

RESERVED
Court No. 1

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

O.A. No. 120 of 2014

Wednesday, this the 10th day of October, 2018

Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

1. Jai Ram Yadav son of Bhawani Bheekh Yadav
 2. Smt. Sushila Devi wife of Jai Ram Yadav
- Both residents of village- Jagatgaon (Chaturbhujpur)
Post Office Agarhar (Amethi), District Sultanpur.

.... Applicants

Ld. Counsel for the: Shri Virat Anand Singh, Advocate.
Applicant

Versus

1. Union of India, through Secretary Ministry of Defence,
Bharat Sarkar, New Delhi.
2. Chief of the Air Staff, Air Headquarters (Vayu Bhawan)
Rafi Marg, New Delhi.
3. AOC i/c Air Force Record Office
4. AOC i/c Air Force Central Accounts Office
5. AOC i/c Air Force Group Insurance Scheme
All at Subroto Park, New Delhi.
6. Principal Director/Director III B (FP)
Directorate of Air Veterans, Air Headquarters, Subroto
Park, New Delhi.
7. Commanding Officer, No. 49 Wing, Air Force C/o 56 APO
8. Km Pushpa Devi d/o Kedar Nath Yadav, R/o Village-
Dihwa, Bhawalpur, P.O. Chanderia Teekar Mafi, District
Sultanpur.

....Respondents

Ld. Counsel for the: Shri Namit Sharma, Advocate.
Respondents.

ORDER

“(Per Hon’ble Mr. Justice SVS Rathore, Member (J))”

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

“(a). issue an appropriate order, direction or writ in the nature of certiorari, call for record and quash the communication No. Air HQ/99798/3/920628/5980-SD/FP/DAV dated 9.10.2013 issued by Director III B (FP), Air Headquarters, New Delhi, P.O.R. No. 49W/P-72/2011 dated 17.11.2011 issued by C.O., 49 Wing, Air Force and communication No. RO/2855/920628/5980/P&WW (FP) dated 05.07.2011 issued by Air Force Record Office, New Delhi and proceedings leading to payment of Funds, terminal benefits of late Rajinder Kumar Yadav and family pension to respondent Pushpa Devi.

(b). issue an appropriate order, direction or writ in the nature of mandamus direct the respondents to pay entire Funds, terminal benefits of Rajinder Kumar Yadav and Family Pension month to month to the applicant since date of demise of son-15/06/2010.

(c). issue any other writ or direction, which this Hon’ble Court may deem just and expedient in the interest of justice.

(d). award costs of this application in favour of the applicants.”

2. In brief the facts giving rise to the instant O.A. may be summarized as under.

3. Applicant no.1 is himself serving in IAF and applicant no.2 is his wife. The son of the applicants, namely, Rajinder Kumar Yadav was enrolled as an Airman in Indian Air Force on 27.06.2007. He was holding the rank of LAC and was on posting strength of No. 49 Wing, Air Force on 01.06.2010. He was on part

of Annual leave to his home town Sultanpur and met with a fatal motor vehicle accident during his leave period on 14.06.2010. He succumbed to injury at Command Hospital, Lucknow on 15.06.2010. At present applicant no.1 Jai Ram Yadav is a Non-Combatant member of Indian Air Force and stands on the posting strength of BFTS, Air Force, Bamrauli, Allahabad and applicant no.2 Smt Sushila Devi is wife of Jai Ram Yadav and they are parents of the deceased Rajinder Kumar Yadav. It is specifically pleaded on behalf of the applicants that their son Rajinder Kumar Yadav was unmarried at the time of enrolment in Indian Air Force and, therefore, he got the name of applicant no.1 Jai Ram Yadav registered as his next of kin and nominated him to receive death-cum-retirement gratuity. He further incorporated the name of Smt Sushila Devi to whom the nomination shall pass in case of death of first nominee i.e. applicant no.1. It is also pleaded that those nominations were duly accepted by the respondents. In the Air Force the minimum age for marriage of an Airman after his enrolment is 25 years and apart from it a prior permission from the competent authority is also mandatory condition before contracting the marriage. After marriage an Airman is required to submit a marriage certificate duly issued by the Registrar of Marriages alongwith two copies of joint photographs. The date of birth of Rajinder Kumar Yadav was 15.05.1987 and his age was about 20 years on the date of his enrolment. Therefore, under the service conditions he attained the marriageable age only after five years on 14.05.2012. It is further pleaded that his marriage with

Pushpa Devi was settled and engagement ceremony was held on 15.03.2009. Since at that time he had not attained the marriageable age as per his service conditions, therefore, he was neither entitled to solemnize marriage nor he was in a position to seek permission to marry. The applicants after the death of their son sent their claim for family pension. A query for combined income certificate was raised vide letter dated 27.08.2010. In the meanwhile No. 14 P&S Unit, Allahabad was directed to make a spot inquiry. The I.O. who went for the inquiry, connived with Kedar Nath Yadav, the father of Pushpa Devi, respondent no.8 and submitted a false report wherein he converted engagement ceremony into marriage on 23.06.2010.

