

RESERVED
Court No 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 432 of 2022

Friday, this the 8th day of September, 2023

“Hon’ble Mr. Justice Anil Kumar (J)
Hon’ble Lt Gen Anil Puri, Member (A)”

Nasiran Bibi (Senior citizen and widow)
Wife of No. 6818878 Late Sepoy Pyare Ali Khan
R/o 30, Alamganj, Pachokhar, District-Ghazipur (UP) – 232329
Through her daughter Najma Begum

Counsel for the Applicant : **Shri Faiz Ali Khan**, Advocate

Versus

1. Union of India through the Secretary, Department of Defence, New Delhi.
2. The Chief of Army, Integrated Headquarters of Ministry of Defence, Sena Bhawan, South Block, New Delhi - 110011.
3. Secretary, Department of Ex-Servicemen Welfare D (Pension Grievance), Ministry of Defence, New Delhi.
4. CPIO and Under Secretary (PG), Department of Ex-Servicemen Welfare D (Pension Grievance), Ministry of Defence, New Delhi.
5. Directorate of Indian Army Veterans through its Director, Adjutant General’s Branch, IHQ of MoD (Army), Maude Lines, 104 Cavalry Road, Delhi Cantt – 110010.
6. Army Medical Corps Record Office, Pin-900450, C/o 56 APO, S.P. Marg, Dilkusha, Lucknow (UP).
7. Zila Sainik kalyan Evam Punarvas Karyalaya, through Zila Sainik Welfare Officer, District – Gazipur (UP) – 233001.

.....Respondents

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

ORDER

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

“A. The Hon’ble Tribunal may kindly be pleased to quash the order dated 08.02.2022 passed by respondent no. 6 through which applicant is denied widow pension on the basis of frivolous and vexatious grounds.

B. The Hon’ble Tribunal may kindly be pleased to direct the respondents to grant widow pension to the applicant alongwith arrears with interest @ 18% from the date of death of her husband i.e. 29.07.2009.

C. To award the cost of the petition in favour of the applicant from the respondents.

D. Any other or further orders which this Hon’ble Tribunal deems fit and proper under the circumstances may granted to the applicant.”

2. Facts giving rise to Original Application in brief are that alleged husband of applicant No. 6818878 Ex Sep (late) Pyare Ali Khan was enrolled in the Army on 17.06.1963 and was discharged from service on 30.06.1978 (AN) after rendering 15 years and 14 days of service. He was granted service pension vide PPO dated 28.12.1978. The ex-serviceman died on 29.07.2009. As per service records, deceased ex-serviceman

was married to Smt. Amina before joining of Army service. Now, the applicant, Smt. Nasiran Bibi has filed present Original Application claiming herself as wife of the deceased ex-serviceman and prayed for grant of family pension. The applicant has submitted several applications alongwith required documents to the respondents for correction of her name in service records of the deceased soldier and to grant family pension but the respondents have returned back all the documents to the applicant unactioned stating that ex-serviceman was married to Smt. Amina before enrolment into Army and her name is recorded in the service documents. The applicant is unable to prove herself as legally wedded wife of Ex Sepoy Pyare Ali Khan and therefore, she is not entitled to any relief prayed in the Original Application. Being aggrieved, the applicant has filed instant O.A. for correction of her name in service records and grant of family pension.

3. Learned counsel for the applicant submitted that applicant is 85 years old senior citizen and widow of late Sepoy Pyare Ali Khan who was enrolled as Sepoy (No. 6818878) in the Army (Army Medical Corps) on 17.06.1963 and was discharged from service on 30.06.1978. Ex Sepoy Pyare Ali Khan died on 29.07.2009. After death of her husband, applicant vide application dated 30.03.2010 applied for widow pension but respondent No. 6 denied the same vide order dated 25.05.2010 on the basis of frivolous objections stating that applicant's

husband has one more widow other than the applicant whose name (Amina) is entered in the service record of Ex Sepoy (late) Pyare Ali Khan and applicant's case for grant of family pension will only be considered if she gives the whereabouts of first wife and her children. In this regard, a police verification was requested by respondent No. 6 to SP, Ghazipur vide respondents letter dated 31.01.2020, 23.10.2020 and 13.07.2021 to inquire about authenticity of applicant being widow of late Sepoy Pyare Ali Khan. It was established through investigation reports that applicant is the only widow of late Sepoy Pyare Ali Khan and he never had a second wife vide police reports dated 04.03.2020 and 21.08.2021. All the documents of evidences that applicant is the only widow of late Sepoy Pyare Ali Khan were submitted to respondent No. 6 duly verified by Zila Sainik Welfare Officer and Zila Sainik Board for grant of family pension but time and again documents for grant of family pension were returned back to the applicant unactioned raising some observation and asking clarification with regard to Smt. Amina as first wife and widow of deceased soldier to whom applicant is unaware as she never heard about any lady named 'Amina'.

