

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.19 of 2014

Monday, the 8th day of June 2015

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

AND

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

Ms. Uma Rani (aged 39 years)
Widow & 2nd wife of Ex Sep
(No.2560770) P.Palani
C/o PG Hariappa
23, TNHB (LIG) Colony
Bangalore Road, Krishnagiri
Tamil Nadu-635 001.

... Applicant

By Legal Practitioners:
M/s. SP Ilangovan & Mr. B.A. Thayalan

vs.

1. Union of India
Rep. by The Defence Secretary
Ministry of Defence
South Block, New Delhi-110 011.

2. The Chief of the Army Staff
Integrated Head Quarters (Army)
South Block, New Delhi-110 011.

3. O i/c DSC Records, Pin-901277
C/o 56 APO.

4. Principal Controller of Defence
Accounts (Pensions)
Draupadi Ghat, Allahabad
UP-211 014.

5. Ambika
Beruhalli Vill, Nagarasanpatti PO
Mardheri Panchayat, Pochampalli Taluk
Krishnagiri District, TN 655 204.

....Respondents

By Mr. V.Kadhirvelu, CGSC
For respondents-1 to 4

M/s. S.Rajesh & G.Ambika
For respondent No.5

ORDER

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

1. The applicant has filed this application for division of Army service Family Pension between the applicant and the 5th respondent on the death of Ex Sepoy P. Palani and direct the respondents-1 to 4 to grant the eligible divided service Family Pension and service benefits such as Canteen and ECHS facility to the applicant, in accordance with law.
2. The factual matrix of the applicant's case in brief would be as follows:

The applicant is a destitute being the second wife of Ex Sepoy P.Palani. He suppressed the fact that he was already married to one Ambika and did not get any divorce from his first wife and married the applicant as per Hindu rites in the presence village elders on 27.05.1997. Only after marriage, she came to know about the first wife, who also took away the dowry money, marriage jewels and other

streedhana articles belonged to the applicant and finally driven out of the marital home. The applicant lost her parents and has no one to support her and she is also afflicted with TB. The applicant filed a maintenance case in M.C.No.02 of 2003 before the District Munsif Court, Pochampalli and she was granted Rs.500/- p.m. as maintenance amount which she was in receipt from the said P.Palani till his death on 11.06.2011. After the death of P. Palani, his wife Ambika collected all the death benefits of her husband P. Palani and also swindled away all his properties and is also receiving the Family Pension from the Army but refused to pay the maintenance amount of Rs.500/- p.m. Therefore, the applicant is suffering from poverty. For the legal notice dated 08.04.2013 sent by the applicant to Oi/c DSC Records (the 3rd respondent) seeking division of Family Pension, in accordance with Section 116 of Army Pension Regulations 2008, the Oi/c DSC Records vide letter No.NER/2560770/LC-3, dated 04.05.2013 declined to accept her request for the division of Family Pension stating that her marriage with Ex Sep P.Palani is void, which is under challenge in this application. The applicant submits that the impugned order vide dated 04.05.2013 unjust and arbitrary. The applicant married Ex Sep P.Palani on the misrepresentation that he was a divorcee. Since the applicant and his first wife did not have any child, the first wife consented for the second marriage and therefore, the first wife was aware of the marriage of the

applicant with the said P. Palani. The first wife is a party to the fraud committed by them and therefore, she is morally if not legally, liable to share the Family Pension with the applicant. The order of maintenance in favour of the applicant forms a precedent to the present application and that Section 116 of Army Pension Regulations 2008 provides for division of family pension between eligible members of the family. The applicant submits that in such similar cases, this Tribunal has granted relief to the applicants which would form as a precedent to this application. Therefore, the applicant requests that the application may be allowed.

