

**ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI**

OA -01/2022

NO.13960710 EX Hav (Hony Nb Sub)
Hira Nath Das
S/O, Surendra Nath Das
Village -Mahut Gaon (Rajanakhat Goan)
PO Bokolai District -Golaghat, Assam PIN 785625

... Applicant

By legal practitioners for Applicant
A.R.Tahbilkdar

- Versus -

1.The Union of India
Represented by the Secretary
Ministry of Defence
Sena Bhawan, New Delhi-11

2.Army Medical Corps Records (Pen)
PIN- 900473 C/O 56 APO

3.Additional Directorate General,
Personnel Services, PS-4(d)
Adjutant General's Branch
IHQ of MoD (Army)DHQ, PO- New Delhi.

4.The Principal Controller of Defence
Accounts (Pension), Allahabad, Uttar Pradesh
PIN 211014 Uttar Pradesh.

... Respondents
By legal practitioner for Respondents
P.K.Garodia, CGSC

CORUM:**HON'BLE MR. JUSTICE K. HARILAL, MEMBER (J)****HON'BLE AIR MSHL BALAKRISHNAN SURESH, MEMBER (A)****ORDER**
04.04.2024**(K.Harilal, J)**

This Original Application has been filed assailing the impugned order Annexure-F issued by the second respondent, rejecting the applicant's prayer for endorsement of family pension in favour of his second wife Smt.Nabanita Das on the ground that re-marriage with Smt.Nabanita Das was before his divorce from first wife Smt.Padma Rani Das. The applicant has prayed mainly for an order directing the respondents to endorse family pension in favour of his second wife Smt.Nabanita Das, after setting aside Annexure-F order passed by the second respondent.

2. The applicant, No.13960710X Ex-Hav (Hony Nb Sub) Hira Nath Das, has been given service pension from 01.12.2008, after retiring from 24 years of meritorious Army service. In addition to that, he has been granted disability pension for life for his disability, which has been assessed at 70%. He married one Smt. Padma Rani Das on 6th March, 1991 and accordingly, Part-II Order was published vide 174 MH Part II No.33/131/1991. But, soon

after the marriage, the said Padma Rani Das deserted him. The marriage could not even be consummated. She did not return in spite of his best efforts. After some time, by the end of 1992, Padma Rani Das entered into a bigamous marriage with one Naruttam Das of Golaghat and she has two children in that marriage. After the re-marriage of his first wife, he, with due permission of the village panchayat, entered into marriage with Smt.Nabanita Das on 3rd March, 1995, following the Hindu rites and rituals. The village panchayat has issued a certificate in that respect and that was submitted to his Coy Commander with which he was attached at that time and he forwarded the same to AMC Records. On receipt of the certificate issued by the village panchayat regarding the said second marriage, his marriage with Nabanita Das was accepted by publishing Annexure-A Part-II Order vide 158 BH Do II 0/033/95 dated 30.04.1995 by the concerned authority and accordingly, the name of his Next of Kin for receiving family pension was changed to Smt.Nabanita Das and for all purposes concerning service benefits. He has two children with his wife Nabanita Das, a son Nabagot Das and a daughter Rani Das, born on 14.12.1995 and 30.12.1999 respectively. In order to alleviate future complications regarding his marital status, on the advice given by Army Medical Corps Record Office vide letter dated 23.02.2000, he instituted M.Title Suit No.6/2000 for a decree of

divorce from Smt. Padma Rani Das and the same was decreed *ex-parte* vide order dated 16.06.2000. Subsequently, RMO, KRC vide letter dated 26.06.2000 forwarded a copy of the decree of divorce to AMC Records, Lucknow and thereafter, on receipt of the said decree of divorce, the casualty was promulgated vide KRC, Ranikhet Part II Order No. 06/001/2000 dated 06-07-2000. Subsequently, KRC, Ranikhet published casualty regarding marriage of the applicant with Smti Nabanita Das vide Part -II Order No. 07/01/2000 dated 07-08-2000 (Annexure-C). He was discharged from service on 01.12.2008 by the order of the Commandant, AMC Centre & School, Lucknow. Since the date of his discharge, he has been receiving his pension and other service benefits. In the discharge certificate, under the column family particulars, the name of Nabanita Das has been recorded as the wife of the applicant. Though the name of Nabanita Das has been recorded in all the documents, including the discharge book, to his shock and surprise, her name has not been endorsed in the Pension Payment Order by the authority concerned. He submitted an application along with all necessary documents to the Record Officer, AMC Records, Lucknow through Zila Sainik Welfare Office, Golaghat for endorsement of the name of his wife Nabanita Das in the Pension Payment Order. While so, the Senior Record Officer, Army Medical Corps Record Office passed Annexure-F order

