

**RESERVED**  
**Court No. 1**

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

**Transferred Application No. 41 of 2016**

Thursday , this the 25<sup>th</sup> day of March , 2021

**Hon'ble Mr. Justice Umesh Chandra Srivastava (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Smt. Shakuntla Devi Widow of Ex. No. 7045864 Late Havildar Rama Kant Sharma Son of Sri Sharad Charya R/o Nai Wali Gali, Kotwali Road, Mathura.

.... **Applicant**

Ld. Counsel for the: **Col. Y.R. Sharma (Retd.)**, Advocate  
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, Rakchha Bhawan, New Delhi.
2. Major/Senior Record Officer, E.M.E. Records, Sikandrabad-2.
3. Sub-Major ARO Branch Recruiting Officer, 65 Taj Road, Agra Cantt.282001.
4. Smt. Brinda Rani Sharma @ Meera Sharma, R/o 134, Mangal Patel Ke Samne, Gupteshwar, Jabalpur (M.P.).

... **Respondents**

Ld. Counsel for the : **Shri Anurag Mishra**, Advocate  
Respondent Nos. 1 to 3.

Ld. Counsel for the : **Shri R. Chandra**, Advocate  
Respondent No. 4

**ORDER****“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. Initially Civil Misc. Writ Petition No. 48952 of 2004 was filed before the Hon’ble Allahabad High Court of judicature at Allahabad which on constitution of this Tribunal was transferred and was renumbered as T.A. No. 41 of 2016. By means of this T.A. the applicant has prayed the following reliefs:-

- (A) *To issue orders/direction in appropriate form to Respondents to pay the Family Pension and other consequential benefits to the applicant with effect from 05.01.2003, date of death of her husband who was in Army service and was drawing pension after retirement.*
- (B) *To set aside/quash the order of EME Records Secunderabad, Rejecting the representation of the applicant vide their letter No. 7045864/F.P.-5 Pen dated 27 May 2003 addressed to State Bank of India Vrindavan (Mathura) attached as Annexure – 2.*
- (C) *To issue any other orders/directions as deemed appropriate in the circumstances of the case.*
- (D) *To award cost of the suit.*

2. Briefly stated, the applicant’s husband ( Ex. No. 7045864 Havildar Late Rama Kant Sharma) was enrolled in the Indian Army on 12.05.1961 and was discharged from service with effect from 31.05.1985 on fulfilling the terms of his enrolment under Rule 13 (3) Item III (i) of the Army Rules, 1954. After his retirement Havildar Late Rama Kant Sharma was getting pension. Late Havildar Ramakant Sharma had filed a Matrimonial Suit being O.S. No. 311 of 1988 in the Court of Civil Judge, Mathura that his marriage with applicant Smt. Shakuntla Devi, which had taken

place on 30.04.1980, be declared null and void. The said Suit was contested by the applicant that she was the legally wedded wife of Late Havildar Rama Kant Sharma, who was not married earlier, therefore, her marriage with him was a lawful marriage. The said Suit was dismissed on 24.12.1997 holding applicant was the legally wedded wife of Late Havildar Rama Kant Sharma as the latter had failed to prove his marriage with Smt. Brinda Rani Sharma alias Meera Sharma on 21.05.1964. Late Havildar Rama Kant Sharma had filed a Civil Appeal being Civil Appeal No. 31 of 1998 against the order of dismissal of suit dated 24.12.1997 in the Court of District Judge, Mathura, which was also dismissed vide Judgment and order dated 31.01.2000. No appeal was preferred against this order, therefore, the findings recorded in Original Suit No. 311 of 1988 became confirmed and final.

3. Applicant had also filed a Petition being Case No. 51 of 1989 under Section 125 of the Criminal Procedure Code for the grant of maintenance for herself and her two children born from the wedlock of Late Havildar Rama Kant Sharma in the Court of Munsif Magistrate, Mathura which was dismissed on 18.01.1989. Both Late Havildar as well as applicant had preferred Criminal Revision being Criminal Revision No. 40 of 1989 and 55 of 1989 respectively against the order dated 18.01.1989, of which while Criminal Revision No. 40 of 1989 was dismissed the Criminal Revision No. 55 of 1989 was allowed holding applicant being legally wedded wife of Late Havildar Rama Kant Sharma and directing the latter to pay maintenance to her and her two children.

4. Late Havildar Rama Kant Sharma died on 05.01.2003 and, after his death, applicant preferred a Petition dated 03.02.2003 before the respondent Nos. 1 to 3, requesting them to grant family pension to her. The said petition was rejected by the respondent Nos. 1 to 3 holding she being not legally wedded wife of the deceased soldier was not entitled to family pension. The applicant again sent representations dated 22.07.2003 and 26.08.2003 but all in vain. It is in this perspective that the applicant preferred Writ Petition in the Hon'ble High Court of Judicature at Allahabad being Writ Petition No. 48952 of 2004 for the grant of family pension to her.

