

Reserved Judgment**ARMED FORCES TRIBUNAL, REGIONAL BENCH,LUCKNOW
(CIRCUIT BENCH NAINITAL)****Original Application No. 342 of 2018****Thursday, this the 1st day of November, 2018****Hon'ble Mr. Justice S.V.S. Rathore, Member (J)****Hon'ble Air Marshal BBP Sinha, Member (A)**

Smt Bhawani Devi
 W/o No.8019852 Late Sep Sher Nath,
 R/o Village - Dumali, P.O. - Digtoli,
 District - Pithoragarh, Uttrakhand.

.....Applicant

Ld. Counsel for : **Shri Kishore Rai, Advocate**
 the Applicant

Versus

1. Union of India through Secretary,
 Ministry of Defence through its Secretary,
 South Block,
 New Delhi-110011.
2. P.C.D.A. (P), Allahabad.
3. Appellate Committee on First Appeals,
 Dir PS -4, AG's Branch, Army HQs, DHQ PO,
 New Delhi 110011.
4. Senior Record Officer, Kumaun Regiment,
 Ranikhet.

.....Respondents

Ld. Counsel for the : **Dr. Chet Narain Singh,**
 Respondents **Ld. Counsel for Central Govt.**

ORDER

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, and he has claimed the reliefs as under:-

“(i) A direction to quash the order dated 29.04.2016 passed by respondent no.2 (contained as Annexure No.21 to this original application),

(ii) A direction to the respondents to grant family pension in favour of the applicant w.e.f. 20.12.2009.

(iii) To summon the entire records of the applicant pertaining to computation of her family pension.

(iv) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.”

2. In brief, the facts necessary for the purpose of adjudication in instant Original Application may be summarised as under.

The husband of the applicant was enrolled in the Army on 10.07.1969 and was discharged from service with effect from 31.07.1984. The husband of the applicant was in receipt of pension till his death. The applicant, who claims to be the legally wedded wife of Sep Sher Nath, has made claim for grant of family pension. The husband of the applicant has died on 19.12.2009. It is pleaded in the O.A. that husband of the applicant was originally married to Smt. Motima Devi who had eloped in the year 1974 with Shri Prem Nath and got married with Prem Nath and lived with him permanently. After elopement of Smt. Motima Devi with Shri Prem

Nath, the applicant married to Sep Sher Nath (deceased) on 02.05.1982 according to Hindu Vedic ritual.

3. The applicant is having two sons, namely Jeewan Nath and Madan Nath through the said wedlock. The applicant was living with her husband till his death on 19.12.2009. The applicant immediately after death of her husband approached the respondent No. 4 through Zila Sainik Kalyan Evam Punarvas Karyalaya, Pithoragarh vide her application dated 21.01.2010 which was duly forwarded to respondent No. 4. Certain documents were required by the respondent No. 4 vide its letter dated 28.06.2010, to be supplied by the applicant. The applicant supplied the documents through Zila Sainik Kalyan Evam Punarvas Karyalaya, Pithoragarh which were sought by the respondent No. 4 vide her letter dated 07.09.2010. Copy of the letter dated 07.09.2010 is filed as Annexure No. 4 to the O.A.

4. The respondent No. 4, vide in its letter dated 06.01.2011 sought affidavit from first wife and second wife of late Sep Sher Nath and non grant of family pension certificate from Union Bank of India which was duly supplied to respondent No. 4 by the applicant. The Zila Sainik Kalyan Evam Punarvas Karyalaya, Pithoragarh vide its letter dated 22.03.2012 inquired about the progress of the case pertaining to the family pension of the applicant.

5. The applicant vide its letter dated 12.09.2012 approached respondent No. 4 regarding family pension in which she stated all the earlier developments in her case and requested respondents No. 4 to pass an order for granting her family pension.

6. The respondent No. 4 again sought certain documents vide its letter dated 04.01.2013 from the applicant in respect of marriage certificate issued by District Magistrate, death certificate of her husband, affidavit in respect of marriage solemnized between applicant and her husband and legal heir-ship certificate.

