

RESERVED
(Court No 2)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 473 of 2023

Tuesday, this the 05th day of March, 2024

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

1. Smt Priya Mishra (Widow of No 15428826-K, Late Sep Janardan Mishra), R/o Village-Pipri, PO-Dehratikar, Khajani, PS-Sikriganj, Distt-Gorakhpur, U.P.-273213.

2. Miss Anchal Mishra (D/o No 15428826-K, Late Sep Janardan Mishra), R/o Village-Pipri, PO-Dehratikar, Khajani, PS-Sikriganj, Distt-Gorakhpur, U.P.-273213.

..... Applicants

Ld. Counsel for the : **Shri Ravi Kumar Yadav**, Advocate.
Applicant

Versus

1. The Union of India Rep by the Secretary, Govt of India, Ministry of Defence, South Block, New Delhi-110011.

2. The Chief of the Army Staff, Integrated Headquarters of MoD (Army), Post-DHQ, New Delhi-110011.

3. OIC Record Office, Army Medical Corps Records, PIN-900450, C/o 56 APO.

4. PCDA (P) (Army), Draupadi Ghat, Allahabad (UP)-212114.

.....Respondents

Ld. Counsel for the : **Shri DK Pandey**, Advocate
Respondents. Central Govt. Counsel

ORDER**“Per Justice Anil Kumar, Member (J)”**

1. This application has been filed on behalf of the applicants under Section 14 of the Armed Forces Tribunal Act, 2007. The applicants have prayed for the following reliefs:-

(i) To quash and set aside the Respondent's letter No 15428826K/Pen/FP&PEA/PPO dated 09 Jan 2021 and letter No 1165/A dated 08 Sep 2021 (Annexure A-1 & A-2 of instant OA & Impugned order).

(ii) To issue/pass an order or direction of appropriate nature to the respondents to grant full Special Family Pension to applicant No 1 from next date of death of deceased Sepoy Janardan Mishra i.e. 18.05.2020 and pay the arrears of Special Family Pension alongwith suitable rate of interest.

(iii) To issue/pass an order or direction of appropriate nature to the respondents to publish Part-II order regarding birth of applicant No 2 and her name as daughter be entered in service records of her late father and issue the relationship certificate to the applicant.

(iv) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.

2. Facts giving rise to this Original Application in brief are that No. 15428826K (late) Sepoy Janardan Mishra was enrolled in Army Medical Corps (AMC) of the Indian Army on 20.06.2009 and died while in service on 17.05.2020 due to 'Refractory CLL Covid-19' after rendering 10 years, 10 months and 28 days service. After death of the deceased soldier, 50% Special Family Pension was granted to applicant No. 1 vide PPO No. 185202100001-3300 dated 04.01.2021.

3. During the course of his service, the deceased soldier was married with Smt Poonam Mishra on 12.06.2010 and casualty to this effect was notified vide Part-II Order No. 0/0233/001/2011.

As per applicant, three children viz. Miss Anchal Mishra (applicant No 1), Miss Priyanshi Mishra and Master Divyansh were born out of the said wedlock. Smt Poonam Mishra (first wife of the deceased soldier) died on 29.03.2014 and thereafter, the deceased soldier re-married with applicant No. 1 on 13.10.2015. He died while admitted in Military Hospital on 17.05.2020 due to 'Refractory CLL Covid-19'.

4. After demise of the deceased soldier, applicant No. 1 was granted 50% Special Family Pension through PPO issued by PCDA (P), Allahabad on 04.01.2021. This O.A. has been filed for grant of 100% Special Family Pension to applicant No. 1 and publication of birth Part-II Order in respect of Miss Anchal Mishra (applicant No. 2) who is claiming to be daughter of the deceased soldier.

5. Submission of learned counsel for the applicants is that on getting to know that name of applicant No. 2 is not endorsed in service records of the deceased soldier, applicant No. 1 approached the respondents with supporting documents for endorsement of name of applicant No. 2 in service documents of the deceased soldier. In response, respondents vide letter dated 08.09.2021 returned said documents un-actioned raising objection that Miss Anchal Mishra (applicant No. 2) was born four-five years before the date of marriage in respect of Smt Poonam Mishra.