rejecting the said request for the endorsement of family pension in favour of his wife Nabanita Das in the Pension Payment Order, on the ground that he re-married Nabanita Das on 3rd March, 1995, without divorcing his first wife Smt. Padma Rani Das, whom he divorced on 16-06-2000 and as such, his second marriage is null and void. In the above circumstances, he was left with no remedy other than approaching this Tribunal.

3. In the Affidavit-in-Opposition, the respondents raised various contentions to justify the rejection of the applicant's claim for endorsement of the name of his second wife Nabanita Das in the pension records. They admitted the tenure of service rendered by the applicant and the receipt of service pension by him. The respondents further admitted that immediately after the first marriage of the applicant with Padma Rani Das, Part-II Order was published to that effect. While so, Part-II Order in respect of the applicant's first marriage was cancelled vide 174 Military Hospital Part-II Order No.03.10.1992. The applicant again married Nabanita Das on 3rd March, 1995 and reported the said fact to the Army authorities concerned and consequently, Part-II Order in respect of his marriage with Nabanita Das was also published vide Annexure-A Part-II Order dated 30.04.1995. Thereafter, Army Medical Corps Record Office examined the casualty in

detail and rejected Part-II Order in respect of the applicant's second marriage with Nabanita Das stating that he had already married Smt. Padma Rani Das. In the meantime, the applicant was posted to Kumaon Regimental Centre, Ranikhet, with effect from 31.01.1998. The Kumaon Regimental Centre was directed to investigate the case of the applicant and take appropriate action. The Kumaon Regimental Centre had again approached 174 Military Hospital to know under what circumstances Part-II Order in respect of the marriage of Padma Rani Das was published and subsequently cancelled, and 174 Military Hospital intimated that marriage of the individual was cancelled as date of birth of the first wife Padma Rani Das was not mentioned in declaration certificate of marriage submitted by the applicant. The applicant had also given explanation regarding both his marriages and the same was forwarded to Army Medical Corps Record Office. Thereafter, the Army Medical Corps Record Office directed the Kumaon Regimental Centre to direct the applicant to get divorce from Smt. Padma Rani Das by a divorce decree granted by the competent Court of Law and forward the same to the Army Medical Corps Record Office along with Part-II Order vide Annexure-4 letter. Further, Kumaon Regimental Centre was directed to publish Part-II Order afresh in respect of the second marriage with Nabanita Das and forward the same along with all the connected documents/

nomination forms/ photo with spouse to Army Medical Corps at the earliest. It was further reminded that Part-II Order in respect of second marriage with Nabanita Das be published after publication of divorce casualty only. Thereafter, the applicant obtained and submitted the decree of divorce dated 16.06.2000 granted by the Court of District and Sessions Judge, Golaghat. As per the divorce decree, the applicant divorced Smt.Padma Rani Das (1st wife) on 16.06.2000. Subsequently, Kumaon Regimental Centre, Ranikhet published Part-II Order No.06/001/2000 dated 06.07.2000 in respect of divorce from first wife and later published Part-II Order No. 07/01/2000 dated 07-08-2000 in respect of the second marriage and forwarded the same to Army Medical Corps Record Office along with fresh declaration certificate. It is also stated that after re-marriage, the couple was blessed with two children Nabagot Das and Rani Das and their dates of birth are 14.12.1995 and 30.12.1999 respectively. It is further admitted that after a gap of 13 years, an application has been received from the applicant for endorsement of the name of second wife Nabanita Das in PPO as wife to receive family pension after his death. But, on scrutiny of service documents, it was found that he had re-married Smt.Nabanita Das on 03 March, 1995 without divorcing the first wife Smt.Padma Rani Das by a decree granting divorce passed by the Court. But, decree granting divorce from first wife Smt. Padma

Rani Das was passed on 16-06-2000 only. Since the divorce decree has been obtained after the second marriage with Nabanita Das, the second marriage is null and void as per the Hindu Marriage Act, 1955. In short, since the second marriage is illegal, no action can be taken for endorsement of family pension in favour of second wife Nabanita Das and the said fact was informed to the applicant by Annexure-F.

