

**E-Court**

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

**ORIGINAL APPLICATION No. 365 of 2021**

Thursday, this the 03<sup>rd</sup> day of November, 2022

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

Balbir Singh (No. 6488874M Ex Sep/ASH) S/o Sri Ram Chandra, R/o Village-Chhachhounapur, Post-Roshnabad, District-Farrukhabad, PIN-209745.

..... Applicant

Learned counsel for the : **Shri Ashok Kumar**, Advocate  
Applicant

Versus

1. Union of India through Secretary, Min of Defence, South Block, Delhi -110011.
2. Incharge Sena Seva Corps Abhilekh (Pashu Parivahan), ASC Records (AT), PIN-900493, C/o 56 APO.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj (UP).
4. Smt Sunita Devi, D/o Ram Kishan, R/o Village-Malaluddinpur, Police Station-Rajepur, Farrukhabad.

.....Respondents

Learned counsel for the : **Shri Amit Jaiswal**, Advocate  
Respondents. Central Govt. Counsel

**ORDER (Oral)**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (a) *This Hon'ble Court may graciously be pleased to quash the discharge certificate/order dated 15.09.2008 (Annexure No A-2 along with compilation No 1) passed by respondent No 2.*
- (b) *This Hon'ble Court may graciously be pleased to direct the respondents to give service pension and other consequential benefits to the applicant in pursuance of judgment and order dated 2.7.2013 passed by the learned Judicial Magistrate, Court No 11, Farrukhabad by acquitting the applicant from the criminal case i.e. Criminal Case No 612/2013 Smt Sunita Devi vs Balbir & Others, from the date of locally discharge order dated 15.09.2008.*
- (c) *This Hon'ble Court may further be pleased to pass such other and/or further order as deemed fit, proper and necessary in the circumstances of this case.*
- (d) *Award costs to the applicant.*

2. Counter and rejoinder affidavits filed by learned counsel for the parties are taken on record.

3. Brief facts of the case are that the applicant was enrolled in the Army on 03.07.1995 and he was discharged from service on contracting plural marriage which is prohibited under the provisions of Para 333 of Regulations for the Army, 1987 (Revised Edition)

w.e.f. 16.09.2008. Applicant has filed this O.A. to quash discharge certificate dated 15.09.2008 and grant him service pension and other consequential benefits in pursuance of judgment and order dated 02.07.2013 passed by the learned Judicial Magistrate, Farrukhabad by which the petitioner was acquitted from the criminal case i.e. Criminal Case No 612 of 2013, **Smt Sunita Devi vs Balbir & Ors.** A representation dated 21.02.2000 from Smt Sunita Devi was received by 870 AT Coy ASC alleging that her husband (the applicant) was not maintaining her. Based on the aforesaid complaint an enquiry was instituted which found that there was no entry with regard to marriage of the applicant with Smt Sunita Devi. On further ascertaining the facts from local administration it revealed that the applicant was married off to Smt Sunita Devi forcefully on 10.04.1999 at Samsabad Police Station without permission of his parents. Only police staff along with Officer-in-Charge of Police Station and one MLA were present at the time of marriage. Later, maintenance allowance @ 22% per month out of his pay and allowances was sanctioned to Smt Sunita Devi vide HQ Eastern Command letter dated 28.12.2001. Thereafter, based on complaint dated 03.04.2001 and certificate of Gram Pradhan with regard to applicant's plural marriage and further petition dated 29.03.2004

preferred by Smt Sunita Devi, a Show Cause Notice dated 03.12.2007 was issued to the applicant and on receipt of his reply dated 20.12.2007 he was locally discharged from service w.e.f. 16.09.2008. After efflux of almost 12 years, on 03.02.2021, the applicant approached ASC Records (AT) seeking redressal of his grievances but he was informed that since he was discharged from service before completion of pensionable service, he is not entitled to pensionary benefits. Being dissatisfied with reply of the respondents, he has filed this O.A.

