

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.111 of 2014

Monday, the 22<sup>nd</sup> day of June 2015

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH  
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN K. SURENDRA NATH  
(MEMBER – ADMINISTRATIVE)

Smt. N.Dhanalakshmi  
W/o Late N.Nalliappan, Sepoy No.1333625  
Perungudi Village, Thirumogur Post  
Ottha Kadai Vazhi  
Madurai District, Tamil Nadu-625 107.

... Applicant

By Legal Practitioner:  
Mrs. Tonifia Miranda

vs.

1. Union of India  
rep. by The Secretary  
Government of India  
Ministry of Defence  
New Delhi-110 011.

2. Abhelekh Karyalaya  
Record Office  
Madras Engineer Group  
Pin-900 493, C/o 56 APO.

3. Principal Controller  
of Defence Accounts  
Draupathi Ghat, Allahabad.

4. N. Bose, S/o Late N.Nalliappan  
Sepoy No.1333625  
Peria Elanthai Kulam Village  
Thanichiyam Post  
Vadipatti Taluk,  
Madurai District-625 105.

5. N.Kamaey, D/o Late N.Nallaippan  
Sepoy No.1333625  
Peria Elanthai Kulam Village  
Thanichiyam Post  
Vadipatti Taluk, Madurai District-625 105.

6. N. Rajesh Kannan, S/o Late N.Nalliappan  
aged 28 years

7. S.Abhirami, D/o Late N.Nalliappan  
W/o Shanmugapandi, aged 27 years

8. K. Sivakami, D/o late N.Nalliappan  
W/o Kumaravel, aged 26 years  
(Respondents-6, 7, 8 residing at  
Perungudi Village, Thirumohur Post  
Ottha Kadai Vazhi, Madurai District  
Tamil Nadu-625 107)

9. The Chief of Army Staff  
Integrated Head Quarters of MoD (Army)  
DHQ Post, New Delhi-110 011.

... Respondents

Mr. V. Kadhivelu, CGSC  
For respondents-1 to 3 and 9

Mr. E.Selvaraj  
For respondents-4 to 8

### **ORDER**

(Order of the Tribunal made by  
Hon'ble Justice V. Periya Karupiah, Member (Judicial))

1. This application is filed by the widow of Late Ex Sepoy seeking for grant of Family Pension in her favour after her name is directed to be entered in Part-II Order with effect from the date of death of her husband and for other reliefs.

2. The factual matrix of the case of the applicant would be as follows:

The applicant's husband Late Ex Sepoy N.Nalliappan was enrolled in the 2<sup>nd</sup> respondent organization during March 1963 and retired from service on 31.08.1979 with service pension and other retirement benefits. The applicant submits that her husband was married to one Madalaiammal whose name was recorded in part-II Order being the wife of Late Ex Sepoy N.Nalliappan. Two children by name N.Bose (R.4) and N.Kamaye (R.5) were born to them. After leading some years of marital life, due to some illness of Madalaiammal and other problems, they took divorce mutually by means of an agreement dated 04.08.1971, as per their caste and community custom in the presence of community & village elders and relatives. Then, the first wife Madalaiammal took away their children. According to the said agreement, both of them were at liberty to go for second marriage. The applicant submits that thereafter, Late Ex Sepoy N.Nalliappan got remarried with the applicant on 15.08.1970 according to Hindu rites and customs. Out of the wedlock, three children by name, N.Rajesh Kannan (R.6), S.Abrahmi (R.7) and K.Sivakami (R.8) were born to them. After his first wife died, Late Sepoy N.Nalliappan submitted an application to the respondents on 24.06.1998 for entering the name of the applicant in the Part-II order which was replied by the respondents that it could not be done due to the fact that the applicant was the

second wife. On 24.12.2010, the applicant's husband Late Sepoy N.Nalliappan died. The applicant submits that she became helpless and approached the 2<sup>nd</sup> respondent for grant of Family Pension by submitting supporting documents. It was denied by the respondent by the impugned order dated 30.08.2011, though the applicant and Late Sepoy N.Nalliappan lived as husband and wife from the year 1970 onwards. The applicant was issued Canteen Smart Card and also Widow of Ex-Servicemen Card by the respondents. The Hon'ble Supreme Court has held in many cases that long and continuous cohabitation as husband and wife would raise a presumption of marriage. Therefore, the applicant requests that this application may be allowed.