5. Ld. Counsel for the applicant pleaded that Late Havildar Rama Kant Sharma himself has admitted in Matrimonial Suit No. 311 of 1988 that his marriage with applicant was solemnized on 30.04.1980 as per Hindu rites and customs. Applicant has been ruled to be legally wedded wife of Late Havildar Rama Kant Sharma in Matrimonial Suit No. 311 of 1988 by a competent Court of Civil Judge, Mathura vide Judgment and order dated 24.12.1997. The said Suit was filed to pass a Declaratory Decree to the effect that alleged marriage of applicant and the Late Havildar Rama Kant Sharma being solemnized in contravention of provisions of Section 5(1) of the Hindu Marriage Act, 1955 due to first marriage of the latter with Smt. Brinda Rani Sharma on 21.05.1964 being in subsistence was null and void. He further pleaded that Judgment and order dated 24.12.1997 of Civil Judge, Mathura is binding on respondents as Civil Appeal preferred

against this Judgment has been dismissed on 31.01.2000 and no Appeal being preferred against dismissal of Appeal the finding recorded by the Civil Judge, Mathura has become final having binding effect on all including the respondents. He further pleaded that applicant's marriage with Late Havildar Rama Kant Sharma has been held valid in Judgment and Order dated 29.05.1989 in Criminal Revision No. 40 of 1989 and 55 of 1989 by the Additional District Judge, Mathura also which were filed against the order dated 18.01.1989 passed in Case No. 51 of 1989 which applicant had filed in the Court of Munsif Magistrate, Mathura under Section 125 of Criminal Procedure Code to direct Late Havildar Rama Kant Sharma to provide maintenance to applicant and her two children. Decrees passed in Matrimonial Suit as well as in case under Section 125 of Criminal Procedure Code being binding on all respondent Nos. 1 to 3 have no right to refuse to grant family pension to applicant on the premise that in view of name of Smt. Brinda Rani Sharma being recorded as wife of Late Havildar Rama Kant Sharma in their records, her alleged marriage with Late Havildar Rama Kant Sharma based on declaration made by Late Havildar Rama Kant Sharma being a second marriage during subsistence of first marriage is null and void.

6. He further pleaded that Smt. Brinda Rani Sharma alias Meera Sharma is an imaginary name entered in Army records of Late Havildar Rama Kant Sharma as his wife. No marriage of Late Havildar Rama Kant Sharma with a woman named Brinda Rani Sharma had taken place on 21.05.1964 as asserted by

respondent Nos. 1 to 3. Respondent No. 4 in fact is a woman named Meera Sharma who is receiving dual pension, first family pension of Late Havildar Rama Kant Sharma from respondent Nos. 1 to 3 claiming herself to be widow of Late Havildar Rama Kant Sharma in the name of Brinda Rani Sharma and second as service pension from a College in the name of Smt. Meera Sharma. He further pleaded that Brinda Rani Sharma and Meera Sharma are not two names of one and the same woman because had it been true then name of respondent No. 4 in PAN Card and Election Identity Card would be recorded as such, it would not be recorded only Meera.

7. Ld. Counsel for the applicant further pleaded that respondent No. 4, after the death of Late Havildar Rama Kant Sharma, never moved for the grant of Succession Certificate in respect of movables left by Late Havildar Rama Kant Sharma rather it were father of the deceased who moved such application and later got withdrawn and, thereafter, applicant's son Pranat Sharma moved another application being Succession Application No. 93 of 2007 which was allowed by the Court of Civil Judge (Senior Division) vide order dated 17.05.2009. He pleaded that had respondent No. 4 been legally wedded wife of Late Havildar Rama Kant Sharma then she would certainly file Succession Application, or would make application in the Court for being impleaded as party in application filed by the father of Late Havildar Rama Kant Sharma, Shardacharya, which she never did which indicates that she is not legally wedded wife of deceased

soldier rather getting benefit of a fictitious entry in the name of Brinda Rani Sharma as wife in official record of Late Havildar Rama Kant Sharma she is receiving family pension depriving with her legal right.

8. Per contra, Ld. Counsel for the respondents pleaded that Late Havildar Rama Kant Sharma has himself admitted respondent No. 4 Smt. Brinda Rani Sharma as his legally wedded wife in the Matrimonial Suit he had filed against the applicant for declaring his marriage with applicant as null and void. The name of Smt. Brinda Rani Sharma (Wife) along with her three children namely, (i) Richa Sharma (Daughter), (ii) Kapil Sharma alias Rakesh Sharma (Son) and (iii) Shruti Sharma alias Mithu Sharma (Daughter) have been recorded in the Army records based on declaration made by Late Havildar Rama Kant Sharma himself since 1965, which certifies her status to be of legally wedded wife of Late Havildar Rama Kant Sharma. He further pleaded that during subsistence of marriage of Smt. Brinda Rani Sharma with Late Havildar Rama Kant Sharma the alleged marriage of applicant with Late Havildar Rama Kant Sharma, if any, being solemnized in contravention of provisions of Section 5(1) of Hindu Marriage Act, 1955 is nothing but a void marriage and, therefore, cannot be recognized and given effect to by anyone including respondent Nos. 1 to 3. His further submission is that respondent No. 4 Smt. Brinda Rani Sharma being not a party in Matrimonial Suit, as well as in proceedings under Section 125 of Criminal Procedure Code and Succession Application, any finding

recorded therein would not be binding on her and even on respondent No. 1 to 3, more so when her (respondent No. 4) name has been recorded as wife of Late Havildar Rama Kant Sharma in the Army records since 1965 based on declaration made by Late Havildar himself.

