

②

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI
E-Court

26. O.A. No. 91 of 2018

Smt. Ratanbai Pitamber Sonawane
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>26.07.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>On the case being taken up for hearing no one is present on behalf of the applicant.</p> <p>Heard Mr. Rishi Ashok, Advocate instructed by Mr. B.K. Ashok, Ld. Counsel for the respondents.</p> <p>Original Application is dismissed on merit.</p> <p>For order, see our Judgment passed on separate sheets.</p> <p>Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.</p> <p>(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>AKD/SB/-</p>

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
MUMBAI**

ORIGINAL APPLICATION No. 91 of 2018

Tuesday, this the 26th day of July, 2022

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

Smt Ratanbai, W/o Pitambar Sonawane, R/o Sonawane
Home, Besides Meghawale Postman's House, Narali Bagh,
Near Nala, Aurangabad (Maharashtra) – 431001.

..... Applicant

Counsel for the Applicant : **None for the applicant**

Versus

1. Union of India through Secretary, Ministry of
Defence, South Block, Rajpath Marg, New Delhi –
110011.
2. The Officer In Charge, The Record Office, The
Maratha Light Infantry, C/o 56 APO, PIN- 900499.
3. The Zilla Sainik Welfare Officer, O/o Zilla Sainik
Welfare Office, Sainik Sankul, Nandanvan
Colony, Aurangabad Cantonment, Aurangabad-
431002.

..... Respondents

Counsel for the :
Respondents

**Shri Rishi Ashok and
Shri BK Ashok,
Central Govt. Counsel**

ORDER

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

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

"(8.1) The O.A. may please be allowed with costs.

(8.2) The respondents may please be directed to consider the request application of the applicant dated 09.10.2017 and to grant family pension and pension benefits from eligible date AND

(8.3) To pass any other order or direction or any other relief as deemed fit by this Hon'ble Tribunal in the favour of the applicant in the interest of justice.

2. Facts giving rise to Original Application in brief are that husband of applicant Ex Sep Pitambar Sonawane was enrolled in the Army on 01.07.1946 as reservist with terms of engagement 07 years as colour and 08 years in reserve i.e. total 15 years. He was discharged from service on 01.06.1962 on completion of terms of enrolment. Ex Sep Pitambar Sonawane was granted lump sum of Rs 750/- on account of Reservist Gratuity in lieu of Reservist Pension vide PCDA (P), Allahabad PPO dated 19.11.1962. As per service record, he was married to Smt Shantabai (1st wife)

in the year 1945 according to Hindu rites and nominated her as heir to family pension. Ex Sep Pitambar Sonawane died on 01.12.1998. In the year 2014 applicant submitted application intimating that Ex Sep Pitambar Sonawane married her in the year 1965 after taking customary divorce from Smt Shantabai (1st wife) and after divorce, Smt Shantabai (1st wife) had further married to Shri Ukhardu Dhangar and later on she expired on 07.10.1998. After death of her husband, the applicant (Smt Ratanbai) approached the respondents for grant of reservist family pension which was denied by the respondents on the ground that her name is not entered in service record of Ex Sep Pitambar Sonawane. Applicant preferred various applications for grant of reservist family pension but the same was not granted to her. Being aggrieved, the applicant has filed instant Original Application.

3. As per documents available on record Ex Sep Pitambar Sonawane was enrolled in the army on 01.07.1946 as reservist with terms of engagement 07 years as colour and 08 years in reserve i.e. total 15 years. He was discharged from service with effect from 01.06.1962 having completed 15 years combined colour and reserve service.

On retirement he was granted Reservist Gratuity in lieu of Reservist Pension vide PPO dated 19.11.1962.

4. As per service document, Ex Sep Pitambar Sonawane was married to Smt Shantabai in the year 1945 according to Hindu rites and nominated her as heir to family pension. The divorce took place between them in 1952 before Village Panch in a customary way. Thereafter, Smt Shantabai married Shri Ukhardu Dhangar of Village Lohara, Distt- Jalgaon. She was not having any issue from both the marriages. She expired on 07.10.1998. Ex Sep Pitambar Sonawane solemnised second marriage with Smt Ratanbai (2nd wife) on 17.05.1955 at village – Veerwada, District - Jalgaon as per Hindu rites and customs and applicant resided with Ex Sep Pitambar Sonawane at Dhangar Galli, Ahilyabai Holkar Chowk, Distt- Jalgaon. The applicant has 2 sons and 5 daughters out of said marriage with second wife.

5. Husband of the applicant joined Income Tax Department after retirement from army. After retirement he was granted service pension from Income Tax Department

and after his death, applicant is getting family pension from Income Tax Department.