3. The respondents-1 to 3 and 9 filed reply-statement which would be as follows:

Ex Sapper Late N.Nalliappan (No.1333625) was enrolled in the Army (MEG) on 16.02.1963 and was transferred to pension establishment with effect from 01.09.1979, under Rule 13(3) Item III (i) of Army Rules 1954 on fulfilling the conditions of his enrolment. He was granted Service Pension with effect from 01.09.1979. As per service records, Ex Sapper Late N.Nalliappan married to Smt Madalaialammal prior to his enrolment and nominated her to receive Family Pension. Out of the wedlock, three children were born to

them. When Ex Sapper Late N. Nalliappan submitted the documents, viz., death certificate of the 1<sup>st</sup> wife Smt Madalaialammal, Decree of divorce from the first wife sworn in before a I Class Magistrate of District Court and Marriage Certificate obtained from the Registrar of Marriage or an affidavit sworn in before a I Class Magistrate with date of birth of wife; the same were not accepted for the reason that the applicant contracted plural marriage with the applicant during the lifetime of his first wife. The respondents submit that without obtaining divorce from Smt Madalaialammal through a competent Court of Law, the second marriage of Ex Sapper N. Nalliappan with the applicant would be null and void and tantamount to plural marriage, as per Hindu Marriage Act 1955. However, the children born out of such marriage are eligible for grant of share of Family Pension till they attain the age of 25 years. However, the children of the applicant are married and above 25 years of age. The respondents submit that neither the applicant nor her Late husband Ex Sapper N.Nalliappan rectified the observation or submitted any other document for verification and publication. Consequently, the applicant is not eligible for grant of Family Pension. Therefore, these respondents request that this application may be dismissed.

4. Respondent Nos.4 to 8 filed reply-statement which would be as follows:

The relationship as stated by the applicant in between these respondents is admitted. The respondents submit that a cordial settlement was reached between Ex Sapper N. Nalliappan and Madalaialammal. The respondents admit that the applicant took care of all the children without any partiality. They have no objection in granting Family Pension to the applicant and submit that if Family pension is not granted to the applicant, it would create a stigma on her in the society. Therefore, these respondents request that this application may be allowed.

5. The applicant filed a Rejoinder which would be as follows:

The applicant citing catena of judgments of the Hon'ble Supreme Court, High Court of Madras and this Tribunal in favour of the applicant submits that the principle laid down in the said judgments is that long cohabitation of a man and woman living as husband and wife to the knowledge of the society could be presumed as a lawful marriage when the marriage has not been proved by other circumstances. The applicant from the date of marriage had been staying with her husband and had been to all the areas where he served and stayed in the service quarters of the respondents and was accorded the status of

wife. Therefore, the applicant once again request that the application may be allowed.

6. On the above pleadings, the following points emerged for consideration:

*1. Whether the applicant is entitled to Family Pension payable on the death of Late Ex Sapper N.Nalliappan (No.1333625) after the inclusion of her name in Part-II order with effect from the date of death of her husband on 24.12.2010 ?*

*2. Whether the impugned order dated 30.08.2011 is liable to be set aside ?*

*3. To what relief the applicant is entitled for ?*

7. We heard the arguments of Mrs. Tonifia Miranda, learned counsel for the applicant and Mr. V.Kadhirvelu, learned CGSC assisted by Major Suchithra Chellappan, learned JAG Officer appearing for respondents-1, 3 and 9 and Mr. E. Selvaraj, learned counsel appearing for respondents-6 to 8.

8. We also perused the documents produced on either side. We have given our anxious thoughts to the arguments advanced on either side.

