



Form No. 4
{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

O.A. No. 38 of 2019

Prayagwati

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents

Notes of
the
Registry

Orders of the Tribunal

25.07.2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)

Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

1. Heard Shri DS Kauntae, Ld. Counsel for the applicant and Shri AJ Mishra, Ld. Counsel for the respondents.

2. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

"(a). *quash/ set the impugned order dated 29.05.2015 passed by the Respondent No 6, subsequent impugned orders dated not know initiated by the Respondent No 4 to Respondent No 8 for issuance of fresh PPO in a 50% share of family pension between the applicant and the Respondent No 5 (ii) and the impugned order dated 30.01.2018 passed by the respondent No 4 Asking the respondent No 7 (The Branch Manager, SB, Sadabad, Distt- Aligarh Branch) to recover the pension money for the period wef 04.06.2014 to 30.09.2016 allegedly on the grounds of being as an unauthorised over payment being wholly illegal and contrary to the law.*

(b). *Issue/ pass suitable/ appropriate orders against the Respondent No 4 and 7 both to immediately restore the family pension disbursement of the applicant with retrospective effects (ie wef 01.10.2016) continuously for life along with 9% interest per annum payable upon the entire sum as so illegally withheld by the Respondent No 7 and further directing the Respondents to grant release the entire pensionary emoluments forthwith and without any further delay.*

(c). *Hold and declare the entire acts of commissions and omissions adopted by the Respondent No 4, 5 (i), 6 and 7 as patently illegal, arbitrary and unsustainable and unjustified besides bad in law.*

(d). *Pass such further order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

3. Briefly stated facts of the case are that Hav Digamber Singh the husband of the applicant was enrolled in the Indian Army on 31.12.1971 and discharged from service on 31.05.1988 on his own request. After retirement, he was granted service pension vide PPO dated 24.05.1988. As per service document, Ex Hav Digamber Singh married to Smt Prayagwati (1st wife) on 22.05.1969 according to Hindu rites. After retirement from army, Ex Hav Digamber Singh contracted plural marriage with Smt Meena Devi (2nd wife) on 01.07.1990 during life time of his first wife without obtaining any proper decree of divorce from court of law and three children were born out of the wedlock with Smt Meena Devi (2nd wife) and Ex Hav Digamber Singh. Ex Hav Digamber Singh died on 03.06.2014. After death of Ex Hav Digamber Singh, Smt Prayagwati (1st wife) was granted family pension. In the year 2015, Smt Meena Devi (2nd wife) filed an application for division of family pension between Smt Prayagwati (1st wife) and her children. Matter was investigated and order for division of family pension as well as to stop family pension to Smt Prayagwati (1st wife) was passed. Being aggrieved, applicant (1st wife) has filed instant O.A. for quashing the order of division of pension and to grant her full family pension.

4. Ld. Counsel for the applicant argued that Smt Prayagwati is legally wedded wife of Ex Hav Digamber Singh and her name was recorded in service document of her husband as next of kin. After death of Ex Hav Digamber Singh, she was granted family pension. In the years 2015, Smt Meena Devi(2nd wife) filed an application that Ex Hav Digamber Singh had married her and she has three children from the wedlock of Ex Hav Digamber Singh. Smt Meena Devi (2nd wife) prayed for grant of share in family pension to her children. Matter was investigated and ordered for recovery of pension from 04.06.2014 to 30.09.2016 and to divide family pension between Smt Prayagwati (1st wife) and Mr Divyam (son of 2nd wife) was passed. Learned counsel for the applicant submitted that family pension granted to Smt Prayagwati (1st wife) was stopped without any intimation and without giving her any show cause notice. Smt Prayagwati (1st wife) filed Misc Application along with O.A. with prayer for interim relief to restrain respondents from division of family pension till final disposal of the present O.A. Application of interim relief was allowed vide order dated 03.06.2019 and respondents were directed to pay full pension to the applicant. By means of instant O.A. applicant has prayed to quash impugned order dated 29.05.2015 and order dated 31.01.2018 and grant her regular pension.