3. Learned counsel for the applicant submitted that applicant was married with Smt Sunita Devi forcefully in the month of April 1999 but after marriage she left the house and never returned to his home. She lodged complaint against him and he was implicated under Section 498A, 494/109, 3/4 of IPC. Later, vide order dated 02.07.2013 passed by learned Judicial Magistrate, Farrukhabad, he was acquitted. Meanwhile, based on complaint from his wife, maintenance allowance @ 22% per month out of his pay and allowances was sanctioned to Smt Sunita Devi vide order dated 28.12.2001. In the said complaint respondent No 4 alleged that applicant got married with Smt Seema Devi D/o Shri Ram Gopal on

07.05.1999. Accordingly, case was processed with GOC-in-C, Northern Command, who directed the applicant to be discharged from service for contracting plural marriage with Smt Seema Devi during the subsistence of his first marriage.

4. Further submission of learned counsel for the applicant is that her wife Smt Sunita Devi could not prove second marriage but even then he was arbitrarily discharged from service which is against the principles of natural justice. He further submitted that since the applicant was illegally discharged from service before completing the terms of engagement after rendering more than 13 years service, he be granted pensionary benefits.

5. On the other hand, learned counsel for the respondents submitted that the applicant has filed this O.A. to quash discharge order dated 15.09.2008 and for grant of service pension and other consequential benefits in view of his acquittal order dated 02.07.2013 passed by learned Judicial Magistrate, Farrukhabad. It was further submitted that based on a complaint received from his wife Smt Sunita Devi a Show Cause Notice dated 03.12.2007 was issued which the applicant replied on 20.12.2007. Thereafter, vide order dated 16.06.2008 passed by the GOC-in-C, Northern

Command, he was discharged from service on the ground of plural marriage in violation of Para 333 of Regulations for the Army, 1987 (Revised Edition). He pleaded for dismissal of O.A. submitting that since he contracted plural marriage, he was rightly discharged from service administratively. It was further submitted that applicant is not entitled to grant of service pension and other consequential benefits due to short fall of minimum 15 years qualifying service.

6. Heard Shri Ashok Kumar, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents and perused the record.

7. It is not disputed that No. 6488874M Sep/ASH Balbir Singh was enrolled in the Army on 03.07.1995 and he was discharged from service w.e.f. 16.09.2008. During service period he got married with Smt Sunita Devi on 10.04.1999 who, as per applicant, did not stay with him and filed cases under Section 498A, 494/109, 3/4 of IPC in which he was acquitted vide order dated 02.07.2013 after discharge from service.

8. Based on complaint dated 03.04.2001 from Smt Sunita Devi and certificate issued by Gram Pradhan, a case of plural marriage surfaced in that the applicant remarried with Smt Seema daughter of

Shri Ram Gopal, during subsistence of first marriage. A Show Cause Notice dated 03.12.2007 was issued to the applicant and in his reply dated 20.12.2007 he admitted contracting second marriage with Smt Seema Devi D/o Ram Gopal. Thus, it was established that the applicant had indeed contracted plural marriage, firstly with Smt Sunita Devi on 07.05.1999 and thereafter, with Smt Seema Devi, D/o Ram Gopal during subsistence of first marriage. It is also an admitted fact that Smt Sunita Devi was being paid maintenance allowance of Rs 1,135/- monthly from his salary.

9. A case for plural marriage alongwith recommendations of the commanders in chain was processed with GOC-in-C, Northern Command who after going through the case directed discharge of the applicant on administrative grounds vide order dated 16.06.2008. For convenience sake order of GOC-in-C, Northern Command is reproduced as under:-

**"ORDER OF THE GENERAL OFFICER COMMANDING-IN-CHIEF,  
NORTHERN COMMAND FOR ADMINISTRATIVE TERMINATION OF  
SERVICE OF NUMBER 6488874M SEP/ASH BALBIR SINGH OF 899 AT  
COMPANY ASC (MA MULES) FOR CONTRACTING PLURAL MARRIAGE**

1. I have perused the case and the reply dated 30 April 2008 and supplementary reply dated 14 May 2008 to the Show Cause notice submitted by Number 6488874M Sep/ASH Balbir Singh of 899 AT Company ASC (MA Mules), alongwith the recommendations of the commanders in the chain of command. I agree with the recommendations of General Officer Commanding 16 Corps.

