

**A ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI**

**TA- 03/2019
(AOO TS-50/2018)**

Smti Hela Rani Das
W/O Lt Subud Das
Ex Dep No. 13954983K
Vill Monacherra Basti
PO Monacherra Dist. Hailakandi (Assam)
Pin 788164.

... Applicant

By legal practitioners for Applicant
AHMR Choudhury

- Versus -

1. The Union of India
Represented by the Secretary
Ministry of Defence, Govt of India
Department of Ex Servicemen
Welfare 5-A South Block,
New Delhi-110011,

2. Sena Chikitsa Corps Abhilekh Karyalaya ,
Army Medical Corps Record Office,
Pune, PIN 900 450 C/O 56 APO

3. The Secretary, Zila Sainik Welfare Office,
Cachar, Silchar (Assam) PIN -788001.

4. The Officer in charge, Zila Sainik Welfare Office,
Hailakandi (DC Office Complex) Dist. Hailakandi (Assam)
PIN 788151.

... Respondents

By legal practitioner for Respondents
Dipanjali Bora, 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 TA was originally filed before the Court of Civil Judge, Hailakandi as Title Suit No.50/2018 and subsequently transferred to this Tribunal by the order passed by the Civil and Assistant Sessions Judge, Hailakandi. On receipt of the TS, this Tribunal registered it as TA No.03/2019 and proceeded further. Today, this TA is posted for hearing and disposal and we heard it finally on merit and disposed of accordingly as given below.

2. According to the Applicant, she is the widow of deceased Subud Das, who was an Ex-Sepoy bearing No.13954983K. She was married to Subud Das as per the rites and ceremonies provided under Hindu Marriage Act 1955 on 18th Falgun 1380 B.S. After marriage, she went to her matrimonial house of her husband at Village Pratappur, Dist. Cachar (Assam). Subsequently, they were blessed with a male child on 9th Falgun 1383 B.S. Thereafter, the Applicant and the child were left by her husband in her parental house and he went to his place of posting.

Unfortunately, the said child died due to ailments after 3 years of his birth in the residence of her parents. After the death of the child, her husband neglected her and refused to pay maintenance allowance and thereby the marital relationship got strained. Consequently, she has filed MR case No.57 of 1991 u/s 125 Cr.P.C. claiming monthly maintenance allowance in the court of Chief Judicial Magistrate, Hailakandi (Assam) and she was granted monthly maintenance by the said court. Thereafter, the order was communicated to the Commandant, HQ, Eastern Command, Fort William, Calcutta-21. Later, Sena Chikitsa Corps Abhilekh, Army Medical Corps Records, Lucknow-2 granted monthly maintenance allowance @ Rs.1073/- per month and the same was continued till the discharge of her husband from service on 1st July 2000. In the meantime, her husband instituted T.S.(D) No.02/1993 before the competent court seeking a decree granting divorce from the Applicant u/s 13 of Hindu Marriage Act 1955. But, the learned District Judge, Hailakandi by order dated 24.02.1994 dismissed the said suit. Thus, the marital relationship with Subud Das has not been terminated by decree of divorce under the Hindu Marriage Act and her marital status as lawfully married wife of Subud Das under Hindu Marriage Act 1955 had been subsisting till the death of her husband on 05.07.2008. But, subsequently she came to know that Subud Das, during the continuation of his matrimonial life with her has entered into a second marriage with