9. We have heard Ld. Counsel of both sides and perused the material placed on record.

10. The only question which needs to be answered in this case is “whether petitioner can be considered as legally wedded wife of Late Havildar Ramakant Sharma and, as such, can be held entitled for Family Pension when as per declaration made by Late Havildar Rama Kant Sharma the name of Smt. Brinda Rani Sharma @ Meera Devi is recorded as his (deceased soldier) wife in the Army records since 1965?”

11. On going through the record it reveals that Late Havildar Rama Kant Sharma was enrolled in the Army on 12.05.1961 as Sepoy and discharged on 31.05.1985 as Havildar after completing the terms of engagement. It further reveals that name of Smt. Brinda Rani Sharma has been entered as wife of Late Havildar Rama Kant Sharma in his official records on his own declaration certificate. It further reveals that name of the applicant and her children are not recorded as kins of Late Havildar in his (deceased soldier) service records as Late Havildar never moved for this.

12. Applicant’s contention that her marriage with Late Havildar Rama Kant Sharma was solemnized as per Hindu rites on 30.04.1980, and, therefore, she is his legal wedded wife and



entitled to receive family pension, after his death, is not acceptable when the deceased soldier has himself admitted the factum of his marriage with respondent No. 4 on 21.05.1964 before respondent Nos. 1 to 3 by submitting declaration certificate at the time of Part II Order, while in service, and before the Courts of Law in declaratory Suit (O.A. No. 311 of 1988) filed by him to declare his marriage with applicant as null and void and in Maintenance Case (Case No. 51 of 1989) the applicant had filed against him. If deceased soldier's marriage with respondent No. 4 had already solemnized on 21.05.1964 and he had declared it also before the respondent Nos. 1 to 3 by submitting declaration certificate, and on account of that the name of respondent No. 4 has been recorded as Kin (wife) of the deceased soldier in his service records during service time, any subsequent event with regard to marriage with applicant on 30.04.1980 being happened in contravention of the provisions of Section 5(1) of the Hindu Marriage Act, 1955 would be void.

13. Applicant's alleged marriage with deceased soldier cannot be regarded as lawful marriage on account of decree(s)/order(s) passed in Matrimonial Suit No. 311 of 1988 and in proceedings under Section 125 of the Criminal Procedure Code in case No. 51 of 1989 as respondent No. 4. Brinda Rani Sharma being not a party in the Suit/proceedings any decree/order passed therein is not binding upon her as well as upon respondent Nos. 1 to 3. Respondent No. 4 Brinda Rani Sharma could not be held legally wedded wife of deceased soldier only when she would be party in

the Suit and proceedings referred to above because in that case decree/order passed therein would be binding not only on respondent No. 4 alone but on other respondents also.

14. It is hard to believe that Brinda Rani Sharma is an imaginary/fictitious name, or Brinda Rani Sharma and Meera Sharma are not two names of one and the same person. This is because it is deceased soldier alone who could have said so which he never did, rather, contrarily, he has admitted this fact when he was alive. Further, there could be no probability to deceased soldier to submit a false declaration certificate in the year 1965 that respondent No. 4 was his wife on account of his marriage solemnized with her (respondent No. 4) on 21.05.1964 when Part II Order was published and name of respondent No. 4 was recorded as Kin (wife) of deceased soldier in his service records as by then there was no dispute with regard to his (deceased soldier) marriage.

15. In a situation when deceased soldier has declared respondent No. 4 as his wife before respondent Nos. 1 to 3, while he was in service, and on account of that declaration the name of respondent No. 4 has been recorded as wife of deceased soldier in his official records in the year 1965, and this entry has remained unchanged due to no otherwise declaration being made by the deceased soldier during his life time, applicant cannot be held legally wedded wife of deceased soldier on the basis of alleged decree/order passed in Matrimonial Suit and in Case under Section 125 of the Criminal Procedure Code nor

respondent Nos. 1 to 3 can be directed to act upon the said decree/order and to grant family pension to applicant treating her to be legally wedded wife of deceased soldier.

16. In view of above, we do not see any merit in the applicant's claim that she is legally wedded wife of deceased soldier Rama Kant Sharma and, as such, is entitled to receive family pension, after the death of deceased soldier.

17. Resultantly, Transferred Application lacks merit and is **dismissed** as such.

18. No order as to costs.

19. Pending applications, if any, are also disposed off accordingly.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: 25 March, 2021

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