4. Learned counsel for the applicant further submitted that applicant was born on 01.01.1937. The copies of Birth Certificate, PAN Card, Aadhar Card, Birth Certificate issued by Gram Pradhan and Voter Identification Card show applicant's

identity and date of birth, are attached alongwith O.A. The applicant was married to Pyare Ali Khan on 20.06.1957 and her name is recorded as wife of Pyare Ali Khan in every government record. The copy of Nikahnama in Urdu and its, translated copies in Hindi and English duly verified by Zila Sainik Welfare Officer, Gazipur and Marriage Certificate issued by Gram Pradhan, Gram Panchayat Alamganj are also annexed alongwith O.A. RTI reply dated 07.06.2017 issued by the Sub Registrar, Jamiya, District Ghazipur states that Muslim marriages are not registered in its office which was issued in pursuance to requirement raised by respondent No. 6 to submit registered marriage certificate of applicant with Pyare Ali Khan. After marriage, three children were born to the applicant, (i) Late Mohammad Israil born in 1958 and died on 31.08.1980, (ii) Meharun Nisa (Married) born on 07.03.1961 and Najma Begum (Married) born on 05.01.1960. The applicant's son died and both the daughters are married and living in their matrimonial homes and applicant is living alone in her home. After death of her husband (Pyare Ali Khan), her name is entered in Khatauni which is evident that her husband had only one wife, i.e. applicant and there is no entry of name 'Amina'. The applicant submitted her Domicile Certificate, Verification Certificate of Gram Pradhan dated 11.08.2016 and Verification Certificate of Gram Pradhan dated 12.11.2020 wherein it is mentioned that applicant's name is Nasiran Bibi and the name 'Amina' is

wrongly recorded in Army service records. Newspaper publication in English and Hindi Daily newspapers also support that she is only surviving widow of late Sepoy Pyare Ali Khan whose name is wrongly recorded in Army Service record as 'Amina' which should be corrected and her correct name 'Nasiran Bibi' should be recorded in Army service records.

5. Learned counsel for the applicant further submitted that applicant has submitted all required documents to the respondents duly verified by Zila Sainik Board, Ghazipur whenever asked but time and again documents were returned back with observation and clarification about whereabouts of so-called first wife 'Amina' whereas name 'Amina' is merely a typographical error in service records as till date no woman with the name of 'Amina' or her successor or legal representative had ever appeared before the respondent No. 6 claiming herself to be widow of applicant's late husband (Pyare Ali Khan). He pleaded that in absence of any evidence to prove the existence of 'Amina' through police verification and documents verification, it is well existed that applicant – Nasiran Bibi is the sole wife and widow of late Sepoy Pyare Ali Khan. Accordingly, name of 'Amina' be deleted from service record of her husband (Sep Pyare Ali Khan) and name of the applicant be entered in service record of her husband and direction be issued to the respondents for grant of ordinary family pension to

the applicant from the date of death of her husband (Sep Pyare Ali Khan).

6. Per contra, learned counsel for the respondents submitted that alleged husband of applicant No. 6818878 Ex Sep (Late) Pyare Ali Khan was enrolled in the Army on 17.06.1963 and was discharged from service on 30.06.1978 (AN) on fulfilling the conditions of enrolment under Army Rules 13 (3) III (i) after rendering 15 years and 14 days of service. He was granted service pension vide PPO dated 28.12.1978. The ex-serviceman died on 29.07.2009. The deceased ex-serviceman was married with Smt. Amina whose date of birth is 01.07.1944, before joining of Army service. After marriage, the couple was blessed with one son named Mahamad Jsrail, date of birth 01.07.1953 and one daughter named Meharu Nasha, date of birth 01.07.1957, as recorded in service dossier of the deceased ex-serviceman.