9. **Point Nos.1 and 2:** The facts that Late Ex Sapper N. Nalliappan was enrolled in the Army on 16.02.1993 and after his discharge from the Army on 31.08.1979, he was transferred to pension establishment and was granted service pension with effect from 01.01.1979 are undisputed. Similarly the fact that Ex Sapper N.Nalliappan married one Smt. Madalaiammal even prior to his enrolment and nominated her name to receive Family Pension is also not disputed. However, the contention of the applicant that she was married to Late Ex Sapper N. Nalliappan after obtaining a customary divorce with the first wife Madalaiammal was not admitted by the respondents-1 to 3 and 9. Contrary to that, the said marriage was considered by the respondents-1 to 3 and 9 as a plural marriage and the request of Late Ex Sapper N. Nalliappan to amend the Part-II order by including the name of the applicant in the place of Madalaiammal was therefore not considered, even though the particulars of children begot by Late Ex Sapper through his two wives were given in the application are not disputed by the respondents-1 to 3 and 9. According to the particulars recorded, the respondent No.4 (name given as Alagarsamy), respondent No.5 (name given as Annakamam) and respondents No.6 were shown as the children of Madalaiammal and respondent Nos.7 and 8 were shown as the children of Late Ex Sapper N.Nalliappan. The respondents-4 to 8 admitted before us and



also in a reply-statement they admitted that the respondents-4 and 5 were born to the first wife Madalaiammal and respondents-6 to 8 were born to the applicant and the said Late Ex Sapper N. Nalliappan. Virtually, they have no objection for the grant of Family Pension in favour of the applicant.

10. The sequence of this case would be that the Late Ex Sapper N. Nalliappan married Madalaiammal even prior to his enrolment in Army and subsequently he married the applicant on 15.08.1970. However, the pleadings made in the application would go to show that the said Late Ex Sapper N. Nalliappan divorced his first wife as per the caste and community custom in the presence of community elders and relatives on 04.08.1971 at the village Peria Elanthai Kulam and an agreement was drawn for that purpose and later Ex Sapper N. Nalliappan got married the applicant on 15.08.1970 as per Hindu rites and customs. How could the marriage that took place in the year 1970 be after the divorce of Madalaiammal and Ex Sapper N. Nalliappan said to have happened on 04.08.1971, i.e., a later date? The alleged date of divorce has been referred in an agreement produced as Annexure-1 accompanied by a translated version in English. On a careful reading of the vernacular document produced in Annexure-1, the actual translation in English would be as follows:

*" Since No.1 amongst us Nalliappa Gounder married for the second time and he had executed a settlement deed in favour of No.2 amongst us, No.2 of us hereby agrees not to dispute the same and will not take any civil or criminal action against No.1 amongst us. If any such action is taken, No.2 amongst us will be liable for all the costs and expenses. Further, since No.1 amongst us married for the second time, he agrees to pay a sum of Rs.20/- per month to No.2 amongst us without any default and in default to do so, No.1 amongst us agreed to bear all the costs and expenses payable to No.2. No.1 amongst us further agrees to bear the expenses of school education of their son Alagarsamy."*

11. In this translation, we do not find any reference about the divorce in between Ex Sapper N.Nalliappan and Madalaiaammal done through the said document. But it has been categorically referred that the said Ex Sapper Late N.Nalliappan had already married for the second time and executed a settlement deed in favour of his first wife Madalaiaammal and therefore, the said Madalaiaammal should not oppose the same or to take any civil or criminal action. Similarly, Ex Sapper Late N.Nalliappan was also said to have agreed to give a sum of Rs.20/- per month to his wife without fail and also to look after the educational expenditure of their son Alagarsamy. The translated copy produced by the applicant would not show anything except the bearing of the expenditure of the son of Ex Sapper Late N.Nalliappan