6. After death of her husband, applicant filed O.A. No 443 of 2018 before Central Administrative Tribunal, Mumbai for grant of reservist family pension from army which was dismissed vide order dated 04.07.2018 with liberty to file fresh application before appropriate forum. Applicant approached the respondents of army for adding her name in service documents of her husband late Ex Sep Pitambar Sonawane as well as for grant of reservist family pension. She was advised to submit various documents for adding her name in service record of Ex Sep Pitambar but her name was not added in service record of her husband and reservist family pension was denied to her. Applicant in the instant O.A. has pleaded that since Ex Sep Pitambar Sonawane married her after getting customary divorce from Smt Shantabai (1st wife), hence her name should be entered in service record of her husband being a legally wedded wife and reservist family pension be granted to her.

7. Per contra, learned counsel for the respondents submitted that Ex Sep Pitambar Sonawane at the time of

retirement from army opted for Reservist Gratuity in lieu of Reservist Pension, he was granted Reservist Gratuity vide PCDA (P), Allahabad PPO No S/11007/68 dated 19.11.1962. As per service record, Ex Sep Pitambar Sonawane married to Smt Shantabai (1st wife) and her name was recorded as next of kin in service document of Ex Sep Pitambar Sonawane. Ex Sep Pitambar Sonawane never brought to the notice of respondents that he has taken customary divorce before village panch with Smt Shantabai (1st wife) in the year 1952. After death of Ex Sep Pitambar Sonawane, applicant Smt Ratanbai (2nd wife) had approached the respondents for grant of reservist family pension claiming her as second wife. She was asked to produce certain documents including Decree of divorce with Smt Shantabai (1st wife) to ascertain whether she is legally wedded second wife of Ex Sep Pitambar Sonawane. The applicant submitted divorce certificate issued by President, Municipal Council Jalgaon dated 29 September 2017 which is not valid document to examine her case for grant of reservist family pension. At that time, only one pension was applicable, accordingly, the deceased soldier had opted for reservist gratuity from army and service pension from Income Tax Department. Ex Sep Pitambar Sonawane was

granted civil service pension from Income Tax Department and after his death applicant is getting family pension from Income Tax Department. Learned counsel for the respondents submitted that documents available on record show that Smt Shantabai (1st wife) was legally wedded wife of Ex Sep Pitambar Sonawane. Husband of the applicant has not declared Smt Ratanbai as his second wife after customary divorce with Smt Shantabai. He pleaded that in view of the facts and legal position, the Original Application is misconceived and devoid of merits as such liable to be dismissed.

8. Heard learned counsel for the respondents and perused the document available on record.

9. From perusal of document submitted by Smt Ratanbai it emerged that :-

(a) Ex Sep Pitambar Sonawane had declared Smt Shantabai as his wife and Next of Kin and her name was recorded in service documents of the deceased soldier.

(b) Ex Sep Pitambar Sonawane died on 01.12.1998. During his life time, deceased soldier never made any declaration regarding his second marriage with the applicant i.e. Smt Ratanbai.

(c) After about 15 years from the death of the soldier (Husband of the applicant) the applicant had submitted representation dated 25.03.2017 for publication of Part II Order for marriage and to grant her reservist family pension.

10. In this connection on subsistence of first marriage an individual may apply for contracting second marriage on any one or more of the following grounds :-

- (a) *His wife has deserted him and there is sufficient proof of such desertion;*
- (b) *His wife has been medically certified as being insane;*
- (c) *Infidelity of the wife has been proved before a court of law;*

11. The applicant being a Hindu having contracted the first marriage under Hindu rites was governed by the Hindu Marriage Act and any so called Village Panch Talak by customary rites has no legal sanctity. There is nothing to show any valid or recognised customary law applicable to the applicant dissolving his marriage. Having married Smt

Ratanbai (2nd wife) during the subsistence of the first marriage, he had clearly contracted plural marriage. The Defence Services Regulations are framed under the authority of Section 192 of the Army Act, 1950. For better appreciation, provisions of para 333 of Regulations for the Army, 1987 are extracted hereunder and it reads as below:

"333.Plural Marriages.- (A) The Special Marriage Act 1954 and Hindu Marriage Act 1955 lay down the rule of "Monogamy" that is, neither party has a souse living at the time of marriage. These Acts also provide for decrees of nullity of marriage, restitution of conjugal rights, judicial separation and divorce and also orders for alimony, and custody of children. The Hindu Marriage Act applies to all Hindus, Budhists, Jains and Sikhs and also applies to all other persons (with certain exceptions), who are not Muslims, Christians, Paris or Jews by religion. Christians, Parsis and Jews are also prohibited under their respective personal laws from contracting a plural marriage. Thus no person who has solemnized or registered his/her marriage under the Special Marriage Act or who is a Christian, Parsi or Jew or to whom the Hindu Marriage Act 1955 applies, can now remarry during the life time of his or her, wife or husband. Sub-para (C) (a) to (c) below apply to such persons only. A Muslim or such other person to whom the Hindu Marriage Act does not apply and whose personal law does not prohibit Polygamy or Polyandry

can marry during the life time of his or her, wife or husband and sub-para (B) (a) to (h) below apply to such persons only.