6. Further submission of learned counsel for the applicants is that authenticity with regard to applicant No. 2 being daughter of

the deceased soldier has been verified by the police authority and a report is placed at Annexure A-8 to this O.A. Learned counsel for the applicants further submitted that certificate dated 13.11.2020 (□□□□□□□□ □□□□□□ □□□□□□ □□□□) (page 23 of O.A.) issued by the Sub Divisional Magistrate, Gorakhpur is also in favour of applicant No. 2 in which her name is entered as daughter of the deceased soldier, therefore, her name be entered in service documents of the deceased soldier.

7. Learned counsel for the applicants also submitted that applicant No. 1 be granted 100% Special Family Pension in terms of Para 114 of Pension Regulations for the Army, 2008 (Part-I) which stipulates that if wife of the deceased soldier supports children of the deceased soldier, she is eligible for grant of full Special Family Pension. He pleaded for grant of full Special Family Pension to applicant No. 1 and endorsement of name of applicant No. 2 in service records of the deceased soldier.

8. In support of his contention, reliance has been placed by learned counsel for the applicants on order dated 09.12.2020 passed by this Tribunal in O.A. No. 243 of 2020, **Pinki Devi vs UOI & Ors** and order dated 31.10.2022 passed in O.A. No. 511 of 2022, **Smt Sarvistha vs UOI & Ors**.

9. Per contra, learned counsel for the respondents submitted that after death of the deceased soldier, applicant No. 1 being NOK was granted 100% death-cum-retirement gratuity and 50% Special Family Pension in terms of Para 130 of Pension

Regulations for the Army, 2008 (Part-I) w.e.f. next date of her husband's death as her name is recorded in service documents of the deceased soldier. Learned counsel for the respondents further submitted that since name of the elder daughter Miss Anchal Mishra (applicant No. 2) was not found recorded in service documents of the deceased soldier, certain documents were asked by AMC Records through Zila Sainik Board, Gorakhpur/Army Recruiting Office (ARO), Varanasi. On scrutiny of documents submitted by the applicant through ARO, Varanasi, it was observed that date of birth in respect of Miss Anchal Mishra (applicant No 2), who is claiming herself to be daughter of the deceased soldier, is mentioned as 08.08.2005 i.e. about 05 years before marriage of Smt Poonam Mishra (first wife of the deceased soldier) which was solemnized on 12.06.2010, therefore, endorsement of name of Miss Anchal Mishra (applicant No. 2) in service dossiers of the deceased soldier was rejected by AMC Records.

10. Learned counsel for the respondents further submitted that a series of communications have been made to Superintendent of Police, Gorakhpur and ARO, Varanasi including District Magistrate, Gorakhpur but the contradiction with regard to date of birth in respect of Miss Anchal Mishra (applicant No. 2) and date of marriage in respect of deceased soldier's first wife remained disputed. Learned counsel for the respondents however, admitted that in verification report submitted by Senior Police

Officer, Sikriganj, District-Gorakhpur (Annexure R-25) it is mentioned that Miss Anchal Mishra (applicant No. 2) is the legitimate eldest daughter of the deceased soldier, but her name is not entered in service record of the deceased soldier.

11. Learned counsel for the respondents further submitted that on receipt of verification report from police authorities, letter dated 23.12.2022 was sent to PCDA (P), Allahabad for getting clarification whether after publication of NE series Part-II Order in respect of Miss Anchal Mishra (applicant No. 2), who is illegitimate daughter, 50% share of Special Family Pension may be granted to her or not. It was further submitted that no response has been received from their office.

12. Learned counsel for the respondents further submitted that applicant No. 1 may be granted 100% Special Family Pension in terms of Para 117 of Pension Regulations for the Army, 2008 (Part-I) or it may also be divided between applicant No. 1 and applicant No. 2 in terms of Para 130 (a) of Pension Regulations for the Army, 2008 (Part-I). Since, applicant No. 1 is supporting all children of the deceased soldier, she may be granted 100% Special Family Pension. It was however, submitted that marriage between the deceased soldier and Smt Poonam Mishra (deceased first wife) was solemnized on 12.06.2010, whereas Miss Anchal Mishra (applicant No. 2) was born on 08.08.2005 i.e. about 05 years prior to the date of their marriage which being contradictory, Part-II Order of birth in respect of Miss Anchal

Mishra (applicant No. 2) cannot be published. He pleaded for dismissal of O.A.

13. Heard Shri Ravi Kumar Yadav, learned counsel for the applicant and Shri DK Pandey, learned counsel for the respondents and perused the record.