4. Heard Mr.A.R.Tahbildar, learned counsel appearing for the applicant and Mr.P.K.Garodia, learned Central Government Standing Counsel appearing for the respondents.

5. The crux of the arguments advanced by the learned counsel appearing for the applicant is as follows:

5.1. It is not disputed that the applicant's first marriage with Smt.Padma Rani Das was endorsed in the Army records by the publication of Part-II Order and subsequently, the said Part-II Order had been cancelled by the respondents themselves, whatever be the reason, and they removed all endorsements in respect of the first marriage with Smt.Padma Rani Das from all Army records. So, at present, Padma Rani Das is not the wife of the applicant as per Army records, and none other than his second wife Nabanita Das has come forward claiming that she is the wife of the

applicant. Similarly, the respondents themselves have admitted that the divorce decree was obtained in compliance with the direction of the Army Medical Corps Record Office, Lucknow, by Annexure-4 letter to Kumaon Regimental Centre. But, when he obtained the decree of divorce and produced it before the authorities in compliance with the said direction, the Army Medical Corps Records has rejected it on a mere technical reason, in spite of the fact that the Part-II Order in respect of the second marriage had already been published and all the endorsements in respect of the second marriage were made in all the Army records except the Pension Payment Order. Therefore, there is no reason for not making endorsement in Pension Payment Order only.

6. *Per contra*, the learned Central Government Standing Counsel appearing for the respondents relied on the provisions of the Hindu Marriage Act, 1955 and contended that since the second marriage was held when the first marriage was in force legally, the second marriage was null and void. Therefore, this Tribunal cannot find fault with the Army Medical Corps Records for rejecting the applicant's claim for endorsement of his second wife's name in his pension payment records.

7. In view of the submissions at the Bar, the broad question to be considered is whether the Army Medical Corps Records is justified in rejecting the applicant's claim for endorsing the name of his second wife Nabanita Das in family pension records of the applicant on the ground that his marriage with Nabanita Das is null and void, in view of the admitted facts and sequence of events that occurred after the said marriage?

8. The facts admitted by the respondents which are germane for answering the aforesaid question are as follows:

8.1 It is admitted by the respondents that Part-II Order had been published in respect of applicant's first marriage with Padma Rani Das and thereafter, the said Part-II Order was cancelled and all the endorsements of her name as wife of the applicant had been removed from all the service records of the applicant, including family pension payment documents. In short, his first wife Padma Rani Das has already been removed from the marital status as well as NOK as the wife of the applicant. Going by the sequence of events, we find that immediately after the desertion of Padma Rani Das and subsequent re-marriage with another person, the applicant obtained a divorce from her in accordance with customs prevailing in the community, which was approved and accepted by village panchayat, and

thereafter he re-married Nabanita Das. Thereafter, he informed all the aforesaid events with certificate issued by the panchayat to the Army Medical Corps Records and all the steps for publishing Annexure-A Part-II Order in respect of second wife Nabanita Das and endorsing her name in the Army records have been taken by the respondents on the basis of the request submitted by the applicant. In fact, the applicant has not suppressed anything in respect of his first and second marriages. The name of the second wife Nabanita Das was also endorsed in all Army records and Annexure-A Part-II Order was published on the request of the applicant, though it was not accepted by the Army Medical Corps Records. At present, Padma Rani Das is not his wife as per Army records. More importantly, in the Affidavit-in-Opposition, in Paragraph 4, in Page No.5 the Army Medical Corps Records Office itself admitted that they sent Annexure-4 letter dated 23.02.2000 to the Kumaon Regimental Centre directing the applicant to get a decree of divorce from a Court of Law dissolving the first marriage with Padma Rani Das. Further, Kumaon Regimental Centre was directed to publish Part-II Order regarding the second marriage with Nabanita Das and on receipt of divorce decree, forward all connected documents/nomination forms/ photo with spouse to the Office of Army Medical Corps Record Office at the earliest. The Kumaon Regimental Centre was also reminded that Part-

II Order of second marriage would be published after publication of divorce casualty only. Thus, in compliance with the direction of Army Medical Corps, Kumaon Regimental Centre has issued another Part-II Order in respect of marriage to second wife Nabanita Das vide Part-II Order No.07/01/2000 dated 07.08.2000.

