

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH, NAINITAL)**

Original Application No. 48 of 2017
Thursday, this the 20th day September, 2018

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

Smt Radhika Devi, W/o No 4137470 Ex (Late) L/Nk Sher Singh
R/O Village & Post – Naugar Estate, Distt-Bageshwar.

..... Applicant

Ld. Counsel for the Applicant: **Shri CS Rawat**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Central Civil Secretariat, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), New Delhi.
3. Senior Record Officer, Kumaon Regiment Record, Ranikhet, Distt -Almora
4. The PCDA (Pension), Allahabad.

..... Respondents

Ld. Counsel for the Respondents :**Dr. Gyan Singh**,
Central Govt Counsel assisted
by Maj Salen Xaxa, OIC Legal Cell.

ORDER

Per Hon'ble Mr. Justice SVS 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, whereby the applicant has sought the following reliefs:-

- (i) *That this Hon'ble Tribunal may graciously be pleased to quash the impugned order dated 30.08.2016 passed by respondent No 3 and call the entire records.*
- (ii) *That this Hon'ble Tribunal may graciously be pleased to direct the respondents to grant the family pension to the petitioner along with arrear.*

(iii) *That this Hon'ble Tribunal may graciously be pleased to pass such other and/or further order as deemed fit proper, and necessary in the circumstances of this case.*

(iv) *Award cost to the petitioner.*

2. Brief facts necessary for adjudication of the case are that the husband of the applicant (No 4137470 Ex (Late) L/Nk Sher Singh) was enrolled in the Indian Army on 24.12.1942 and discharged from service being surplus in the establishment on 01.12.1955. The husband of the applicant died on 07.01.2016 after attaining the age of 94 years. The husband of the applicant, during subsistence of his first marriage with one Smt Paruli Devi, who as per pleadings on record died on 06.02.2005, had solemnised second marriage with the applicant Smt Radhika Devi on 22.11.1952 under the customs and usage prevailing at that time in his society. The late husband of the applicant during his life time informed about the factum of his second marriage with the applicant to the competent authority. It is submitted by Ld. Counsel for the applicant that both the marriages were solemnised before the commencement of the Hindu Marriage Act, 1955 (25 of 1955) and under the custom and usage prevalent at the relevant time in the society of the applicant, plural marriage was permissible and therefore the applicant, the second wife, is entitled to family pension.

3. Ld. Counsel for the applicant in support of his submissions has placed reliance on paras 9 and 10 of the judgment and order of O.A. No. 130 of 2014 ***Adesh Kumar vs UOI & Ors*** decided on

09.02.2016. For convenience sake the same are reproduced as under:-

“9. The relevant portion of AO No 44/2001 (DV) relevant for the present controversy is reproduced as under:-

“5. No person subject to the Army Act, except Gorkha personnel of Nepalese domicile, whose personal law permits plural marriage and whose previous marriage is subsisting, will marry again without prior sanction of the Central Government.

6. An individual may, during the life time of his wife apply for sanction to contract a plural marriage on any one or more of the following grounds:-

(a) His wife has deserted him and there is sufficient proof of such desertion;

(b) His wife has been medically certified as being insane;

(c) Infidelity of the wife has been proved before a court of law;

7. Applications will state the law under which the subsisting marriage was solemnized, registered or performed and will include the following details where applicable :-

(a) Whether the previous wife will continue to live with the husband;

(b) If the previous wife does not propose to live with the husband, what maintenance allowance is proposed to be paid and in what manner;

(c) Name, age and sex of each child by previous marriage and the maintenance allowance proposed for each in case any such child is to live in the custody of the mother.

In all cases, the applicant will render a certificate to the effect that he is not a Christian, Parsi or Jew by religion; that he had not solemnized or registered his previous marriage under the Special Marriage Act 1954 and that the Hindu Marriage Act 1955 is not applicable to him.

8. Applications will be forwarded through normal channels and each intermediate commander will endorse his specific recommendations. Such recommendations will be signed by the commander himself or be personally approved by him. Before making his recommendations a commander will satisfy himself that the reasons given for the proposed plural marriage are fully supported by adequate evidence.

9. *An individual whose marriage is alleged to have been dissolved according to any customary law but not by a judicial decree will report, immediately after the divorce, the full circumstances leading to and culminating in dissolution of marriage together with a valid proof of the existence of alleged custom or personal law. Existence and validity of the same, if considered necessary, will be got verified from civil authorities and it is confirmed by the civil authorities action will be taken to publish casualty for the dissolution of the marriage. The individual thereafter will not be required to obtain sanction for contracting the second marriage.*

10. *A literal interpretation of the aforesaid provision of AO No 44/2001 (DV) shows that before taking a decision it shall be incumbent upon the appropriate authority to find out whether plural marriage is permissible or not permissible along with eligibility or ineligibility for enrolment/appointment in Army."*

4. Ld. Counsel for the respondents has vehemently argued that since husband of the applicant had entered into plural marriage during the life time of his first wife Smt Paruli Devi, the second marriage was void and therefore as per provisions of the Army Act and relevant Rules, the applicant is not entitled to family pension. Ld. Counsel for the respondents has also argued that the claim for grant of family pension was rejected on the ground that the second marriage during continuance of first marriage was void, therefore, the applicant is not entitled to family pension. He has drawn our attention towards letter dated 30.08.2016.