and Madalaiammal. The whole sum and substance of the agreement cannot be considered as a divorce agreement as pleaded by the applicant. Moreover, we find that the Late Ex Sapper N. Nalliappan had already married for the second time as on 04.08.1971, the date of the agreement. Therefore, it is quite clear that Ex Sapper N.Nalliappan would have married the applicant even during the subsistence of his marriage with Madalaiammal. The death certificate of Madalaiammal has been produced along with rejoinder of the applicant which would show that she died on 03.08.1986. All these circumstances would go to show that Late Ex Sapper N.Nalliappan married the applicant while the first wife Madalaiammal was alive and the said marriage would therefore be considered as a plural marriage and it is void under the provisions of Hindu Marriage Act. The contention raised by the respondents-1 to 3 and 9 to that effect would be correct. However, it was argued by the learned counsel for the applicant that the applicant even though married as second wife, she had continued to live with Late Ex Sapper N.Nalliappan and begot three children, viz., the respondents-6 to 8. She would also refer to a Legal Heirship Certificate produced as Annexure A.5 certified by the Tahsildar, Madurai North Taluk in support of her argument. No doubt the respondents-6 to 8 are shown as the children of the applicant born to Late Ex Sapper N.Nalliappan in the said legal heirship certificate .

Relying upon the certificate she would further argue that the applicant had cohabited with Late Ex Sapper N.Nalliappan and gave birth to these three persons for a considerable period and they were considered as husband and wife by the society. She would also submit that the said relationship and the cohabitation also continued even after the death of the first wife on 03.08.1986 till Late Ex Sapper died on 24.12.2010. She would also submit that such a long cohabitation of the applicant with Late Ex Sapper N.Nalliappan would draw a presumption of marriage in between them. She would cite a judgment of the Hon'ble Apex court in a case between **S.P.S. Balasubramanyam** and **Suruttayan** reported in **AIR 1992 SC 756** in support of her argument. She would quote yet another judgment of Hon'ble Apex court in a case between **Challamma** and **Tilaga** reported in **2009 (9) SCC 299** for the principle that presumption of marriage under Section 114 of the Evidence Act could be drawn on the natural common course of events and conduct of parties in the circumstances of a particular case to presume a man and a woman as husband and wife in favour of their wedlock. She would insist in her argument that the said similar circumstances also prevailed in this case so as to draw such presumption as dictated in yet another judgment of the Hon'ble Apex Court reported in **2008 (4) SCC 520** between **Tulsa & Ors** and **Durghatiya & Ors**. She would also cite a

judgment of this Tribunal made in a case between **M. Athi Lakshmi @ Sumathi** and **The Adjutant General and Ors.**, in **O.A.No.69 of 2013, dated 6.11.2013** passed in similar circumstances. She would also place her reliance on a judgment of the Hon'ble High Court of Madras reported in **2008 (5) CTC 294** in a case between **Sivasamy and & 2 Ors** vs. **Poomalai & 2 Ors.** in support of her case. Quoting the dicta laid down in the judgments of the Hon'ble Apex Court, the Hon'ble High Court and the order of this Tribunal, the learned counsel for the applicant would argue that the reasons put forth by the second respondent for holding the marriage between the applicant and her husband Ex Sapper N.Nalliappan as a plural marriage is not acceptable. She would also draw our attention that the non-grant of the claim made by the applicant's husband to endorse the name of his second wife (the applicant herein) in Part-II order on some pretext or other was really unfortunate and the entry of the applicant's name in Part-II order should have been done even during the life-time of the applicant's husband, but it is yet to be ordered in favour of the applicant. The unfortunate applicant has to knock the doors of the Tribunal as she is direly in need of family pension for her remaining part of life and the same may be ordered on the guidelines and the principles laid down by the Hon'ble Apex Court and this Tribunal with

costs to be imposed against the respondent for the negligence and laches in granting the relief.

12. Per contra, the learned CGSC would submit that the facts and circumstances of the case and the documents would go to show the marriage of the applicant dated 15.08.1970 would be a plural marriage and that could not be presumed to be a valid marriage in the eye of law. He would further submit that the cases put forth by the applicant would not apply to the present case.