9. The aforesaid admitted facts would show that after knowing fully well that the applicant's first marriage was not dissolved by a decree of divorce, divorce was effected in a customary manner, the village panchayat has issued a certificate to that effect and Annexure-A first Part-II order dated 30.04.1995 in respect of second wife Nabanita Das has already been published, the Army Medical Corps Records vide Annexure-4 dated 23.02.2000 directed the applicant to obtain divorce decree from court, and Kumaon Regimental Centre was directed to publish another Part-II Order in respect of the second wife Nabanita Das. Thereafter, in compliance with the direction of the Army Medical Corps vide Annexure-4 dated 23.02.2000, Kumaon Regimental Centre had issued another Part-II Order dated 06.07.2000, promulgating the divorce on receipt of divorce decree of first marriage granted by the competent Court of Law.

10. It is surprising that thereafter the Army Medical Corps Records has not accepted the aforesaid proceedings, which culminated in second Part-II Order dated 07.08.2000 for the reasons well known to them before directing the applicant to get a divorce decree from a Court of Law. However, pursuant to Annexure-4 direction issued by the Army Medical Corps Records, the applicant obtained a divorce decree in the year 2000 and produced the same. But the Army Medical Corps Records Office rejected the same stating that the decree of divorce in respect of first marriage was obtained after the second marriage. It is evidently clear from Annexure-4 dated 23.02.2000 that the said divorce decree has been obtained in compliance with the direction of the Army Medical Corps which rejected the same. Since the direction vide Annexure-4 dated 23.02.2000 was issued after knowing fully well all the sequence of events from 1995, the Army Medical Corps Records is not justified in rejecting the same, whatever be the reason, more particularly, on a fresh and different reasoning.

11. The Army Medical Corps Records ought to have remembered that Part-II Order No.33/131/91 of the first wife Padma Rani Das had already been cancelled vide 174 MH Part -II Order dated 03.10.1992 at the time when the applicant submitted the divorce decree. We are of the firm opinion

that Army Medical Corps Records is estopped from rejecting the divorce decree and Part-II Order dated 07.08.2000, and not endorsing the name of the second wife in Pension Payment Order on a fresh and different reasoning after the production of divorce decree granted by the Court of Law, in compliance with their own direction. In short, on 23.2.2000, when they directed the applicant to obtain divorce decree, they were fully aware of the fact that the second marriage was solemnized in accordance with customary rites, without obtaining a divorce decree from a Court of Law. So, we conclude that the Army Medical Corps Records is not justified in rejecting the divorce decree granted by the competent Court in respect of the first marriage of the applicant. They ought to have accepted the same, for the interest of equity and justice, particularly when they themselves cancelled the Part-II Order in respect of first marriage; and none other than second wife Nabanita Das has come forward with a claim of marital status with the applicant so far.

12. More importantly, the second marriage was solemnized on 3rd March, 1995 and two children by names Nabagot Das and Rani Das were born out of the applicant's wedlock with the second wife Nabanita Das, on 14th December, 1995 and 30th December, 1999 respectively. Now, they are aged

28 years and 24 years respectively. The very long cohabitation of the applicant with the second wife for about three decades and the procreation of two children now aged 28 and 24 would give rise to a presumption that the second wife Nabanita Das is the wife of the applicant, particularly when none other than Nabanita Das, including the first wife Padma Rani Das, has come forward with the claim that she is the wife of the applicant and she is entitled to get family pension. Therefore, the respondents ought to have endorsed the name of Nabanita Das as the wife of the applicant in family pension records and all concerned records for the interest of equity and justice.

13. The above view is supported by the judgment of the Supreme Court in **Civil Appeal No.5262 of 2023 (Smt.Shiramabai W/o Pundalik Bhave & others v. The Captain Record Officer)**. In the said decision, the Supreme Court has held as follows:

"14. It is no longer res integra that if a man and woman cohabit as husband and wife for a long duration, one can draw a presumption in their favour that they were living together as a consequence of a valid marriage. This presumption can be drawn under Section 114 of the Evidence Act that states as follows:

"114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events,

human conduct and public and private business, in their relation to the facts of the particular case."

15. In this above context, we may refer to *Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy*²⁷, where the Privy Council observed thus:

".....where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage."

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"The parties lived together for twenty years in the same house, and eight children were born to them. The husband during his life recognized, by affectionate provisions, his wife and children. The evidence of the Registrar of the District shows that for a long course of years the parties were recognized as married citizens, and even the family functions and ceremonies, such as, in particular, the reception of the relations and other guests in the family house by Don Andris and Balahamy as host and hostess—all such functions were conducted on the footing alone that they were man and wife. No evidence whatsoever is afforded of repudiation of this relation by husband or wife or anybody."