7. Learned counsel for the respondents further submitted that Smt. Nasiran Bibi, the applicant claiming herself as wife of the deceased ex-serviceman, approached AMC Records through an application dated nil alongwith death certificate of No. 6818878 Ex Sep Pyare Ali Khan for grant of family pension informing that her husband died on 29.07.2009 and she is only eligible widow of deceased ex-serviceman to draw family pension w.e.f. 29.07.2009. AMC Records replied the said application vide letter dated 25.05.2010 stating that, ".....your

name as wife is not recorded in the service documents of the above named deceased soldier. If you are legally wedded wife of the above named deceased, you are advised to forward the documents/certificate to AMC Records (NE Group) for necessary action, i.e. (i) whereabouts of 1st widow of deceased whether died/divorced, (ii) marriage certificate with date and place of marriage and (iii) Details of children of 1st widow. Further action for grant of family pension will be taken only on receipt of above mentioned documents and confirmation of your eligibility for the same. In response to letter dated 25.05.2010, the applicant submitted certain documents to AMC Records vide her application dated 13.06.2016 for grant of family pension. AMC Records vide letter dated 04.07.2016 replied to applicant to route her application/documents through Zila Sainik Board duly verified by them for further action. The applicant submitted documents through Zila Sainik Kalyan Evam Punarvas, Ghazipur vide letter dated 09.01.2017 but the same being not signed by the concerned Zila Sainik Welfare Officer were returned to the applicant vide letter dated 02.05.2017. Thereafter, applicant's application dated March 2019 received through Zila Sainik Kalyan Evam Punarvas, Ghazipur vide letter dated 15.04.2019 in which the applicant stated that she was married with the deceased ex-serviceman on 20.06.1957 which was examined and suitably replied by AMC Records vide letter dated 17.06.2019 intimating that as per service documents

(Sheet Roll) ex-serviceman was married to Smt. Amina before enrolment into Army and her name is recorded in the service documents, hence, your claim that you married to deceased soldier on 20.06.1957 is not feasible. Thereafter, AMC Records vide letter dated 25.10.2019 again approached the applicant to send certain documents duly authenticated by Zila Sainik Board for publication of NE Series Part II Order regarding change of name to which applicant submitted required documents to the respondents.

8. Learned counsel for the respondents further submitted that in the meantime, AMC Records approached to Superintendent of Police, Ghazipur for verification of facts and establishment of her identity vide letter dated 31.06.2020, however, no reply received from the police department. Later on, applicant submitted certain documents through Zila Sainik Kalyan Evam Punarvas Adhikari, Ghazipur vide letter dated 14.07.2021 but the same were returned back to the applicant unactioned vide AMC Records letter dated 14.09.2021 with observation asking clarification of the applicant with regard to Smt. Amina and requirement of certain documents. Thereafter, applicant re-submitted certain documents through Zila Sainik Kalyan Evam Punarvas Adhikari, Ghazipur vide letter dated 25.11.2021 but the same were again returned back to the applicant unactioned vide AMC Records letter dated 15.12.2021 stating that any action with regard to her claim as

wife and grant of family pension will only be entertained on receipt of clarification/documents as asked for vide Records letter dated 14.09.2021. Thereafter, applicant submitted online complaint through CPGRAM on 14.01.2022 which was examined and suitably replied vide AMC Records letter dated 08.02.2022. Since, the applicant has not been able to prove herself as legally wedded wife of the deceased ex-serviceman, she cannot be granted family pension as per rules. He pleaded that Original Application being devoid of merit is liable to be dismissed.

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

10. The question which needs to be answered is that if the name of the applicant is not recorded in service document of deceased soldier, then applicant is entitled for grant of family pension or not?

11. 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.”

12. 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”

13. In the instant case, we observe that applicant has submitted all required documents as asked by the respondent No. 6 except details of whereabouts of ‘Amina’ whose name, as per respondents, is recorded in service record of the deceased soldier. The applicant has produced/submitted following documents with regard to her claim which are indicative that applicant is wife of Sepoy Pyare Ali Khan :-

(a) Death Certificate of Pyare Ali Khan dated 07.05.2016 issued by UP Govt. in which Smt. Nasiran Bibi is shown as wife.

(b) Birth Certificate of Nasiran Bibi dated 31.05.2016 issued by UP Govt. showing date of birth as 01.01.1937.

(c) Police report of Inspector, Police Station – Dildarnagar, Ghazipur dated 04.03.2020 submitted to SP,

Ghazipur mentioning Nasiran Bibi as wife of late Pyare Ali Khan.

(d) Police report of Sub Inspector, Police Station – Dildarnagar, Ghazipur dated 21.08.2021 submitted to SP, Ghazipur mentioning Nasiran Bibi as wife of late Pyare Ali Khan who was retired soldier and died on 29.07.2009.

(e) PAN Card No. EAOPB6595M showing name Nasiran Bibi and date of birth 01.01.1937.

(f) Aadhar Card No. 241055129048 showing name Nasiran Bibi and date of birth 01.01.1937.