(B) *Plural Marriage by persons in whose case it is permissible:-*

(a) *No person subject to the Army Act except Gorkha personnel of Nepalese domicile can marry again within the life time of his wife without prior sanction of the Government. The circumstances under which such Gorkha personnel can contract a plural marriage are:-*

- (i) *When the wife suffers from incurable insanity (madness);*
- (ii) *When there is no birth till ten years of marriage;*
- (iii) *When the wife is paralysed and cannot move;*
- (iv) *When the wife becomes blind of both the eyes;*
- (v) *When the wife is suffering from an infectious incurable sexually transmitted disease.*

(b) *An individual may, during the life time of his wife apply for sanction to contract a plural marriage 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.

(c) Applications will state the law under which the subsisting marriage was solemnized, registered or performed and will include the following details where applicable:-

(i) Whether the previous wife will continue to live with the husband;

(ii) If the previous wife does not propose to live with the husband, what maintenance allowance is proposed to be paid and in what manner; and

(iii) Name, age and sex of each child by previous marriage and maintenance allowance proposed for each in case any such child is to live in the custody of the mother.

In all the cases, the applicant will render a certificate to the effect that he is not a Christian, Parsi or Jew by religion, that he had not solemnized or registered his previous marriage under the Special Marriage Act, 1954 and that the Hindu Marriage Act, 1955 is not applicable to him.

(d) Applications will be forwarded through normal channels and each intermediate commander will endorse his specific recommendations. Such recommendations will be signed by the commander himself or be personally approved by him. Before making his recommendations a commander will satisfy himself that the reasons given for the proposed plural marriage are fully supported by adequate evidence.

(e) An individual whose marriage is alleged to have been dissolved according to any customary or personal law but not by a judicial decree will report, immediately after the divorce, the full circumstances leading to and culminating in dissolution of the marriage together with a valid proof of the existence of the alleged custom or personal law. The existence and validity of the alleged custom or personal law, if considered necessary, will be got verified from civil authorities and if it is confirmed by the civil authorities, action will be taken to publish casualty for the dissolution of the marriage. The individual therefore will not be required to obtain sanction for contracting the second marriage.

(f) An application which is not recommended by the Commanding Officer and an authority superior to him need not be sent to Army Headquarters, but may be rejected by the GOCin-C of the Command concerned.

(g) Cases where it is found that an individual has contracted plural marriage without obtaining prior Government sanction as required in clause (a) above will be dealt with as under:-

(i) Cases of officers will be reported through normal channels to Army Headquarters (AG/DV-2) with the recommendations as to whether ex-post-facto sanction should be obtained or administrative action should be taken against the individual.

(ii) Cases of JCOs and OR will be submitted to the GOC-in-C Command who will decide whether ex-post-facto sanction should be obtained or administrative action should be taken against the individual. In cases, where it is decided that administrative action should be taken against the individual, his service will be terminated under orders of the competent authority.

When reporting cases to higher authorities, intermediate commanders will endorse their specific recommendations with reasons thereof. Here too recommendations will be signed by the Commanders themselves or be personally approved by them. Also, an opportunity to "show cause" against the order of termination of service will always be given to the individual concerned.

(h) In no circumstances will disciplinary action by way of trial by Court Martial or Summary disposal be taken against an individual who is found to have contravened the provisions of clause (a) above.

If, however, the individual is also found to have committed another offence connected with his act of contracting a plural marriage, disciplinary action for the connected offence may be taken and progressed in the normal manner.

(C) Plural Marriage by persons in whose case it is not permissible-

(a) An individual whose marriage is alleged to have been dissolved according to any recognized custom or special enactment under the provisions of Sec 20 (2), read with Sec 3 (a) of the Hindu Marriage Act, but not by a judicial decree will report immediately after the divorce, the full circumstances leading to and culminating in dissolution of marriage together with a valid proof of the existence of the alleged recognized custom or special enactment. The existence and validity of the alleged custom or special enactment will be got verified from civil authorities and if it is confirmed by the civil authorities that the divorce is valid, action will be taken to publish the casualty for the dissolution of the marriage. The individual thereafter

will not be required to obtain sanction for contracting the second marriage.

