

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT  
NEW DELHI**

O.A. No. 258/2010

Smt. Roshni Devi

.....Applicant

Versus

Union of India & Others

.....Respondents

For applicant: Sh. Puneet Verma, Advocate.

For respondents: Sh. Ankur Chibber, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.  
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

**ORDER  
24.09.2010**

1. Applicant by this application has prayed that letters dated 17.01.2003, 21.04.2009, 24.07.2009 and 06.08.2009, 28.01.2010 and 03.03.2010 (Annexure-A-1 to Annexure-A-5) being illegal and arbitrary may be quashed and respondents may be directed to pay family pension to applicant who is the wife of late Sh. Ram Singh.

2. Brief facts of the case are that Sh. Ram Singh, husband of applicant was enrolled as Sepoy in the Indian Army on

08<sup>th</sup> December, 1952 and became Religious Teacher in the Military Training Core. On 13.05.1956 late husband Sh. Ram Singh married to one Ved Kaur D/o. Sh. Chotu Ram, Village & P.O. Chmni, District Rohtak. It is alleged that when Ved Kaur married to late Ram Singh both were minors. Thereafter, late Ram Singh entered into second marriage with Roshni Devi (applicant) on 05.06.1980 while the first marriage was subsisting. He moved a request for entering the name of Smt. Roshni Devi in Part-II order of the Army and a query was made about first marriage by the respondents because in the Part-II Order the name of Smt. Ved Kaur was mentioned as the married wife of Sh. Ram Singh. It is alleged that Smt. Ved Kaur died on 22.01.2000 and therefore, late husband requested that in place of Ved Kaur name of applicant i.e. second wife may be added. This was objected by the Army that when he was married in 1956 and the marriage was subsisting how can the name of second wife could be entered. Late Ram Singh did not answer satisfactorily or explain to the respondents. Hence, request for grant of family pension to applicant being wife of late Ram Singh could not be accepted by the respondents. Hence, she filed present petition before this Tribunal.

3. Respondents in their reply submitted that while subsistence of the first marriage Late Ram Singh contracted second marriage therefore, husband of applicant was guilty of Bigamy punishable under Section 494 of Indian Penal Code and under the Army Act, second marriage cannot be recognised while first marriage was in subsistence.

4. Learned counsel for applicant submitted that first marriage contracted by Ram Singh was a child marriage which was illegal abinitio. Therefore, he was free to enter into second marriage on 05<sup>th</sup> June, 1980. The arguments of learned counsel for applicant appears to be very attractive but the fact that the under Section 3 of Child Marriage Restraint Act, 1929 such marriage is punishable. However, under this Act of 1929 status of marriage was not treated to be void abinitio. Therefore, it cannot be said that when marriage of the two minors was void abinitio. It is only in the Act of 2006 i.e. Prohibition of Child Marriage Act, 2006 now marriage is to be held voidable at the option of contracting party who was a child at the time of marriage and under section 10, this has now been made punishable with

rigorous imprisonment of two years and liable to be fine which may extend to Rs. 1 Lac unless he proves that he had reasons to be believe that the marriage was not a child marriage. Thus, first marriage solemnised cannot be treated to be void or voidable. Therefore, we cannot at this distance of time declare that the first marriage solemnised was an illegal marriage, therefore, it should be treated to be void abinitio. Since the first marriage was not void abinitio, therefore, contracting second marriage after 24 years cannot be said to be valid marriage as it is illegal and punishable as Bigamy under Section 494 IPC. We cannot recognise second marriage to be legitimate marriage to release the pensionary benefits to the applicant. The second marriage in subsistence of first marriage is also punishable under Regulation 333 of Defence Services Regulations, 1964. Hence, we do not find any merit in the petition. Same is dismissed. No order as to costs.

**A.K. MATHUR**  
**(Chairperson)**

**New Delhi**  
**September 24, 2010**

**M.L. NAIDU**  
**(Member)**