14. This O.A. has been filed by Smt Priya Mishra (applicant No. 1 who is second wife of the deceased soldier) and Miss Anchal Mishra (applicant No. 2 who is claiming herself to be eldest daughter of the deceased soldier). It is not disputed that the deceased soldier was enrolled in the Army on 20.06.2009 and he died while in service on 17.05.2020 due to 'Refractory CLL Covid-19'. While in service, the deceased soldier was married with Ms Poonam Mishra on 12.06.2010, casualty of which was notified vide Part-II Order No. 0/0233/001/2011 dated 16.12.2011. Smt Poonam Mishra died on 29.03.2014, casualty of which was also notified vide Part-II Order No. 0/0017/0008/2014 dated 14.05.2014. Consequent to demise of first wife, the deceased soldier was re-married with Ms Priya Mishra (applicant No. 1) on 13.10.2015, casualty of which was notified vide Part-II Order No. 0/0060/0001/2016 dated 19.05.2016.

15. During his lifetime, the deceased soldier got published Part-II Orders in respect of Ms Priyanshi Mishra (DOB-10.04.2011) and Master Dibyans (DOB-06.01.2013) which were notified vide Part-II Orders Nos 0/0016/0001/2014 dated

13.05.2014 and 0/0016/0002/2014 dated 13.05.2014 respectively.

16. After death of serving soldier, PCDA (P), Allahabad issued PPO No. 185202100001-3300 dated 04.01.2021 in favour of Smt Priya Mishra (applicant No. 1) granting 100% death-cum-retirement gratuity and 50% Special Family Pension. However, PCDA (P), Allahabad raised some observations saying '*.....during the scrutiny of the claim, it is observed that second wife is the nominee for pension so either, the claim may be forwarded 100% in favour of 2nd wife because as per Para 117 of Pension Regulations for the Army, 2008 (Pat-I), Special Family Pension may be notified in favour of nominated person and if division may be made, then claim for division may be forwarded alongwith ARO/BRO report duly recommended by RO as per Para 130 (a) of Pension Regulations for the Army, 2008 (Part-I). Therefore, it is requested to re-submit the claim alongwith required above said documents*'.

17. Thereafter, verification letters were sent to ARO, Varanasi and Zila Sainik Welfare Office, Gorakhpur and a verification report was also asked from District Magistrate-Gorakhpur. On call of ARO, Varanasi, applicant No. 1 visited their office on 25.03.2021 who submitted report dated 12.04.2021 to AMC records as under:-

- "1. x x x
2. *It is intimated that Smt Priya Mishra, wife of No 15428826K late Sep (WM) Janardan Mishra reported to this ARO on 25.03.2021 with three children of above named deceased. After due investigation by the undersigned it is found that birth*

Part-II Order in r/o elder daughter named Anchal Mishra (DOB 08.08.2005) has not been published by the deceased while in service.

3. In view of the above, you are requested to take nec action for publication the same occurrence under intimation to this office for our recommendation on the subject case."

18. An undated application supported with connected documents was received by Zila Sainik Welfare Office, Gorakhpur from Smt Priya Mishra (applicant No. 1) for publication of birth Part-II Order in respect of Miss Anchal Mishra (applicant No. 2). On 24.03.2021 (Annexure R-15) requisite documents related to publication of Part-II Order regarding birth of Miss Anchal Mishra (applicant No. 2) were forwarded by Zila Sainik Welfare Office, Gorakhpur to Officer-in-Charge, AMC Records but the said Part-II Order could not be published due to mismatch in date of birth in respect of Miss Anchal Mishra (DOB-08.08.2005) and date of marriage in respect of Smt Poonam Mishra (DOM-12.06.2010). Accordingly, AMC Records on 19.08.2021 (Annexure R-19) again submitted verification roll to Superintendent of Police, District-Gorakhpur and after some time AMC Records also submitted verification roll dated 21.08.2021 to ARO, Varanasi.

19. On receipt of letter dated 19.08.2021, the police authorities verified the fact through Police Station-Sikariganj and following report was submitted:-

“[REDACTED] CVR [REDACTED]/2021 [REDACTED] [REDACTED] [REDACTED]. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] w/o [REDACTED]. [REDACTED] [REDACTED] [REDACTED] [REDACTED], [REDACTED] [REDACTED], [REDACTED]-[REDACTED] [REDACTED] [REDACTED] [REDACTED] | [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] 17.05.2020 [REDACTED] [REDACTED] [REDACTED] [REDACTED] | [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

whose birth Part-II Order was not published due to anomaly between her date of birth and date of marriage of her deceased mother.