13. Considering the contentions raised on either side, we see that the marriage between the applicant and the Late Ex Sapper N.Nalliappan said to have taken place on 15.08.1970 was done during the lifetime of his first Madalaiaammal. Therefore, it would be only a void marriage and the status of the applicant cannot be the status of a wife at the time of her marriage. However, the facts and circumstances would disclose that there was a dispute between the first wife Madalaiaammal and Late Ex Sapper N. Nalliappan in the year 1971 and an agreement was entered into and both were separated from the said date. The actual contents of the agreement would go to show that the first wife Madalaiaammal should not take any steps to prosecute the Late Ex Sapper N.Nalliappan in criminal Courts or in civil Courts for marrying second time and the Late Ex Sapper N.Nalliappan thus agreed to pay a sum of Rs.20/- towards her maintenance apart

from looking after the educational expenditure of their son Alagarsamy. This agreement even though produced towards the proof of divorce between Late Ex Sapper N. Nalliappan and his first wife Madalaialammal it which cannot be, but it shows that the Late Ex Sapper N. Nalliappan and his first wife were living separately from the said date, viz., 04.08.1971. The facts that the respondents-6 to 8 were born to the applicant and Late Ex Sapper N. Nalliappan after the separation of the first wife Madalaialammal would go to show that the applicant lived along with Late Ex Sapper N. Nalliappan and led a family life and gave birth to those children. The said Madalaialammal died on 03.08.1996 and the death certificate produced would prove the same. Even after the death of Madalaialammal, the applicant was continuously living with Late Ex Sapper N. Nalliappan as husband and wife and she was considered as the wife of Late Ex Sapper N. Nalliappan to his relatives and friends.

14. Now we have to consider whether the argument of the learned counsel for applicant that long cohabitation of the applicant with Late Ex Sapper N.Nalliappan would give rise to any presumption of legal status as to wife in favour of the applicant and could she be considered as the widow of Late Ex Sapper N.Nalliappan after his death, should be answered.

15. In a judgment of the Hon'ble Apex Court reported in **AIR 1992 SC 756** between **S.P.S. Balasubramanyam v. Suruttayan**, it has been held as follows:

*" The appellate court however, held to the contrary. It held that since Chinnathambi and Pavayee No.2 continuously lived under the same roof and cohabited for a number of years the law would raise presumption that they lived as husband and wife. There was no other evidence to destroy that presumption. So stating plaintiff's suit was decreed. In the second appeal the High Court took a different view. It was held that presumption available in favour of Pavayee No.2 by her continuous living with Chinnathambi has been destroyed by other circumstances in the case. The High Court relied upon three circumstances to rebut the presumption, (i) non-mentioning the name of Pavayee No.2 in the will Ex.B-1: (ii) not referring the names of Pavayee No.2 and her children by Chinnathambi in the compromise Ex.B-32; and (iii) the evidence of PW 6 and DW 4. We do not think that the circumstances relied upon by the High Court are relevant to destroy the presumption which is otherwise available to recognize Pavayee No.2 as the wife of Chinnathambi. The first two circumstances relied upon by the High Court are indeed neutral. The absence of any reference to Pavayee No.2 in Ex.B-1 or in Ex.B-32 cannot be held against the legitimacy of the children of Pavayee No.2 born to Chinnathambi. Equally, we do not find*



*anything from the evidence of PW 6 or DW 4. Both these witnesses did not deny that Chinnathambi and Pavayee No.2 were living together. It is not in dispute that children including Ramaswamy were born to Chinnathambi. In our opinion, the circumstances and the evidence relied upon by the High Court are not relevant to destroy the presumption that Chinnathambi and Pavayee No.2 lived together as husband and wife. "*

16. In yet another judgment of the Hon'ble Apex Court cited by the learned counsel for the applicant reported in **(2008) 4 SCC 520** between **Tulsa & Ors.** and **Durghatiya & Ors.**, it has been laid down as follows:

*"Section 114 of the Evidence Act refers to common course of natural events, human conduct and private business. The court may presume the existence of any fact which it thinks likely to have occurred. Reading the provisions of Sections 50 and 114 of the Evidence Act together, it is clear that the act of marriage can be presumed from the common course of natural events and the conduct of parties as they are borne out by the facts of a particular case.*