3. A reply statement has been filed by respondents-1 to 4 which would be as follows:

Ex Sep Palani was initially enrolled in the Madras Regiment on 13.12.1965 and was discharged therefrom on 31.12.1982 (AN) under Army Rule 13 (3) Item III (i) for which he was granted Service Pension vide PPO No.S/C/149/1983. While so, he declared the name of his wife as Smt. Ambika as his nominee for drawing the Family Pension and all other benefits admissible to the NOK. Thereafter, he was re-enrolled in Defence Security Corps (DSC) on 31.05.1984. During his service in DSC, he had again nominated his wife Smt. Ambika for drawing Family Pension and other benefits. He was discharged from DSC service with effect from 31.12.2000 (AN) on attaining the age of superannuation,

i.e., 55 years. He was granted Service Pension for life in respect of service in DSC vide PPO No.S/006202/2001. After his death, the Family Pension admissible to his wife Smt.Ambika was granted vide PPO No.F/NA/016971/2012. But the applicant Smt. Uma Rani claiming to be the second wife of Ex Sep (Late) P.Palani has filed this application for division of Family Pension between her and Smt.Ambika (5th respondent). The name of the applicant herein was not found nominated in the service records relating to Madras Regiment and DSC Service of Late P.Palani. As per Hindu Marriage Act, no person can marry during the life time of his/her spouse and as such, a plural marriage is not only null and void but also an offence. Ex Sep P.Palani never disclosed about the divorce and his re-marriage till his death and never produced any decree of divorce to show that he divorced his wife from any Court of Law and therefore, the applicant's case cannot be considered for division of Family Pension between his wife and the applicant herein. The order passed by DMC, Pochampalli for payment of maintenance allowance to the applicant is not adequate unless a divorce was legally made through a Court. Therefore, the respondents-1 to 4 request that the application may be dismissed as devoid of any merit.

4. A reply statement has been filed by the fifth respondent which would be as follows:

This respondent submits that the averments regarding marriage between her husband Ex Sepoy P.Palani and the applicant and the dowry money, jewels etc. are baseless and utter false. Even though the 5th respondent admits that no children were born out of the wedlock, she never consented for a second marriage of her husband. The said second marriage was performed illegally against the will of this respondent and she never concurred for her husband to live with another woman and therefore, the frivolous allegations that she had taken away all the belongings of the applicant are motivated and devoid of merit. The maintenance order passed in favour of the applicant was only against her Late husband P.Palani and the same shall not have any binding effect on this respondent. The Family Pension and all other benefits had been sanctioned to this respondent by the competent authorities as she is the only legal heir left behind her Late husband. Section 116 of Army Pension Regulations 2008 deals with division of Special Family Pension of the widows of officers' cadre only. The Late husband of this fifth respondent was served as Sepoy only. Therefore, the claim for division of Family Pension is not sustainable and is liable to be dismissed. According to section 107 (i) of the Army Pension Regulations 2008, a husband/wife legally married before or retirement of the service in the Army is declared as the eligible person to get sanction of Family Pension. The alleged second marriage of P.

Palani which is said to have been taken place on 27.05.1997 with the applicant herein is a void marriage as per Section 5(i) of Hindu Marriage Act, 1955. This respondent has no other source of income and depends only on the Family Pension being received by her and if at all any division is ordered, it would cause great injustice and irreparable monetary loss. Any division of Family Pension would amount to illegal and contrary to the Hindu Marriage Act. The applicant has no *locus standi* to claim for the division of the Family Pension under Section 116 of Army Pension Regulations, 2008 as her marriage itself is an invalid one and her application is liable to be dismissed *ab initio*. Therefore, this respondent requests that this application may be dismissed.

5. The applicant filed a rejoinder which would run as follows: It is untrue that the 5th respondent never consented to the marriage of the applicant as it can be seen from the marriage album that the 5th respondent actually participated in all the ceremonies of the marriage and she only gave away the "Thali/Mangalasutra" to the Late P.Palani in the presence of all witnesses. The statement of the village elders and the marriage certificate issued by Koil Poojari Mr. Santhnamurthy to this effect would reveal the truth. The applicant submits that had the 5th respondent not consented for the second marriage and did not participate in the second marriage, she should have lodged a police

