on 22.11.1982. Thereafter Late Sub Yoginder Singh was remarried to Smt Rajvati on 15.02.1983 and had children namely Hitesh (son) date of birth 01 May 1991 and Rashmi (daughter) date of birth 30.04.199 as per declaration certificate dated 23.01.1993 given by the deceased soldier. After death of Sub Yoginder Singh, Records Raj Rif approached Smt Rajvati (Legally wedded wife) for grant of pension. At the same time Smt Vinod claimed that she is the legally wedded wife of Ex Late Sub Yoginder Singh and her marriage with Late Sub Yoginder Singh was solemnized on 25.11.1989 at District Ghaziabad according to Hindu rites and she had two children out of this wedlock. She prayed for grant of family pension in her favour. During life time, Late Sub Yoginder did not declare any change to this effect. Thereafter, Records Raj Rif asked BRO Agra to investigate the facts and it was revealed that Smt Vinod was married to Ex late Sub Yoginder Singh on

25.11.1989 and has two children out of this wedlock i.e. Master Hitesh Kumar and Miss Rashmi and Smt Rajvati had remarried someone else. The deceased Junior Commissioned Officer on 23.01.1993 gave declaration that Hitesh (Son) and Miss Rashmi (daughter) were borne to his wife Smt Rajvati. On the basis of this report family pension was granted to Hitesh Kumar (son). The applicant filed writ petition No 46107 of 2014 before Hon'ble High Court, Allahabad for grant of family pension to her. The same was dismissed on 01.09.2014 with liberty to approach Armed Tribunal. Now the applicant has filed instant O.A. for grant of family pension. Applicant has been granted AGI benefits vide letter dated 16.11.1999. In view of above, learned counsel for the respondents prayed that applicant is not entitled for grant of family pension and instant Original Application is devoid of merit and is liable to be dismissed.

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

6. The question which needs to be answered is 'when name of applicant is not recorded in service documents of deceased soldier, is the applicant entitled for grant of family pension?

7. 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.”*

8. 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”*

9. On perusal of record, it is evident that Ex Late Sub Yoginder Singh solemnized first marriage with Smt Rajindri Devi before enrolment but she died on 22.11.1982. Thereafter, he remarried Smt Rajvati but the marriage was dissolved. Ex Late Sub Yoginder Singh remarried Smt Vinod and two children born out of this wedlock. Ex Late Sub Yoginder Singh gave false declaration that two children Named Hitesh (son) and Rashmi (daughter) were borne out of wedlock with Smt Rajvati whereas these children were born as a result of wedlock of Ex late Sub Yoginder Singh and Smt Vinod. On the basis of investigation report and documents produced by the applicant, it appears that applicant is legally wedded wife of Ex late Sub Yoginder Singh as her marriage was solemnized after dissolving the marriage of Ex late Sub Yoginder Singh with Smt Rajvati. Applicant has produced photocopy of succession certificate, certificate of dissolving marriage with Smt Rajvati, marriage certificate and Voter ID which establish that she is legally wedded wife of Ex late Sub Yodinder Singh and she is entitled for grant of Family Pension. Applicant has been granted AGI benefits by the respondents.

10. In view of the facts and circumstances of the case, we are of the considered view that the applicant is entitled for grant of Family Pension from the next date of death of her husband and

objection raised by the respondents rejecting her claim for grant of family pension is overruled. Though there may be some discrepancy in documentation, but same being human error may be corrected.

11. Thus, in the result, Original Application succeeds and is **allowed**. Applicant is directed to submit documents, if any, asked by the respondents immediately and respondents shall endorse name of the applicant as wife in service documents of deceased soldier. Respondents are further directed to cease family pension to the children with immediate effect and grant the same to the applicant as per rule 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.

12. No order as to costs.

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

14. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

**Member (A)**

**Member (J)**

Dated : 11 March, 2022

UKT/-