22. Birth Part-II Order has not been published in respect of applicant No. 2 on the ground that her date of birth (08.08.2005) is recorded prior to date of her mother's marriage (12.06.2010) which was declared by the deceased soldier during his life time. In regard to this we are of the view that for any commission or omission on the part of parents (who are no more), next generation, in the present case (daughter), cannot be put to suffer. It is a constitutionally protected fundamental right of all citizens to enjoy life on the basis of date of birth and other records and the same cannot be obstructed by any person, whosoever, on account of commission and omission of the parents.

23. To ensure the required entry in service record and to establish relationship with applicant No. 2, it was the duty of her father, failing to do being fatal to next generation, in the present case (daughter), such failure in discharge of duty may be corrected at the earliest opportunity to secure and protect the constitutional right of young generation, that too when they are not at fault.

24. The verification reports received through the various agencies clearly depict that all the three children were born to deceased Smt Poonam Mishra (first wife) and Smt Priya Mishra

(applicant No. 1) is childless widow of the deceased soldier. During the course of hearing, Smt Priya Mishra (applicant No. 1), Miss Anchal Mishra (applicant No. 2), Miss Priyanshi Mishra and Master Divyans were called in the Court room separately. While interacting, it was found that all the children are residing with applicant No. 1 and she is taking care of them. Therefore, she may be granted 100% Special Family Pension as per rules on the subject.

25. While filing rejoinder affidavit, learned counsel for the applicant has submitted that on conjoint reading of Regulations 110, 114 and 117 of Pension Regulations for the Army, 2008 (Part-I), it clearly establishes that after death of the deceased soldier his widow Smt Priya Mishra (applicant No. 1) is entitled to get full Special Family Pension. We have perused the aforesaid Regulations which are in favour of the applicant No 1.

26. In view of the above, we are of the considered opinion that birth Part-II Order in respect of Miss Anchal Mishra (applicant No. 2) should be published on the basis of Adhar Card, High School Certificate, Birth Certificate issued by Registrar Birth and death, Family Register, Bhulekh Certificate, Certificate issued by Village Pradhan-Pipri and verification reports received from police department after verifying the genuineness of the said documents.

27. Since applicant No. 1 is supporting all the children and they are residing with Smt Priya Mishra (applicant No. 1), she is

eligible for grant of 100% Special Family Pension w.e.f. 18.05.2020.

28. In view of the above, O.A. is **allowed**. The respondents are directed to publish birth Part-II Order in respect of Miss Anchal Mishra (applicant No. 2) on the basis of documents mentioned in Para 24 above after verifying the genuineness of the documents and grant 100% Special Family Pension to applicant No. 1 w.e.f. 18.05.2020 alongwith arrears. The aforesaid exercise shall be completed by the respondents within a period of four months on receipt of a certified copy of this order. Default will invite interest @ 8% p.a.

29. No order as to costs.

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

(Maj Gen Sanjay Singh)
Member (A)

Dated: 05.03.2024
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(Justice Anil Kumar)
Member (J)

RESERVED

(Court No 2)

Form No. 4

{See rule 11(1)}
ORDER SHEETARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

O.A. No. 473 of 2023

Smt Priya Mishra

Applicant

By Legal Practitioner for the Applicant : Shri **Ravi Kumar Yadav**, Advocate

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents : **Shri DK Pandey**, Advocate

Notes of the Registry	Orders of the Tribunal
	<p data-bbox="391 1454 529 1486"><u>05.03.2024</u></p> <p data-bbox="391 1489 1003 1524"><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></p> <p data-bbox="391 1526 1003 1561"><u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p data-bbox="488 1623 764 1658">Judgment pronounced.</p> <p data-bbox="488 1677 873 1712">O. A. No. 473 of 2023 is allowed.</p> <p data-bbox="488 1731 1284 1766">For orders, see our judgment and order passed on separate sheets.</p> <p data-bbox="407 1876 764 1946">(Maj Gen Sanjay Singh) Member (A)</p> <p data-bbox="391 1946 477 1978"><i>rathore</i></p> <p data-bbox="1040 1876 1338 1946">(Justice Anil Kumar) Member (J)</p>