complaint and stopped the marriage and saved the applicant from being cheated to enter a second marriage. Section 98 of the Army Pension Regulations 1961 lays down that the Family Pension of an officer's widow can be discontinued, if she proves unworthy of it. Widows of officers and PBORs stand on the same footing as Army family pensioners. The applicant's husband Late P.Palani did not object to the payment of maintenance amount of Rs.500/- p.m. to the applicant till his death. Even after his death, the applicant's right of residence in the marital home of her husband and maintenance out of his estate and property, continues. The statement of the 5th respondent that she has no other source of income and only depends on the Family Pension is totally false. She has unlawfully usurped all the landed properties of her husband and alienated some of them already and is still in possession of the rest of the properties of her husband. The statement of the 5th respondent that she is the only legal heir of Ex Sep P. Palani is an incorrect statement, since the Legal Heirship Certificate dated 18.02.2012 issued by the Tahsildar of Pochampalli marked as Ex.A.3, clearly reveals that she is one of the two legal heirs of the Late husband P.Palani. The applicant submits that the applicant's husband failed to notify the divorce of the 5th respondent and his remarriage with the applicant to the Oi/c Records and therefore, the 5th respondent is taking

undue advantage of the hapless situation of the applicant. Therefore, the applicant requests that the application may be allowed.

6. On the above pleadings, the following points were framed for the disposal of the application:

(1) Whether the applicant is entitled for division of Army Service Pension with the 5th respondent on the death of Ex. Sepoy P. Palani?

(2) Whether the service benefits such as canteen and ECHS are to be granted in favour of the applicant along with the 5th respondent?

(3) To what relief the applicant is entitled for ?

7. The case was referred to Mediators, viz., Mr. S.Biju, learned counsel and Major Suchithra Chellappan, learned JAG Officer for settling the disputes between applicant and 5th respondent. The Mediators attempted to settle the disputes between the applicant and the 5th respondent, but the matter was not settled between them. They filed a Report stating that settlement was not possible. Subsequently by the request of the learned counsel for the applicant, the applicant and the 5th respondent were directed to appear before the Court towards promotion of settlement. Accordingly, the applicant and the 5th respondent appeared before us for that purpose. However, the 5th

respondent was not inclined to a compromise by sharing her right to Family Pension. Therefore, the compromise between the applicant and the 5th respondent was not feasible.

8. We heard the arguments of Mr. B.A. Thayalan, learned counsel for the applicant and Mr. V.Kadhirvelu, CGSC assisted by Major Suchithra Chellappan, appearing for respondents-1 to 4 and Mr. S.Rajesh appearing for 5th respondent.

9. We have also received the written submissions on either side and have considered the averments made therein. We have also perused the records produced in this case.

10. **Point Nos.1 and 2:** The facts that one P.Palani was enrolled in the Army, that after serving the nation for a considerable period of a qualifying service, he was granted Service Pension on his discharge and that, he was receiving the Service Pension till he died on 11.06.2011 are not disputed.

11. According to the applicant, the said Sepoy P.Palani divorced his first wife, the 5th respondent herein and married the applicant on 27.05.1997 in Arulmighu Balasubramaniam Thirukoil, in accordance with the Hindu rites in the presence of Panchayat President

Mr.Santhanamurthy and other village elders. The further case of the applicant was that she came to know that Late P. Palani was already married to one Ambika, the 5th respondent and he had not divorced her and since they did not beget any children, he married the applicant with the consent of Ambika, by hiding the truth to the applicant. Further, the dowry money, marriage jewels and other streedhana articles were taken away by those two, namely, P.Palani and Ambika and the applicant was driven away from the marital home and therefore, the applicant had to file a case in M.C.No.2 of 2003 before DM-cum-JM, Pochampalli and a sum of Rs.500/- p.m. was ordered in her favour by directing P.Palani to pay the same. However, on the death of P.Palani, all the death benefits were swindled by the 5th respondent and the respondents-1 to 4 did not even pay a sum of Rs.500/- towards her maintenance. The legal notice issued by the applicant was not responded.

