

**RESERVED**  
(Court No 2)

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

**Original Application No. 741 of 2022**

Wednesday, this the 29<sup>th</sup> day of November, 2023

**"Hon'ble Mr. Justice Anil Kumar, Member (J)  
Hon'ble Maj Gen Sanjay Singh, Member (A)"**

Smt Noor Saba widow of No 13937148-M Ex Nk Late Syed Moharram Ali, R/o 868/A, AB Nagar, Distt-Unnao, State-UP, PIN-209801.

.....Applicant

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

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-11.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), DHQ, Post Office, New Delhi-11.
3. The Officer-in-Charge, Army Medical Corps Records Office, Lucknow-226002.
4. The Chief Controller Defence Accounts, Draudpadi Ghat, Allahabad (UP).
5. The Zila Sainik Welfare Office, Unnao (UP), PIN-209801.

..... Respondents

Ld. Counsel for the: **Ms Amrita Chakraborty**, Advocate  
Respondents

**ORDER**

1. This instant Original application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 by which she has sought the following reliefs:-

- (i) *The Hon'ble Tribunal may be pleased to set aside the order dated 28.06.2010 (Annexure No A-1) and order dated 03.09.2010 (Annexure No A-2).*
- (ii) *The Hon'ble Tribunal may be pleased to direct the respondents to grant family pension to the applicant w.e.f. 30.06.2022 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. Brief facts of the case are that No. 13937140-M ex late Nk Syed Moharram Ali was enrolled in the Army on 15.12.1973. During the course of his service he was married with Kumari Zubeda Begum as per Muslim Rites on 07.11.1977. She died on 15.03.1989. Applicant's husband was re-married with Kumari Samsad Begum on 03.06.1990 and casualty to this effect was published vide Part-II Order No 58/48/90. Thereafter, due to family dispute, talaqnama took place between them and marriage was terminated on 26.12.1992. After talaqnama, applicant Noor Saba was married to the late deceased soldier on 19.06.1993 while he

was posted with 326 Field Ambulance and occurrence was notified vide Part-II Order No 62/01/1995. On 31.12.1995, applicant's husband was discharged from service and granted service pension vide PPO No S/013370/1996 (Army). He died due to illness on 24.05.2009. After his death, applicant had approached for grant of family pension but the same was denied vide letter dated 03.06.2010 stating that third marriage was solemnized during subsistence of second marriage. Thereafter, applicant's son being below the age of 25 years was granted family pension for the period 25.05.2009 to 29.06.2022. This O.A. has been filed for grant of family pension w.e.f. 30.06.2022 along with arrears.

3. Submission of learned counsel for the applicant is that being married to the deceased soldier on 19.06.1993 after talaqnama with second wife on 26.12.1992 as per Muslim Rites, applicant is entitled to grant of family pension based on Part-II Order No. 62/01/1995 which was published relating to her marriage by 326 Field Ambulance in the year 1995. His further submission is that relationship certificate issued by AMC Records dated 14.10.2008 (Annexure A-4) also specifies that she is legally wedded wife of the deceased soldier.

4. Further submission of learned counsel for the applicant is that applicant is entitled to family pension because her name is duly entered as next of kin in record of her deceased husband. His further submission is that after return of her claim for grant of family pension by PCDA (P), Allahabad, since family pension was granted to her son till attaining the age of 25 years i.e. up to 29.06.2022, she is entitled to receive family pension w.e.f. 30.06.2022. In support of claim for grant of family pension to applicant, learned counsel for the applicant has relied upon order dated 11.10.2017 passed by this Tribunal in the case of **Smt Kamil Nisha vs UOI & Ors** (O.A. No. 381 of 2017) and **Smt Shiramabai vs The Captain, Record Officer**, Civil Appeal No. 5262 of 2023 decided by the Hon'ble Apex Court on 18.08.2023.

5. On the other hand, submission of learned counsel for the respondents is that No. 13937148M Ex Naik Syed Moharram Ali was enrolled in Army Medical Corps (AMC) on 15.12.1973 and he was discharged from service on 31.12.1995. After discharge from service he was granted service pension vide PPO No S/013370/1996 (Army) dated 18.04.1996. He died on 24.05.2009 while in receipt of service pension.

6. Learned counsel for the respondents further submitted that during the course of his service the deceased soldier married Zubeda Begum on 07.11.1977 but she expired on 15.03.1989. After death of his first wife he married to second wife Samsad Begum on 03.06.1990 but soon after marriage their relationship became tense and they lives separately. The deceased soldier gave talaq to second wife without decree of divorce from court of law and married Noor Saba (third wife) on 19.06.1993 for which casualty was published vide Part-II Order No 62/01/1995 erroneously without ascertaining the documents submitted by the deceased soldier. It was submitted that since the deceased soldier married Noor Saba when second marriage was subsisting, this marriage being plural is not sustainable, applicant is not entitled to family pension. He pleaded for dismissal of O.A.

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

8. In the instant case, the applicant is claiming the family pension of her deceased husband ex Naik Syed Moharram Ali on the ground that she is legally wedded wife of the ex-serviceman (ESM). The contention of the respondents is that her marriage is illegal because marriage with the applicant

was third marriage of the ESM solemnized in the life time of second wife Samshad Begum. The respondents also contended that marriage of ESM with the applicant Noor Saba is a plural marriage case because ESM married without decree of divorce from his second wife Samsad Begum.

9. It is not disputed that after death of first wife Zubeda Begum, the late husband of the applicant Nk Syed Moharram Ali married to the second wife Samshad Begum on 03.06.1990.