5. The moot question involved in this case is; whether the second marriage solemnized by the applicant during the life time of his first wife can be treated to be void marriage even if it was solemnized before the commencement of the Hindu Marriage Act, 1955?

6. It transpires from the record that by means of report dated 11.05.2016 the Zila Sainik Kalyan and Punarvas Adhikari,

Bageshwar in reply to Kumaon Regiment letter dated 15.05.2016 submitted investigation report informing that the applicant Smt Radhika Devi is the real and legal wife of late Sep Sher Singh. The relevant portion of report dated 11.05.2016 is reproduced as under:-

“INVESTIGATION REPORT

1. *In reference with Records the Kumaon Regiment letter No 4137470/PC/FP dated 15.05.2016, the matter regarding Smt Radhika Devi claiming to be so called wife of No 4137470 Late Sep Sher Singh was investigated by Gram Pradhan, Gram Panchayat Payyan, Distt Bageshwar (UK). During the investigation it was found that Smt Radhika Devi is real and legal wife of No 4137470 Late Sep Sher Singh.*
2. *Smt Radhika Devi is the legal wife of No 4130470 Late Sep Sher Singh and her case for grant of family pension is genuine and recommended.*

Bageshwar
11 May 2016

Sd/- x x x x
Zila Sainik Evam Punarvas Adhikari
Bageshwar”

7. In the year 2005 No 4130470 Late Sep Sher Singh approached Records, the Kumaon Regiment for inclusion of name of second wife after demise of his first wife which was replied by the Record Office, Kumaon Regiment vide letter dated 24.03.2005 which is reproduced as under:-

“Copy of Records the Kumaon Regiment letter No 4137470/X/EFP dated 24.03.2016 addressed to No 4137470 Ex Sep Sher Singh.

ENDORSEMENT OF NAME OF PENSIONER

1. *Refer to your petition dated 11 Mar 2005.*
2. *It is to inform you that if an individual re-married even after the death of his first wife, it is treated as plural marriage for the purpose of endorsement of family pension. In such cases family pension can be granted as and when the circumstances arise i.e. after demise of the pensioner.*

Sd/- x x x x x
(Major)
Senior Record Officer
The Kumaon Regiment”

8. We are appalled by the reply given by the Record Office that case of the applicant for grant of family pension could not be processed to PCDA (P), Allahabad due to the fact that applicant's marriage with the late Army personnel was solemnised before the death of first wife as such, it is a plural marriage.

9. Section 11 of the Hindu Marriage Act, 1955 provides for void marriages, which for convenience sake is reproduced as under:-

*"11. **Void Marriages.-** Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i) (iv) and (v) of Section 5)"*

10. Section 5 of the Act provides conditions for the Hindu marriage. It is reproduced as follows:-

*"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) at the time of the marriage, neither party-*
 - (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or*
 - (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or*
 - (c) has been subject to recurrent attacks of insanity.*
- (iii) the bridegroom has completed the age of twenty one years and the bride, the age of eighteen 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."*

11. A conjoint reading of Section 11 and Section 5 of the Act (supra) gives rise to the conclusion that if any marriage during life time of first wife is solemnized after commencement of the Hindu Marriage Act, 1955 only then it shall be treated to be a void marriage. In the undisputed facts of the present case, both the marriages entered into by the deceased Army personnel were solemnized before the commencement of the Hindu Marriage Act which was enforced with effect from 18th May 1955.

12. Section 29 of the Hindu Marriage Act, 1955, relevant for adjudication of the controversy involved in the present case is reproduced as under:-

*“29. **Savings.**- (1) A marriage solemnized between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same gotra or pravara or belonged to different religions, castes or sub-divisions of the same caste.*

(2) Nothing contained in this Act shall be deemed to affect any right recognized by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

(3) Nothing contained in this Act shall affect any proceeding under any law for the time being in force for declaring any marriage to be null and void or for annulling or dissolving any marriage or for judicial separation pending at the commencement of this Act, and any such proceeding may be continued and determined as if this Act had not been passed.

(4) Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1954 (43 of 1954) with respect to marriages between Hindus solemnised under that Act, whether before or after the commencement of this Act.”

13. Since in the instant case, both the marriages entered into by the deceased Army personnel were solemnized before the enforcement of the Hindu Marriage Act, 1955, therefore the second marriage of deceased Army personnel with applicant Smt

Radhika Devi cannot be said to be void. Thus, we are of the considered opinion that the applicant is entitled for family pension of her deceased husband.

14. The O.A. is accordingly **allowed**. Order dated 30.08.2016 (**Annexure No. 1 to the O.A.**) is set aside. The respondents are directed to grant family pension to the applicant from the date of death of her husband No 4137470 Ex (Late) L/Nk Sher Singh in accordance with Rules. 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. Default will invite interest @ 9% per annum.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : September, 2018
anb