12. The respondents-1 to 4 would contend that the applicant was admittedly not a legally wedded wife of Late Sepoy P.Palani and she was the second wife of the Sepoy married him during the subsistence of the earlier marriage. It is further contended that the applicant had admitted that the marriage took place between the 5th respondent and Late P.Palani was solemnized suppressing the first marriage at the time

of marriage. Therefore, it was argued that the marriage of the applicant with Late P.Palani was a plural marriage and it was not in accordance with the provisions of the Hindu Marriage Act and the applicant cannot get any benefits on the death of Late P.Palani when the 5th respondent, the 1st wife is alive.

13. Similar contentions were raised by the 5th respondent in the reply statement as well as in the written arguments.

14. The learned counsel for the applicant would submit that the maintenance application filed by the applicant before a Court of Law, viz., DM-cum-JM, Pochampalli in M.C.No.2 of 2003 was ordered on 27.06.2003 in favour of the applicant and this would give her a legal right to get maintenance from her husband P.Palani and the decision reached by a competent court that the applicant was the wife of deceased P.Palani should be respected and therefore, the applicant be granted Family Pension along with the 5th respondent.

15. Per contra, the learned Central Government Standing counsel would submit in his argument that according to the Extract of Para 333 (A) and (B), sub-clause (a) and (b) of Regulations for the Army, 1987 (Revised), any marriage contrary to Special Marriage Act 1954 and

Hindu Marriage Act 1955 in respect of rule of monogamy will not be valid in law and would be considered as plural marriage and the spouse contracting a plural marriage would not be entitled to any benefit after the death of her husband except where the permission for plural marriages were granted by the Government of India, prior to such marriage. He would also submit that the applicant being a Hindu governed by the Hindu Marriage Act, was guilty of committing second marriage while the first wife, viz., 5th respondent was alive and therefore, the applicant's marriage with Late P.Palani was not a valid one and was attracted by the provisions of Para 333 of Regulations for the Army (Revised) and be considered as a plural marriage. He would also submit that the applicant's marriage with Ex Sepoy P. Palani itself was not a valid one when the applicant herself admitted that she was the second wife of Late P.Palani, and therefore no right can be granted as asked for in the application.

16. However, the learned counsel for the applicant would submit in his argument that the applicant was cheated by the 5th respondent as well by Late P.Palani, while she married Ex Sepoy P.Palani on 27.05.1997 and she was not aware of the fact that the 5th respondent did not get divorce from her husband and even the 5th respondent had actively participated in the marriage of the applicant with the said Late P.Palani. The learned counsel would therefore submit that the 5th respondent is

estopped from stating that the applicant was not the legally wedded wife of Late P.Palani and therefore, the applicant is entitled to the benefits payable on the death of Late P.Palani.

17. The learned counsel for the 5th respondent would submit in his argument that the 5th respondent did not participate in the marriage of the applicant with Late P.Palani and the photograph without its negative shown to the Court identifying a woman as 5th respondent and the silhouette shown to be hers are not correct. He would also submit that the respondents-1 to 4 had rightly come to the conclusion that the marriage of the applicant with Late P.Palani was a plural marriage and the applicant was not entitled to any benefit. He would also submit that the 5th respondent being the legally wedded wife and her name being included in Part-II order, she was rightly given Family Pension on the death of her husband. He would also submit that the Family Pension payable to the 5th respondent on the death of Ex Sepoy P.Palani cannot be divided as asked for by the applicant, since there is no rule for division of Family Pension between NOK. Therefore, he would also request that the application be dismissed.

18. We have given our anxious thoughts to the arguments advanced on either side. Admittedly, the facts would clearly show that the applicant was married to Ex Sepoy P.Palani on 27.05.1997 while the 5th respondent was alive and the relationship between the 5th respondent

and P.Palani as husband and wife was existing. The case of the applicant that she was not given particulars that the 5th respondent was not divorced by P.Palani and she came to know about the same only after her marriage could not be true for the reasons below:

(i) The applicant has filed maintenance case before DM-cum-JM, Pochampalli in M.C.No.2 of 2003. This case was filed in the year 2003 in which she has submitted the facts when there was no dispute between the applicant and the 5th respondent in respect of Family Pension. In the said application produced in vernacular language, the applicant has stated that the Sepoy P.Palani married Ambika the 5th respondent some 25 years back and they had no issues born out of the said wedlock and therefore with the consent of the said Ambika, the applicant and the said P.Palani got married without divorcing the 5th respondent at the time of the marriage of the applicant with P. Palani.