10. It is submitted by learned counsel for the applicant that on 26.12.1992 due to some family dispute their married life was terminated and after talaq took as per their caste community, both were living separately since September 1990. It is further submitted that on 19.06.1993, the applicant's deceased husband married to the applicant as per Muslim Rites and casualty to this effect was notified by 326 Field Ambulance vide Part-II Order No 62/01/1995 on the basis of documents produced by her late husband.

11. Thus, it is submitted that marriage with applicant was solemnized after divorce from second wife. It is submitted that the documents submitted by her deceased husband for

publication of Part-II Order are not with her (Para 1 of O.A.). The respondents admitted the fact that Part-II Order was published regarding marriage of the applicant with her deceased husband but it is submitted that it was erroneously published.

12. It is submitted by the learned counsel for the applicant that respondent No 3 had also issued Relationship Certificate (Annexure No A-4 to O.A.) in which name of applicant is mentioned as wife of the deceased ESM. It is also not disputed by the respondents but has submitted that it was issued inadvertently.

13. After discharge from service, deceased ESM was granted service pension and PPO was issued. Later on 15.05.1997 an application was submitted by the ESM through Zila Sainik Welfare Officer, Unnao for endorsement of name of the applicant in PPO. Copy of the letter is annexed as R-7 to the counter affidavit.

14. Learned counsel for the respondent submits that deceased ESM married to applicant without obtaining any decree of divorce/talaqnama from second wife, therefore, his marriage with applicant was a plural marriage. It is also

submitted that petition for divorce filed by the deceased ESM was dismissed by Civil Judge, South Unnao. In this regard learned counsel for the applicant submitted that due to some family dispute with second wife his marriage with second wife was terminated on 20.12.1992 and talaq took place as per their caste community. Both second wife and deceased ESM were living separately since 1990 and on 26.12.1992 deceased ESM gave talaq to second wife Samsad Begum by saying 3 times talaq and thereafter, married to the applicant on 19.06.1993 and on the basis of documents furnished by her husband, Part-II Order regarding her marriage was published (Annexure R-6 to CA). The said talaqnama with second wife was notified by the Notary Court compound Kanpur on 17.06.1996. Subsequently divorce was carried out by Family Court on 16.03.1997. Copy of the judgment of Family Court has not been filed by any of the parties, but it is submitted by learned counsel for the applicant that there was no need of decree of divorce because there was talaqnama which has been accepted by the Civil Judge. The deceased ESM and second wife were living separately and on 26.12.1992 due to family dispute their married life was terminated and talaq took place and ESM had given three



talaqs. No cogent evidence has been filed by the respondents for rebuttal of above contention of the applicant.

15. It is submitted by the learned counsel for the applicant that the applicant was married with the deceased ESM on 19.06.1993 and since then she was living with her deceased husband till his death i.e. up to 24.05.2009. They were living as husband and wife for about 16 years and from their wedlock three children were born. Name of the applicant and her children are clearly mentioned in Relationship Certificate issued by the respondent No. 3 on 24.10.2008 (Annexure A-4 to O.A.). After discharge of the applicant's husband till date, the second wife Samsad Begum never appeared before the respondents or any other authority for her claim. Learned counsel for the applicant submitted that in these circumstances it will be presumed that applicant is legally wedded wife of the deceased ESM. In support of above arguments learned counsel for the applicant has relied on law laid down by the Hon'ble Apex Court in judgment passed on 18.08.2023 in Civil Appeal No. 5262 of 2023, **Smt Shiramabai vs the Captain, Record Officer**. Para 11 of the above judgment is reproduced as under:-

*"11. It is no longer res integra that if a man and woman cohabit as husband and wife for a long duration, one can draw a presumption in their favour that they were living together as a consequence of a valid marriage. This presumption can be drawn under Section 114 of the Evidence Act that states as follows:*

*114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."*

16. In view of the aforesaid discussion, the evidence on record in support of the applicant's claim for family pension, we are of the considered view that the applicant has fully established her claim for family pension. It is also not in dispute that the second wife did not claim any pension from the respondent on demise of applicant's husband. On the contrary the respondents could not deny the claim of the applicant by rebutting the evidence filed by the applicant. The O.A. deserves to be allowed holding the applicant to be entitled to the family pension of her deceased husband ex Nk Syed Moharram Ali.

17. Accordingly, O.A. is **allowed** and the respondents are directed to pay Ordinary Family Pension to the applicant of her deceased husband ex Nk Syed Moharram Ali w.e.f. 30.06.2022 for life along with arrears. The respondents are

further directed to pay the entire arrears of family pension within a period of four months from today failing which interest @ 8% p.a. shall be payable to the applicant.

18. No order as to costs.

19. Miscellaneous application (s), pending if any, stand disposed off.

20. Departmental Representative for the respondents orally submitted to grant leave to appeal against the above order, which we have considered and no point of law of general public importance being involved in this case, the plea is rejected.

**(Maj Gen Sanjay Singh)**  
**Member (A)**

Dated:29.11.2023

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**(Justice Anil Kumar)**  
**Member (J)**

**RESERVED**  
**Court No 2**

Form No. 4  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH,**  
**LUCKNOW**

**O. A. No. 741 of 2022**

**Smt Noor Saba**

Applicant

By Legal Practitioner for the Applicant

Versus

**Union of India & Ors**

Respondents

By Legal Practitioner for Respondents

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|-----------------------|--|
| Notes of the Registry | Orders of the Tribunal   |
|                       | <p><b><u>29.11.2023</u></b><br/><b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b><br/><b><u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></b></p> <p>Judgment pronounced.<br/>O. A. No. 741 of 2022 is <b>allowed</b>.<br/>For orders, see our judgment and order passed on separate sheets.</p> <p><b>(Maj Gen Sanjay Singh)</b><br/><b>Member (A)</b></p> <p><b>(Justice Anil Kumar)</b><br/><b>Member (J)</b></p> <p><i>rathore</i></p> |