*Where the partners lived together for long spell as husband and wife there would be presumption in favour of wedlock. The presumption was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to*

*prove that no marriage took place. Law leans in favour of legitimacy and frowns upon bastardy."*

17. In yet another judgment of the Hon'ble Apex Court reported in **(2009) 9 SCC 299** in the case of **Challamma vs. Tilaga**, it has been laid down as follows:

*" 12. It is also well-settled that a presumption of a valid marriage although is a rebuttable one, it is for the other party to establish the same. (See Ranganath Parmeshwar Panditrao Moli v. Eknath Gajanan Kulkarni and Sobha Hymavathi Devi v. Setti Gangadhara Swamy). Such a presumption can be validly raised having regard to Section 50 of the Evidence Act. (See Tulsa). A heavy burden, thus, lies on the person who seeks to prove that no marriage has taken place. "*

18. The principles laid down by the aforesaid judgments of the Hon'ble Apex Court would categorically guide us to presume a lawful marriage on a long cohabitation of a man and woman living as husband and wife where their marriage has not been proved by other circumstances.

19. The said principle has been followed by the Hon'ble High Court of Madras in a Judgment reported in **2008 (5) CTC 294** in between

**Sivasamy and 2 others Vs. Poomalai and 2 others.** The relevant passage would be as follows :-

*"16..... In the Judgment of the Division Bench referred to above, wherein Paragraph-22 has been extracted, it was held that even if the association had commenced during the life time of the first wife, but the relationship continued after the death of the first wife for long number of years and the second wife had borne children, then the presumption of marriage can definitely be taken. Here in this case, even if the marriage of the fifth defendant with Masi Ambalam was in 1946 during the lifetime of the plaintiff's mother, it continued after the first wife's death till Masi Ambalam died in 1987. All gender based discriminations, all practices which affect the dignity of women are contrary to the Constitution & Convention on Elimination of All Forms of Discrimination against Women. The status of a woman who claims she is the wife and had lived as such for 40 years cannot be reduced to a mere "association" at the instance of the plaintiff merely because she wants the property especially when the world had labelled the fifth defendant as the wife of Masi Ambalam. To deny her status would rob her of the dignity to which she is entitled to."*

**(Emphasis supplied by us)**

20. The said principle laid down by the Hon'ble High Court of Madras would be squarely applicable to the present case as the applicant lived

in cohabitation with Late Ex Sapper N.Nalliappan under one roof even during the life time of the first wife Madalaiammal and even after her death in the year 1986, the applicant continued to live with Late Ex Sapper N.Nalliappan as wife till his death on 24.12.2010. All these facts would go a long way to show that the applicant lived with Late Ex Sapper N. Nalliappan from the year 1970 till the date of his death as wife and begot three children out of the said relationship. In such circumstances, the long cohabitation of the applicant with the Late Ex Sapper N.Nalliappan could be presumed to be a lawful marriage as they were living as husband and wife and the applicant be treated as legally wedded wife of Sapper N.Nalliappan after the separation agreement dated 04.08.1971 or at least from the date of death of his first wife Madalaiammal. Therefore, the denial of the status of widow in favour of the applicant for the grant of family pension, even though it was originally a void marriage, cannot be justified. The refusal on the part of the respondents to grant family pension in favour of the applicant after the emergence of valid marriage through presumption would certainly amount to denial of justice.

21. The grant of pension or any pension is an earned or accrued right and it cannot be considered as a bounty or charity. Such principle was laid down by the Hon'ble Apex Court in several cases. Therefore the denial of family pension to the applicant after the death