2. I find that Number 6488874M Sep/ASH Balbir Singh of 899 AT Company ASC (MA Mules), has contracted plural marriage with Shrimati

*Seema Devi during the subsistence of his first marriage with Shrimati Sunita Devi. The individual has also admitted the same in his reply to the Show Cause Notice.*

*3. Considering the overall circumstances of the case, I direct that in accordance with the provisions contained in Paragraph 333 of Regulations for the Army, 1987 (Revised Edition) read with Army Headquarters letter No 79333/AG/DV-1(P) dated 12 December 2003, Number 6488874M Sep/ASH Balbir Singh of 899 AT Company ASC (MA Mules), be discharged from the service for contracting plural marriage."*

10. Consequent to his discharge from the Army on disciplinary grounds, his final statement of account was prepared and he was paid his dues towards credit balance, AFPP fund and AGIF.

11. Applicant's contention is that his wife Smt Sunita Devi never stayed with him after marriage and after desertion she solemnised marriage with Dinesh S/o Atar Singh in the year 1999 (Annexure RA-1). In regard to this if his wife had deserted he should have processed the case for obtaining sanction of competent authority, before contracting plural marriage with Smt Seema Devi, as per Para 333 Clause (B) sub clause (b) of Regulations for the Army, 1987 (Revised Edition), on any one or more of the following grounds:-

- (i) His wife has deserted him and there is sufficient proof of such desertion.
- (ii) His wife has been medically certified as being insane.



(iii) Infidelity of the wife has been proved before a court of law, and-

(iv) Any other special circumstances which in the opinion of the Brigade or equivalent Commander would justify contracting a plural marriage.

12. The fact on record clearly shows that the applicant never applied before the competent authority for contracting second marriage on desertion of his first wife. In our view, the aspect as to what are the powers available with the respondents under Regulation 333, and how they are to be exercised, and what are the consequences of a person being removed in the eventualities covered by Regulation 333, has already been dealt with by AFT (RB), Chandigarh, in detail, in judgment dated 23.09.2011 passed in T.A. No. 1228 of 2010, **Jagbir Singh Vs. Union of India**, taking the view that the action is taken under Army Rule 13(3)(III)(v), exercising the powers under Section 22 of the Army Act. **Jagbir Singh's** (supra) case was also a case, where action was taken for contracting plural marriage.

13. One of the important aspects which need to be considered is that while filing O.A. in Para 4(2), the applicant has admitted that he was married with Smt Sunita Devi on 28.04.1999 but in rejoinder affidavit and amendment application filed on 17.05.2022 applicant has contended that there was only engagement ceremony and no marriage was solemnized with Smt Sunita Devi. The amendment application was heard and it was dismissed vide order dated 27.05.2022 as the facts narrated in the said application are afterthought. Further, in reply to Show Cause Notice the applicant has admitted that he was married with Smt Sunita Devi. Therefore, it is crystal clear that Smt Sunita Devi is applicant's first wife who was married with him on 28.04.1999 which fact has also been averred by the respondents in Para 5 of their counter affidavit. For convenience sake, Para 4 (2) of O.A. is reproduced as under:-

*“4(2). That the marriage of applicant was solemnized with the respondent No 4 Smt Sunita according to Hindu Rites and customs on 28.04.1999, but immediately after the said marriage Smt Sunita Devi could not manage with the family affairs of applicant and left the house of applicant, thereafter she never returned back with the applicant.”*

14. In the result, we are of the view that the applicant was rightly discharged from service for contracting plural marriage which is

prohibited under Regulation 333 (supra). Further, since the applicant has not served for 15 years, he is not entitled to pensionary benefits.

15. In view of the above, the O.A. deserves to be dismissed. It is accordingly, dismissed.

16. No order as to costs.

17. Pending miscellaneous application(s), if any, are disposed off.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated:03.11.2022

*rathore*