7. Learned counsel for the respondents has argued that the marriage of the applicant with deceased soldier is claimed on the ground as first wife of her husband had eloped and married with some other person. The documents of the divorce with Motima Devi, first wife with her last husband, have not been filed. It is argued that under Hindu Marriage Act, legal status of such marriage is only of a void marriage. Therefore, the applicant cannot be treated to be legally wedded wife of the deceased soldier and under rules, only the legal wedded wife, is entitled for family pension.

8. On perusal of records, it transpires that the applicant has not filed marriage certificate issued by District Magistrate but she has only filed an affidavit before the Court of ADM, which is clear from Annexure No. 9. Apart from it, on the point of marriage of the applicant with Sep Sher Nath (deceased), only an affidavit was filed before the Ist Class Magistrate on 18.02.2013. These two affidavits

cannot, by any stretch of imagination, be regarded as proof of valid marriage.

9. The Records, the Kumaon Regiment, i.e. respondent No. 4 requested to Zila Sainik Kalyan Evam Punarvas Karyalaya, Pithoragarh to investigate the matter regarding the genuineness of claim of the applicant and to forward the recommendations. Therefore, matter was investigated and a report was sent by Zila Sainik Kalyan Evam Punarvas Karyalaya, Pithoragarh and on the basis of which, Part II Order was published. Now the claim of the applicant for grant of pension is based on Part II Order. Part II Order reads as under :-

“PUB LICATION OF PART II ORDER

1. Ref to ZSB Pithoragarh letter No.12/8 Declaration/SD/14787 dated 21 Apr 2015.
2. Occurrence(s) has/have been published as per details given below:-

Ser No.	Name	Date of occurrence	Nature of occurrence	Relation	Auth of Pt II Order
(a)	Motima Devi	1974	Elopement	Wife	Rec NE DO II No.1/0143/016/NE/2015
(b)	Bhawani Devi	02May 1982	Marriage	Wife	Rec NE DO II No.1/0148/021/NE/2015

Sd/-Record Office
The Kumaun Regiment

10. From the perusal of aforesaid Part II Order, it is clear that the Marriage of Smt Motima Devi was also mentioned in the said Part II Order and it was stated as ‘elopement’ of first wife and the second marriage with Bhawana Devi is mentioned with late Sep Sher Nath. The applicant is Hindu by cast. She has also stated in her affidavit

that the marriage was solemnized with Hindu Rites therefore, in view of the Section 5 of Hindu Marriage Act, 1955, unless and until first marriage is dissolved, the applicant could not have legally married with Sep Sher Nath. Section 5 of Hindu Marriage Act, 1955 reads 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) neither party is an idiot or a lunatic at the time of the marriage;

(iii) the bridegroom has completed the age of eighteen years and the bride

the age of fifteen 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;

(vi) where the bride has not completed the age of eighteen years, the consent of her guardian in marriage, if any, has been obtained for the marriage.”

Thus, it is clear that marriage of the applicant with Sher Nath was solemnised while his first wife was alive, so it was in clear violation of Section 5(i) of Hindu Marriage Act, 1955.

11. Even in the Part II Order, name of Motima Devi was not deleted and then substituted by Smt Bhawani Devi, the applicant. So this Part II Order which does not say about the death of Ist wife of Sher Nath nor say about the annulment of Ist marriage does not help the applicant in any manner.

12. Learned counsel for the applicant, during the course of hearing, has conceded this aspect and submitted that the applicant he shall seek declaration of her marital status from the competent Civil Court.

13. Since this Tribunal deals with service matters only and on the basis of affidavits, we cannot not pass any order, nullifying the marriage, as the same is a civil rights of a person and pass an order affecting the rights of Smt Motima Devi, who is not even a party in this case. Therefore, the applicant is not entitled to family pension. We hereby make it clear that the applicant may approach this Tribunal after getting declaration of her marital status with Sep Sher Nath by the Court of competent civil jurisdiction.

14. Subject to the above observations, this O.A. is hereby **dismissed** at this stage.

(Air Marshal BBP Sinha)
Member (A)

Dated : November, 2018
SB

(Justice S.V.S. Rathore)
Member (J)