of her husband, by the respondents would amount to denial of her right to the benefits conferred upon her, the next of kin of the pensioner, viz., Late Ex Sapper N. Nalliappan. Therefore, the claim of the applicant for the grant of family pension is necessarily to be accepted by the respondents. But it was not done so by the respondents. The applicant's husband, viz., Late Ex Sapper N. Nalliappan was driven from pillar to post, by consecutively returning his applications by the respondents for various obvious reasons. The orders passed by the 2<sup>nd</sup> respondent for returning of the applications on flimsy reasons and the delay in ordering endorsement of the name of the applicant in part II order by quoting the reason of plural marriage was certainly not in consonance with the principles laid down by Hon'ble Apex Court. The respondents-1 to 3 and 9 have also issued Identity Card to the applicant as the widow of the Ex-Serviceman and the applicant was also issued ESM canteen Smart Card by the respondents as the widow of Late Ex Sapper N. Nalliappan. Having considered the applicant as the widow of Late Ex Sapper N. Nalliappan it is strange on the part of the respondents to deny the claim of the applicant to substitute her name in the part II order and to grant family pension. For those reasons, the impugned order passed by the 2<sup>nd</sup> respondent and the earlier communications refusing the claim of the applicant are liable to be set aside and the applicant is found

entitled for her name being endorsed in Part-II order in the records of Late Ex Sapper N.Nalliappan towards the grant of family pension. Accordingly, both the points are decided in favour of the applicant.

22. **Point No.3:** In view of our discussion held above, we find that the application filed by the applicant for the grant of Family Pension after her name is included in part-II Order as wife in the place of Madalaiaammal is grantable and she is entitled for Family Pension. Even though the applicant is entitled to get Family pension from the date of death of her husband, she did not put forth her claim by filing any application within the period of limitation. However, the claim of pension is being a continuous and recurring cause of action, the whole claim cannot be considered as barred and the Family Pension can be granted with effect from three years from the date of filing of this application as per the principle laid down by Hon'ble Apex court in **Tarsem Singh's** case. This application was presented before this Court on 31.01.2014 and the date prior to three years from the said date would be 31.01.2011. Therefore, the applicant is entitled for the grant of Family Pension with effect from 31.01.2011 only.

23. In fine, the application filed by the applicant seeking for grant of Family Pension is ordered with effect from 31.01.2011. The applicant is also eligible for all consequential benefits such as widow of Ex-Serviceman including canteen facilities, ECHS etc., as already ordered

by the respondents-1 to 3 and 9. The arrears of Family Pension and the PPO towards grant of Family Pension as ordered in favour of the applicant shall be issued within a period of three months from the date of receipt of this order. In default, the respondents-1 to 3 and 9 are directed to pay the said arrears with interest at 9% per annum till it is fully paid. The application is allowed to that extent indicated above. No order as to costs.

Sd/  
LT GEN K. SURENDRA NATH  
MEMBER (ADMINISTRATIVE)

Sd/  
JUSTICE V.PERIYA KARUPPIAH  
MEMBER (JUDICIAL)

**22.06.2015**  
**(True copy)**

**Member (J)** – Index : Yes/No  
**Member (A)** – Index : Yes/No

Internet : Yes/No  
Internet : Yes/No

vs

To:

1. The Secretary  
Government of India  
Ministry of Defence  
New Delhi-110 011.

2. Abhelekh Karyalaya  
Record Office  
Madras Engineer Group  
Pin-900 493, C/o 56 APO.

3. Principal Controller of Defence Accounts  
Draupathi Ghat, Allahabad.

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W/o Shanmugapandi.

8. K. Sivakami, D/o late N.Nalliappan  
W/o Kumaravel

(Respondents-6, 7 & 8 residing at  
Perungudi Village, Thirumohur Post  
Ottha Kadai Vazhi, Madurai District  
Tamil Nadu-625 107)

9. The Chief of Army Staff  
Integrated Head Quarters of MoD (Army)  
DHQ Post, New Delhi-110 011.



10. Mrs. Tonifia Miranda  
Counsel for applicant.

11. Mr. V.Kadhirvelu, CGSC  
For respondents-1 to 3 and 9

12. Mr. E.Selvaraj  
For respondents-4 to 8

13. OIC, Legal Cell,  
ATNK & K Area, Chennai.

14. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH  
MEMBER (JUDICIAL)  
AND  
HON'BLE LT GEN K. SURENDRA NATH  
MEMBER (ADMINISTRATIVE)

O.A.No. 111 of 2014

Dt: 22.06.2015