

Reserved
Court No.1

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

O.A. No. 381 of 2017

Thursday, the 11th day of October, 2018

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

Smt Kamil Nisa widow of **No. 2957797** Sepoy Late Irshad Ali,
R/o 1/78, Civil Lines near PD Mahila Degreee College,
Fatehgarh, Farrukhabad- 209601 (UP).

.....Applicant

Ld. Counsel for the Applicant: **Shri R. Chandra, Advocate**

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi-11
2. Chief of Army Staff, Integrated Headquarters of Ministry of Defence (Army) DHQ Post Office, New Delhi-11
3. The Officer In-Charge, Defence Security Corps Records c/o 56 APO
4. The Chief Controller Defence Accounts, Draupadi Ghat Allahabad (UP)
5. The Zila Sainik Welfare Office, Fatehgarh (Farrukhabad) (UP) PIN-209601

.....Respondents

Ld. Counsel for the Respondents: **Dr. Shailendra Sharma Atal, Advocate**

ORDER

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

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

“(I) The Hon’ble Tribunal may be pleased to set aside the order dated 20/05/2016 received vide letter dated 24/08/2016 (Annexure No A-1)

(II) The Hon’ble Tribunal may be pleased to direct the respondents to grant family pension to the applicants w.e.f. 26/06/2015 (date of death of late husband) along with its arrears with interest at the rate of 18 percent per annum.

(III) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.”

2. In brief, the facts of the case, as averred by the applicant in her OA, may be summarized as under:

Applicant’s late husband was enrolled in the Army on 02.12.1963 in Rajput Regiment as Sepoy. He was discharged on 28.02.1979 from Army. Again in the year 1981 he was enrolled in DSC as Sepoy and was discharged from DSC on 31.03.1996. The husband of the applicant was getting pension and died on 25.06.2015 due to illness. Photo copy of the death certificate dated 30.06.2015 has been annexed by the applicant as Annexure No.A-2 to the petition. After retirement from Army service, he joined Government of India Ministry of Defence, Canteen Store Department also on 30.04.1992 as Cleaner and retired from there on 28.02.2005 on completion of the age of 60 years. After the death of the applicant’s husband on 25.06.2015, applicant approached the respondents on 11.08.2015 and 03.02.2016 for family pension. On 18.05.2016 District Soldier Welfare Office also gave a reminder to the respondent no.3 for applicant’s family pension. Applicant has

annexed copies of her representations dated 11.08.2015, 03.02.2015 and July, 2016 as Annexures No.A-3, Annexure No.A-4 and Annexure No.A-5 respectively to this petition. It has also been pleaded by the applicant that the on 24.08.2016 the respondent no.3 intimated the applicant that she was already intimated vide letter dated 25.05.2016 that her husband has divorced the first wife Smt Kanija Begam on 09.04.1970 so she was required to send said divorce deed of 1970. It has further been pleaded by the applicant that respondent no.3 itself has admitted that after decree of divorce of first wife applicant's name was entered in the Sheet Roll but the same is not on record, which shows that on the basis of divorce decree of the first wife the name of applicant was entered in the Sheet Roll. The applicant has stated that it appears that the decree of divorce has been misplaced from the records of the respondents, for which she cannot be held liable and it can be traced from the records of Rajput Regiment. It has also been pleaded by the applicant that as per records held with the respondents the name of applicant is mentioned in the descriptive Roll of DSC as Kamil Nisa wife of late Sepoy Irshad Ali and her date of birth is given in it as 01.07.1950 at the time of discharge of her husband from DSC. Photo copy of the PPO and Descriptive Roll dated 08.10.1986 has been annexed by the applicant as Annexure No.A-6 to the petition. It has also been pleaded that in the ECHS card the name of the applicant is mentioned as spouse and she is getting medical facilities.

Her name is also mentioned in the pension account as joint account holder. She has also annexed copy of ECHS card and pass book as Annexure No.A-7 and Annexure-A-8 respectively to the petition. Apart from it copy of discharge book has also been filed wherein name of the applicant is also mentioned and her joint photograph along with her husband is also affixed in it.

3. The respondents have filed their counter affidavit denying the claim of the applicant, mainly on two grounds, firstly that the applicant is the second wife of the deceased soldier and secondly she has been asked to submit a decree of divorce of her deceased husband from a Court of law for preparation of her pension papers but she has not furnished the same.

4. We have heard the learned counsel for the parties and gone through the material on record.

5. In the instant case the applicant is claiming the family pension of her deceased husband Ex Sepoy No.2957797 Irshad Ali. It transpires from a perusal of the record that the respondents are asking the applicant to file decree of divorce deed of 1970 of her late husband by which he had divorced his first wife as the applicant is the second wife of her husband, in response to which the applicant has submitted her reply that she is not in possession of any decree of divorce of her late husband.

6. The submission of the learned counsel for the applicant is that the name of the applicant was entered in the sheet roll on

the basis of decree of divorce and if the decree of divorce deed filed by her husband has been misplaced from the record of the respondents, she cannot be held responsible for the same and same may be traced from the records. He has also submitted that the name of the applicant is mentioned in the descriptive roll of DSC as Kamil Nisa wife of deceased soldier and her date of birth is also given in it as 01.07.1950 at the time of his discharge from DSC. He has further submitted that the name of the applicant is mentioned as spouse in ECHS card, which is prepared after due verification from the sheet roll and she is getting medical facilities. He has also submitted that the name of the applicant is also in the pension account as joint account holder. Hence, in view of the aforesaid documents, there is no occasion to deny the family pension to the applicant as all these documents cumulatively lead to the only conclusion that applicant is the only wife of the deceased soldier Irshad Ali. Apart from it no other lady has raised her claim for family pension as wife of late Irshad Ali.

7. From what has been stated above, it is crystal clear that the applicant has fully established her claim for family pension on the basis of documents filed by her in support of her claim that her name is duly entered in the relevant records. On the contrary the respondents could not deny the claim of the applicant by rebutting the documents filed by her, except on the ground that she has not filed the decree of divorce of her late husband. In the facts and circumstances mentioned above

since the respondents themselves have entered the name of the applicant in their relevant service record as the wife of the deceased soldier, the objection now raised by them asking the applicant to file decree of divorce of her deceased husband with his first wife is not the least justified.

8. In view of the above, we are of the view that since the name of the applicant is duly recorded in the relevant record, her application deserves to be allowed holding her to be entitled to the family pension of her deceased husband Ex Sepoy Irshad Ali.

9. Accordingly, the O.A. is **allowed** and the respondents are directed to pay the family pension to the applicant of her deceased husband Ex Sepoy Irshad Ali from the date of his death i.e. 25.06.2015. The entire arrears of the family pension shall be paid to the applicant within four months from the date of receipt of a certified copy of this order, failing which the respondents shall be liable to pay interest @ 9% till the date of its actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : October 11, 2018
JPT