

**ARMED FORCES TRIBUNAL CHANDIGARH BENCH AT
CHANDIMANDIR**

**T.A. No. 221 of 2010
(arising out of CS 355 of 2007)**

Shanti **Petitioner**

Vs

UO.I & ors. **Respondents**

**JUDGMENT
31-5-2010**

**Coram: Justice Ghanshyam Prasad, Judicial Member.
Lt Gen H S Panag (Retd), Administrative Member.**

For the applicant (s) : Mr. Sultan Singh, Advocate.

For the respondent (s) : Mr. Sanjay Joshi, Senior Panel Counsel

Lt Gen H S Panag:

This case has been received on transfer from the Court of Additional Civil Judge (Senior Division), Charkhi Dadri, and has been treated as application under Section 14/15 of the Armed Forces Tribunal Act, 2007.

The petitioner filed a suit for declaration and mandatory injunction claiming that she is entitled to family pension in respect of her late husband Jugti Ram who died on 20-10-1995.

Shorn of unnecessary details, the brief facts leading to the instant case, as averred, are that the husband of the petitioner Jugti Ram was enrolled in the Indian Cavalry Group on 30-08-1939. He was discharged from the service on 13-11-1960 under Rule 13(3) Item III (V) of Army Rule 1954 having earned maximum pension of his rank. He was

again re-enrolled in the Army (Armoured Corps) on 17-07-1963 in the rank of Dafedar and discharged w.e.f. 20-02-1965 under Rule 13(3) item III (V) on the ground that his services were no longer required.

It is averred in the plaint that Jugti Ram was married to Smt. Bakhati Devi, who died on 3-09-1994 prior to the death of Jugti Ram, who died on 20-10-1995. The petitioner Smt. Shanti Devi was earlier married to Kamal Singh, who happened to be the real brother of Jugti Ram. Kamal Singh died after six months of their marriage. Thereafter, the petitioner performed 'karewa marriage' with Jugti Ram as per custom in the year 1946. Five children were born to Smt. Shanti Devi from the wedlock of her husband. After the death of Jugti Ram, the petitioner applied for grant of family pension to the concerned authority which was rejected on the ground that as per records maintained the petitioner is not the legally wedded wife of Jugti Ram. Thereafter the petitioner got served two legal notices one dated 5th September, 2006 and another dated 10th May 2007, but to no avail. Ultimately, the petitioner filed the present suit for grant of family pension w.e.f. 20-10-1995 along with interest @ 18% per annum.

The suit was contested by the respondents by filing the written statement. The stand taken by the respondents is that Jugti Ram concealed the fact of his 'Karewa marriage' with Shanti Devi, and was already married with Smt. Bakhati Devi. According to the respondents, the concealment of this fact has been admitted by the petitioner in her application for the grant of family pension. It is also the case of the respondents that as per service records of Dafedar Jugti Ram, he was

Married to Smt. Bakhati Devi and it does not contain any note regarding his second marriage with the petitioner as well as the birth of children from this wed-lock. The petitioner being the second widow of the deceased pensioner, is not entitled to claim family pension. Even her marriage with Jugti Ram, which took place in the life time of first wife i.e. in the year 1946, is illegal as per Hindu Marriage Act, 1955. Thus, the petitioner is not entitled to family pension.

In course of the hearing, learned counsel for the petitioner argued that since her second marriage took place in 1946, it is not covered under the Hindu Marriage Act, 1955, but under the then prevailing custom/law which did not debar a second marriage. The fact of marriage of Shanti Devi to Jugti Ram has also been confirmed by the local military authority to whom the case was referred to by the respondents. This fact is also admitted by the respondents themselves. Smt. Shanti Devi is the legally wedded second wife of Jugti Ram. The first wife of Jugti Ram namely Bakhati Devi died on 03-09-1994 prior to the death of Jugti Ram on 20-10-1995. Thus, Smt. Shanti Devi is entitled to get family pension from the date of death of Jugti Ram.

The learned counsel for the respondents also argued that pension to the petitioner cannot be released unless she furnishes a Life Time Arrear Certificate. It appears from the record that the only hurdle in the way of releasing family pension to her is the said certificate. The documents available on record leave no manner of doubt that despite her best efforts, the petitioner could not obtain the aforesaid certificate

from the authorities concerned. Once the petitioner is found entitled to family pension by the authorities after due verification/investigation and admitting her marriage with Jugti Ram to be legal, there is no valid reason for not releasing the pension in her favour. Actually, the LTA Certificate was to be issued by the concerned pension paying authority, and for obtaining the same the petitioner made every effort, but remained unsuccessful. Therefore, due to the adamant attitude of the authorities, the petitioner cannot be made to suffer. Thus, we find no substance in the contention of the learned counsel for the respondents.

Having regard to the facts and circumstances of the case, this application is allowed. The respondents are directed to grant family pension in favour of the petitioner with effect from 20-10-1995 within a period of three months from the date of receipt of a copy of this order. She is also entitled to get arrears which shall be confined to a period of three years prior to filing of the suit in the trial Court.

(Justice Ghanshyam Prasad)

(Lt Gen H S Panag (Retd))

May 31, 2010
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