(g) Birth Certificate dated 14.09.2021 issued by Gram Panchayat Alamganj showing Nasiran Bibi, wife of late Pyare Ali Khan, date of birth 01.01.1937 and resident of village Alamganj, Ghazipur.

(h) Voter Card No. UP/50232/600385 issued on 01.05.1995, showing name Nasiran, wife of Pyare, resident of Alamganj, Ghazipur.

(i) Nikahnama dated 20.06.1957 in Urdu, Hindi and English showing Bride – Nasiran Bibi and Groom – Pyare Ali Khan and other details of Wakil, Witness, Mehar, Kaji etc.

(j) Marriage Certificate dated 09.08.2016 issued by Shamshad Khan, Gram Pradhan Mahna Kala, Distt – Ghazipur mentioning that marriage of Nasiran Bibi with Pyare Ali Khan held on 20.06.1957 as per Muslim customs.

(k) Certificate dated 14.08.2021 issued by Gram Pradhan, Gram Panchayat Alamganj mentioning that Nasiran Bibi is wife of Pyare Ali Khan.

(l) Khatauni of Gata No. 1071 Kh of Fasali Varsh 1424-1429 in which agricultural land is shown on the name of Nasiran Bibi, wife of Pyare Ali Khan of Alamganj.

(m) Newspaper (English and Hindi) cuttings for correction of name as 'Nasiran Bibi' in place of 'Amina' in Army service records of her husband Sepoy Pyare Ali Khan.

(n) Notarized Affidavit of marriage dated 13.10.2017 of the applicant with Pyare Ali Khan.

(o) Notarized Affidavit dated 26.11.2019 of Tehsil Zamania showing Nasiran Bibi is only living widow of her husband, late Pyare Ali Khan.

14. The applicant in her applications and documents submitted in reply to observation/clarification asked by the respondent No. 6 has repeatedly mentioned that Nasiran Bibi (Applicant) is only widow of late Sepoy Pyare Ali Khan and there is no such lady named, 'Amina' who is shown wife in Army service record.

15. We also observe that respondents in their counter affidavit have attached a paper, 'Kindred Roll and Names of Heirs' of Ex Sepoy (late) Pyare Ali Khan, as Exhibit R-2 in which date of birth of wife – Amina, father, mother, son, daughter and three brothers is shown as 1st July in different years which shows distrust on genuineness of paper as date of birth of all personnel mentioned in Kindred Roll as 1st July only creates a doubt towards the entries in it. More so, name of Sepoy Pyare Ali Khan is also nowhere entered/shown in the paper then how it will be assumed that this paper (Kindred Roll) belongs to Sep Pyare Ali Khan. This paper is not signed,

dated and verified by any authority. Besides this, date of birth of Smt. Amina is shown 01.07.1944 and date of birth of first child (son) born to her is shown 01.07.1953, it means that she got married and gave birth to a child in her 9 years of age only which also creates doubt about dates and the authenticity of paper (Kindred Roll).

16. In addition to this, Smt. Amina to whom respondents have shown as wife in service record of Sepoy Pyare Ali Khan has not come forward claiming family pension or other benefits being wife/next of kin after the death of ex-serviceman. Her non appearance for a long period of 14 years from the date of death of ex Sepoy Pyare Ali Khan somehow corroborates the version of the applicant about non existence of Smt. Amina.

17. In view of the aforesaid discussion/observation and circumstances, we are of the view that documents mentioned in para 14 above establishes that applicant (Nasiran Bibi) is wife of ex Sepoy Pyare Ali Khan and therefore, she being the only widow of late Sepoy Pyare Ali Khan is entitled to Ordinary Family Pension from the next date of death of her husband (Ex Sepoy Pyare Ali Khan).

18. Thus, in the result, Original Application succeeds and is **allowed**. Applicant is directed to re-submit all available documents with regard to her claim (entry of her name in service record and for grant of family pension) to the respondents within one month. After receipt of documents from

the applicant, respondents shall update their record showing Nasiran Bibi as wife of Ex Sepoy Pyare Ali Khan subject to verification of the documents and grant Ordinary Family Pension to the applicant from the next date of death of ex Sepoy Pyare Ali Khan, i.e. w.e.f. 30.07.2009. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrears of Ordinary Family Pension will be restricted to three years preceding the date of filing of the Original Application. The date of filing of O.A is 17.05.2022. The respondents are further directed to give effect to this order within a period of six 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.

19. No order as to costs.

20. Pending applications, if any, shall stand disposed off.

(Lt Gen Anil Puri)
Member (A)

Dated : September, 2023
SB

(Justice Anil Kumar)
Member (J)