(b) A plural marriage solemnised, contracted or performed by any such person is null and void and may, on a petition presented to a court of law by either party thereto, be so declared by a decree of nullity. Not only is the plural marriage void but the offence of bigamy is also committed. The offence is, however, triable only on a complaint made to the civil authority by an aggrieved party. The punishment for the offence of a bigamy is prescribed in Sections 494 and 495 of the Indian Penal Code.

(c) When it is found on receipt of a complaint from any source whatsoever, that any such person has gone through a ceremony of plural marriage, no disciplinary action by way of trial by Court Martial or Summary disposal will be taken against him, but administrative action to terminate his service will be initiated and the case reported to higher authorities in the manner laid down in sub-para (B) (g) above. In cases where cognizance has been taken by civil court of competent jurisdiction the matter should be treated as sub judice and the decision of the court awaited before taking any action. When a person has been convicted of the offence of bigamy or where his marriage has been declared void by a decree of court on grounds of plural marriage, action will be taken to terminate his service under AA Section 19 read with Army Rule 14 or AA Section 20 read with Army Rule 17 as the case may be. No ex-post-facto sanction can be accorded as such marriages are contrary to the law of the land.

12. From the above it is clear that the applicant being a Hindu was governed by the Hindu Marriage Act and no customary law was applicable to him. He had also failed to report the alleged dissolution of his first marriage according to any claimed customary or personal law and the full circumstances leading to and culminating in dissolution of the marriage together with a valid proof of the existence of the alleged custom or personal law.

13. On a careful understanding of the said provisions, a person subject to Army Act should get prior sanction of the Government for getting married for a second time except Gorkha personnel of Nepalese domicile. Sub-section (b) deals with the reasons for seeking for permission for the plural marriage. As far as Para-333 (B)(a) of Regulations for the Army 1987, the provisions would apply to all the persons subject to Army Act to seek the permission of the Government to have a second marriage for the reasons mentioned in Sub Para(b). The definition of subject to the Army Act is defined in Section 2 of the Army Act 1950 is therefore to be understood. It runs as follows:-

“ 2. Persons subject to this Act: (1) The following persons shall be subject to this Act wherever they may be, namely:-

(a) officers, junior commissioned officers and warrant officers of the regular Army;

(b) persons enrolled under this Act;

.....

(2) Every person subject to this Act under clauses (a) to (g) of sub-section (1) shall remain so subject until duly retired, discharged, released, removed, dismissed or cashiered from the service."

14. We observe that Ex Sep Pitambar Sonawane took customary divorce from Smt Shantabai (first wife) in the year 1952 and he contracted second marriage with Smt Ratanbai (second wife) on 17.05.1955. In regard to second marriage, it has been brought on record that second marriage was contracted on 17.05.1955 on the basis of customary rites of village panch. In the instant case, we observe that after customary divorce from Smt Shantabai (1st wife) Ex Sep Pitambar Sonawane should have applied the following procedure to validate the second marriage in accordance with AO 44 /2001 if there was no decree of divorce:-

"An individual whose marriage is alleged to have been dissolved according to any customary law but not by a judicial decree will report, immediately after the divorce, the full circumstances leading to and culminating in dissolution of marriage together with a valid proof of the existence of alleged custom or personal law. Existence and validity of the

same, if considered necessary, will be got verified from civil authorities and if it is confirmed by the civil authorities, action will be taken to publish casualty for the dissolution of the marriage. The individual, thereafter will not be required to obtain sanction for contracting the second marriage."

15. There is nothing to show that Ex Sep Pitambar Sonawane has taken any action in accordance with AO 44 /2001 for solemnizing second marriage with the applicant. It could not be disputed by the learned counsel for the applicant that the second marriage under Hindu Marriage Act is null and void.

16. Perusal of document shows that second marriage with Smt Ratanbai was solemnized during the life time of first wife, and no proper procedure was followed while solemnizing marriage with the applicant, therefore, second marriage is null and void and, as such, applicant is not entitled for grant of family pension.

17. In view of the facts and circumstances of the case as well as rule position, we find that Ex Sep Pitambar Sonawane opted for and granted reservist gratuity and he did not opt for reservist pension, hence applicant is also not entitled for reservist family pension.

18. In the result, we hold that the claim of reservist family pension has rightly been rejected by the respondents which needs no interference. Resultantly, O.A. is **dismissed**.

19. No order as to cost.

20. Pending applications, if any, stand disposed off.

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

Dated: 26 July, 2022
UKV/-