4. The Court of Inquiry was also ordered in this matter. The said Court of Inquiry recorded its finding that the applicant Jai Ram Yadav was next of his kin and recommended that action for financial benefits to the next kin may be initiated on priority. After receiving the provost report dated 23.06.2010 the Court of Inquiry proceedings became hostile to the applicant Jai Ram Yadav and it became favourable to the respondent no.8 without any valid reason. The respondent AFRO also initiated communication on 05.07.2011 and directed respondent 49 Wing, Air Force to promulgate marriage POR in respect of late Rajinder Kumar Yadav. In pursuance of the said order No.49 Wing, Air Force promulgated POR bearing No.49W/P-72/2011 dated 17.11.2011 and permitted the respondent no.8 Pushpa Devi to receive all

funds and terminal benefits of late Rajinder Kumar Yadav. It has also been pleaded that the applicants had an impression that the respondent no.8 has received fund to the tune of 20 lacs and she is also getting regular family pension since 2010. The applicants sent a legal notice claiming pension of their deceased son. Thus, the claim of the applicants is that virtually the marriage of their deceased son was never solemnized with respondent no.8. It was only an engagement ceremony and the marriage could not be solemnized before prior permission and before completion of the age of 25 years by their son and therefore the respondent no.8 was not entitled for any pensionary benefits of their deceased son.

5. On behalf of the respondents no.1 to 7 it has been pleaded that during the Court of Inquiry it was revealed that the respondent no.8 was married with LAC Rajinder Kumar Yadav. The fact regarding marriage of individual was also accepted by the applicant no.2 Sushila Devi, the mother of the deceased. It has also been admitted that neither prior permission to marry was taken nor any action for promulgation of marriage was initiated. Since factum of marriage stood established by the Court of Inquiry, therefore, wife being the highest eligible heir for grant of ordinary family pension was duly sanctioned pension alongwith all other retiral benefits of her deceased husband to which a wife was legally entitled.

6. The respondent no.8 also filed her counter affidavit wherein she has denied the averments made in the O.A. It has been

specifically pleaded by her that the marriage was duly solemnized with Rajinder Kumar Yadav. It has also been pleaded that the respondents after holding a proper inquiry and after giving opportunity to all the parties gave a finding that the respondent no.8 is legally wedded wife of the deceased Airman and that she has rightly been given the post retiral benefits of her deceased husband. Alongwith the counter affidavit the respondent no.8 has also annexed photograph of the marriage and marriage certificate issued by the Village Pradhan, stating that the marriage between the two was solemnized on 27.02.2010 as per Hindu rituals. Similar marriage certificate issued by the BDO and photostat copy of the marriage card have also been filed by her. It has also been pleaded that applicant no.1 is a serving air force personnel.

7. During the course of hearing the learned counsel for the respondent no.8 has produced before us the entire marriage album containing coloured photographs of marriage and also the original marriage invitation card. It has nowhere been disputed by the learned counsel for the applicants during the course of arguments that the said photographs are not of their son. These photographs clearly establish that the marriage of Rajinder Kumar Yadav was solemnized with Pushpa Devi. The identity of Pushpa Devi has also not been challenged because the applicants have themselves stated that the engagement ceremony of their son was performed with Pushpa Devi. Thus, in the instant case the applicants have approached this Tribunal for grant of family

pension of their deceased son on the ground that the marriage of their son with the respondent no.8 Pushpa Devi had never taken place and their son was not entitled to marry as he had not attained the age of 25 years and had also not obtained any prior permission and further on the ground that the names of the parents of the deceased Airman were mentioned as nominees in the service record.

8. Learned counsel for the respondent no.8 has argued that it is a common practice that when the marriage of an army personnel is solemnized before attaining the age of 25 years then fact of such marriage is concealed because if said marriage is reported then the person concerned would become liable for disciplinary proceedings/ punishment and, therefore, such fact is concealed and only after attaining the requisite age of 25 years an application is moved seeking permission and thereafter the factum of marriage is reported to the authorities. It has also been argued that even if the deceased had married before attaining the age of 25 years or before seeking permission of the authorities even then said marriage cannot be said to be illegal or irregular but the only consequence of it would be that the person concerned will be liable for minor disciplinary proceeding/ punishment. It cannot nullify a legal and valid marriage.

9. On behalf of the remaining respondents i.e. respondents no.1 to 7, it has been argued that the respondent no.8 has been rightly sanctioned the post retiral benefits of her late husband

because the respondent no.8 made a claim for grant of pensionary benefits and on the basis of her claim Court of Inquiry was held and her claim was found correct and therefore the respondents have not committed any illegality or irregularity in releasing the pensionary benefits and in sanctioning the family pension to the respondent no.8.

10. From a perusal of the documents in the form of photographs of marriage and keeping in view the fact that the identity of bride and bridegroom in those photographs have not been challenged, we are of the view that the marriage of respondent no.8 with the son of the applicants had taken place on 27.02.2010. At the time applicants' son had got married, he was major and, therefore, under the Hindu law bridegroom was entitled to solemnize marriage.

11. Learned counsel for the applicants could not bring to our notice any law wherein it has been held that any marriage solemnized before the age of 25 years as required in the Indian Air Force without any prior permission would be void. The applicants have come before us with absolutely false case that the marriage was never solemnized.

12. In the instant case the factum of marriage is established by the photographs of marriage, marriage card and the certificates issued by the village authorities. Learned counsel for the applicants have argued that the said authorities have got no right to issue such a certificate. It is true that a marriage ought to have

been registered but it is equally true that its absence would not convert a legal marriage into void marriage. In the instant case the Court of Inquiry was held and it found that the respondent no.8 was legally married wife of the applicants' son. Therefore, the applicants ought to have moved the civil court, for seeking a decree of declaration that the marriage of their son with respondent no.8 Pushpa Devi was a nullity. Because the said right was not a service matter but was a civil right between the two but instead of taking such steps, they have come before this Tribunal with a false case that the marriage was never solemnized.

13. In view of what has been discussed above, it is crystal clear that the O.A. lacks merit and deserves to be dismissed. Accordingly, the O.A. is hereby **dismissed**.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

Dated: October 10, 2018

JPT

(Justice SVS Rathore)
Member (J)