(ii) The case of the applicant regarding "suppression of facts" had been stated for the first occasion in this application. Moreover, even if it was suppressed by either Sepoy P.Palani or the 5th respondent Ambika for getting the marriage with the applicant, it would give rise only to seek a relief of getting the marriage declared as void. In other words, the said suppression of facts would not give any validity to the marriage with Ex

Sepoy P. Palani in favour of the applicant so as to get the Family Pension along with the 5th respondent.

19. The rule as laid down in Para 333 (A) and (B), sub-clause (a) and (b) of Regulations for the Army 1987 (Revised) is very clear that any marriage in contravention of Hindu Marriage Act in respect of monogamy would be considered as plural marriage unless it is permitted by prior sanction of the Government as listed in Clause "B". For better understanding, the said paragraph is extracted hereunder:

"(B). Plural Marriage by persons in whose case is permissible:-

(a) No person subject to the Army Act except Gorka personnel of Nepalese domicile can marry again within the life time of his wife without prior sanction of the Government.

(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. "

20. In view of the said provisions, the marriage held between the applicant and Ex Sepoy P.Palani on 27.05.1997 was solemnized during the subsistence of first marriage of Ex Sepoy P.Palani with 5th respondent. It is not the case of the applicant that Ex Sepoy P. Palani applied for permission to go for second marriage as per provisions of Para 333 (B) and was granted and thereafter, he married the applicant. Therefore, the marriage of the applicant with P.Palani is a plural marriage attracted under the above provisions of Para 333 (A) of the Regulations for the Army 1987 (Revised). The 5th respondent is alive and was cohabiting with Ex Sepoy P.Palani till his death in the year 2011. Admittedly, the applicant was not living with Ex Sepoy P.Palani and was claiming maintenance amount from him and the same was also ordered. In the said background of the case, the applicant could not be considered as wife even on a long cohabitation with P.Palani since the 5th respondent the first wife was living with P.Palani till his death. Viewed from any angle, the applicant would not get any right over the death benefits of P.Palani for his service in Army. The right to get Family Pension after the demise of Ex Sepoy P.Palani would only devolve upon the widow of the deceased Ex Sepoy P.Palani, namely, the 5th respondent, which was promptly granted by the respondents-1 to 4 in favour of the 5th respondent. We do not find any substance to interfere with the said order of payment of Family Pension in favour of

the 5th respondent. The said grant of Family Pension in favour of the 5th respondent was lawful in favour of the widow of the deceased Sepoy P.Palani. The benefit of Family Pension cannot be divided as the said Family Pension is not divisible among widows and the second wife.

21. In the said circumstances, the claim of the applicant for the division of Family Pension and the death benefits of Ex Sepoy P.Palani cannot be ordered and be paid to the applicant. Accordingly, both the points are decided against the applicant.

22. **Point No.3:** In view of our discussions held in the above points, the applicant is not entitled for the relief towards the division of Family Pension with the 5th respondent on the death of Ex Sepoy P.Palani. The application seeking for division of other death benefits is also not sustainable. Accordingly, the application is dismissed. No order as to costs.

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

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

08.06.2015
(True copy)

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

Internet : Yes/No
Internet : Yes/No

To:

1. The Defence Secretary
Ministry of Defence
South Block, New Delhi-110 011.
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Counsel for applicant.
7. Mr. V.Kadhirvelu, CGSC
Counsel for respondents-1 to 4
8. M/s. S.Rajesh & G.Ambika
For respondent No.5
9. OIC, Legal Cell,
ATNK & K Area, Chennai.
10. Library, AFT, Chennai.

HON'BLE JUSTICE V. PERIYA KARUPPIAH
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Dt: 08.06.2015