16. In *Mohabbat Ali Khan v. Muhammad Ibrahim Khan*²⁸, it was again observed by the Privy Council that:

".... The law presumes in favour of marriage and against concubinage when a man and a woman have cohabited continuously for a number of years....."

17. Similarly, in *Badri Prasad v. Dy. Director of Consolidation*²⁹, this Court held as follows:

"..... A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy....."

18. In *S.P.S. Balasubramanyam v. Suruttayan alias Andali Padayachi*³⁰, this Court held as under:

"4. What has been settled by this Court is that if a man and woman live together for long years as husband and wife then a presumption arises in law of legality of marriage existing between the two. But the presumption is rebuttable (see *Gokal Chand v. Parvin Kumari*³¹).

19. It is true that there would be a presumption in favour of the wedlock if the partners lived together for a long spell as husband and wife, but, the said presumption is rebuttable though heavy onus is placed on the one who seeks to deprive the relationship of its legal origin to prove that no marriage had taken place (refer : *Tulsa v. Durghatiya*³²).

20. A similar view has been taken by this Court in *Madan Mohan Singh v. Rajni Kant*, *Indra Sarma v. V.K.V. Sarma (supra)* and *Dhannulal v. Ganeshram*.

21. In the case of *Gokal Chand v. Parvin Kumari alias Usha Rani (supra)* this Court observed thus:

".....Continuous cohabitation of man and woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the court cannot ignore them."

22. In *Kattukandi Edathil Valsan's Case (supra)*, citing the abovesaid decisions and relying on Section 114 of the Evidence Act, this Court held in the facts of the said case that there was a presumption of the marriage between the parents of the plaintiffs on the ground of their long cohabitation status, entitling their offspring to claim their share in the suit schedule property.

23. It can be discerned from the aforesaid line of decisions that the law infers a presumption in favour of a marriage when a man and woman have continuously cohabited for a long spell. No doubt, the said presumption is rebuttable and can be rebutted by leading unimpeachable evidence. When there is any circumstance that weakens such a presumption, courts ought not to ignore the same. The burden lies heavily on the party who seeks to question the cohabitation and to deprive the relationship of a legal sanctity.

24. In the instant case, if the period upto the year 1990 was to be excluded as the marriage between Late Subedar Bhave and Anusuya had got dissolved only on 15th November, 1990, fact remains that even thereafter, the deceased had continued to cohabit with the appellant No. 1 for eleven long years, till his demise in the year 2001. The appellant No. 1 was the mother of two children born from the relationship with the deceased, namely, appellants Nos. 2 and 3. Appellants No. 2 and 3 have been held entitled to the estate of the deceased by virtue of the order passed by the High Court on the Review application moved by them. In the above background, a presumption ought to have been drawn in favour of the validity of the marriage between the deceased and the appellant No. 1, more so, when during his life time, the deceased had approached the respondent authorities for seeking deletion of the name of his previous wife - Anusuya from his service record and for endorsement of the name of the appellant No.1 therein, which was duly acted upon by the respondents vide letter dated 05th July, 1999. It is also not in dispute that the ex-wife did not claim any pension from the respondents on the demise of Subedar Bhave."

It is well discernible from the aforesaid legal proposition laid down by the Supreme Court that cohabitation of a man and woman as husband and wife for a long period and procreation of children from the said long cohabitation would give rise to a legal presumption that they are husband and wife. It is true that the aforesaid presumption is a rebuttable presumption only. It follows that unless and until the said presumption is rebutted, the


cohabitation of a man and woman under the same roof for a long period and procreation of children would be considered as a married life as husband and wife.

14. In the above analysis, we find that the applicant is entitled to get his second wife's name Nabanita Das endorsed in all family pension records, including PPO and connected documents and thereafter, she is entitled to get family pension.

15. In the result, Annexure-F Order is set aside and respondents 2 and 3 are directed to endorse the name of Nabanita Das in all service records, particularly family pension records as the wife of the applicant at the earliest, at any rate, within three months from the date of receipt of a copy of this Order. The Original Application is allowed accordingly.

16. No order as to costs.


(AIR MSHL BALAKRISHNAN SURESH)
MEMBER (A)


(JUSTICE K. HARILAL)
MEMBER (J)

Sha/mc