5. On the other hand, Ld. Counsel for the respondents submitted that Ex Hav Digamber Singh was married to Smt Prayagwati Devi (1st wife) and her name was entered in his service document. After retirement from service Ex Hav Digamber Singh was granted service pension vide PPO dated 24.05.1988. Ex Hav

Digamber Singh died on 03.06.2014. After his death, Smt Prayagwati (1st wife) was granted family pension. In the year 2015, Smt Meena Devi (2nd wife) filed an application stating that Ex Hav Digamber Singh married her on 01.07.1990 and she has three children named Smt Bulbul Rani, Mr Shubham Rana and Mr Divyam Rana from the wedlock of Ex Hav Digamber Singh. Matter was investigated and it was ascertained that "as per Hindu Marriage Act, 1955, plural marriage with Smt Meena Devi (2nd wife) is null and void and she is not entitled for grant of family pension". However, children born out of second marriage from Smt Meena Devi are also eligible for 50% share of family pension in terms of Section 11 of Hindu Marriage Act, 1955 which stipulates that children born out of void marriage shall be entitled to share of ordinary family pension. Accordingly, claim for grant of 50% share of family pension in favour of Smt Prayagwati (applicant) and Mr. Divyam Rana (son of 2nd wife) was processed to PCDA (P) Allahabad. PCDA (P), Allahabad has notified pension @ 50% in favour of the applicant (1st wife) vide PPO dated 10.009.2018 and same has been forwarded to PDA & CPPC.

6. Now Smt Prayagwati has filed instant application with the prayer to release her family pension and refund 50% share of pension granted to Mr Divyam Rana along with an application for interim relief praying that respondents be restrained from division of family pension till final disposal of the case. Tribunal vide order dated 03.06.2019 passed in application for interim relief has directed the respondents to pay full pension to the applicant.

7. We have heard learned counsel for the parties and perused the document available on record.

8. The question before us to decide is whether applicant is entitled for full family pension?

9. Section 11 of Hindu Marriage Act 1955 defines marriage as under :-

11. **Void Marriages-** Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto (against the other party), be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

Clauses (i), (iv) and (v) of Section 5 to Hindu Marriage Act 1955 reads as under:-

5. **Conditions for a Hindu Marriage-** A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage.

{(ii) at the time of the marriage, neither party—

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity,

(iii) the bridegroom has completed the age of 2 [twenty-one years] and the bride, the age of 3 [eighteen years] at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

In view of above rule position marriage of Ex Hav Digamber Singh with Smt Meena Devi(2nd wife) is illegal marriage and Smt Meena Devi is not entitled for any pension.

10. Para 71 of Pension Regulations for the Army, (2008) Part I, deals with division of family pension between eligible members which reads as under:-

DIVISION OF ORDINARY FAMILY PENSION

71. (a) *If service personnel leave behind two or more widows who are eligible for an ordinary family pension, the pension shall be divided amongst them in equal share. On the death of widow, her share of ordinary family pension shall become payable to her eligible child.*

Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal share, or if there is only one such other widow, in full to her.

(b) *Where a deceased is survived by a widow and has also left behind eligible child/children from another wife who is not alive, the eligible child of the deceased wife shall be entitled to the share of ordinary family pension which the mother would have received if she had been alive at the time of death of the service personnel/pensioner.*

Provided that the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows and or to other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full to such widow or child.

(c) *Where the deceased is survived by a widow but has left behind eligible child/children from a divorced wife or wives, the eligible child or children shall be entitled to the share of family pension which the mother would have received at the time of the death of the service personnel had she not been so divorced.*

Provided that the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows and or to other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.

Note: Children born out of void marriage in terms of Section 11 of Hindu Marriage Act, 1955 shall be entitled to share of the ordinary family pension, if otherwise admissible, though their mother would not have been eligible for the same, had she been alive at the time of death of her husband, on account of her marriage being null and void under the above said Section.

Thus, Note of Section 71 of Pension Regulations for the Army entitles children of 2nd wife for grant of pension, hence on representation of 2nd wife, pension was divided by the competent authority between Smt Prayagwati (1st wife) and Mr. Divyam Rana (son of Smt Meena Devi).

11. In the application of interim relief, Tribunal while passing order dated 03.06.2019, had clarified that **“Expression of any opinion hereinbefore may not be treated as an opinion on the merits of the case”**.

12. In view of above rule position, we are of the view that respondents have correctly divided pension between Smt Prayagwati (1st wife) and Divyam Rana as per rule position. Interim order dated 03.06.2019 passed by the Tribunal is set aside.

13. We, do not find any merit in the application. The application being devoid of merit is liable to be **dismissed**. Resultantly, O.A. is **dismissed**.

14. No order as to costs.

15. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

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

Ukt/-