one Mona Rani Das D/o Dashu Ram Das of Village Nizvernarpur, P.S. Lala, Dist. Hailakandi, Assam. But it appears from the information furnished by 2nd Respondent/2nd Defendant vide letter No.13954983K/Pen/FP/2018 dated 24th July 2018 in reply to notice u/s 80 CPC sent by the Applicant that as per the Army records, Subud Das was married to Shila Das d/o Shri Debi Prasad Das and family pension was jointly notified in her favour. In this letter, it was also stated that the name of the Applicant as wife of Subud Das was not found recorded and the eligibility for grant of family pension to the aforesaid wife Shila Das as next of kin (NOK) was established as per records available in-service documents of the deceased pensioner. But the full address of Shila Das, the alleged wife of the deceased, was not mentioned in the letter. The said individual is unknown to the Applicant. So, the said woman could not be made as a party in this suit, though she is a necessary party. The Respondent No.2 ought to have given details of the said woman and she will be impleaded in the suit on receipt of the full address. Subud Das died on 05.07.2008 and as per pension rules and regulations, the Applicant is entitled to get family pension as his lawfully married wife and the second marriage is null and void as the same was effected during the continuation of the first marriage with her. The Applicant is entitled to get family pension from the date of death of her husband Subud Das as she is the lawfully married wife of the deceased

pensioner. Due to the ill-will prevailing against her during the time of retirement, he did not furnish her name as his wife and he furnished the name of another woman Shila Das for getting family pension in the event of his death in contravention of Hindu Marriage Act 1955. On several occasions, the Applicant applied for family pension. However, by the letter dated 29th June 2017, AMC Record Office intimated the Applicant as under: -

“On scrutiny of available service documents in respect of No.13954983 K Ex-Sep Late Subud Das, it is found that your name (Smt. Hela Rani Das) as wife is not found recorded therein. The eligibility for grant of family pension to the NOK is established as per records available in-service documents of the deceased pensioner”.

Actually, she is the widow of deceased Subud Das as she is the legally married wife and the marriage was in force till his death on 05.07.2008. With the aforesaid submissions, the Applicant prayed for the following relief: -

“(i) A decree may be passed declaring that the marital relationship between the plaintiff and No.13954983K Ex-Sep Subud Das was subsisting till his death on 05.07.2008 according to Hindu Marriage Act 1955 and the plaintiff being the legitimate widow of the deceased Subud Das is entitled

to family pension from the date of death of No.13954983K Ex Sep Subud Das and the defendants are to rectify the AMC Records accordingly;

- (ii) A decree may be passed declaring that the family pension granted to Smt. Shila Das D/o Shri. Debi Prasad Das against No.13954983K Ex-Sep Late Subud Das as widow of the deceased as family pensioner shall be null and void;*
- (iii) A decree may be passed for permanent/temporary injunction against the defendants not to make payment of family pension to Smt. Shila Das, any more as widow of the deceased No.13954983K Ex-Sep Subud Das;*
- (iv) A decree may be passed for costs of the suit; and*
- (v) Any other relief or reliefs the plaintiff is entitled to as deem fit and proper in the interest of justice and equity."*

3. In the affidavit in opposition filed by the Respondents 1 to 4, they have raised various contentions to justify the grant of family pension to Shila Das as lawfully married wife of the deceased pensioner Subud Das. As per the service records maintained by the AMC Records, the name of Shila Das has been recorded in the Kindred Roll portion of the Annexure A-1 Sheet Roll of Subud Das as his wife. They admitted that the deceased soldier Subud Das had been receiving pension till his death. As per the service records maintained with the AMC Records, the deceased soldier No.13954983K Ex Sepoy (late) Subud Das was

married to Smt. Shila Das on 10 Feb 1989 as per Hindu rites and ceremonies under the authority of Part II order No.54/8/90 passed by MH Jabalpur. He had willingly nominated his wife Smt. Shila Das for death-cum-retirement-gratuity duly authenticated by himself and countersigned by his Commanding Officer and hence the same was confirmed and the same cannot be cancelled /denied. A child named Sangeeta Das was also born on 14 Sep 1999 out of the said wedlock between Subud Das and Shila Das. Copy of Part II Order is produced as Annexure A - 4. According to the Respondents, in any of the Army records, the Applicant's name has not been recorded as wife of the deceased pensioner Subud Das. Therefore, she cannot be considered as wife of the deceased pensioner. It follows that she is not entitled to get family pension as she is not the next of kin. On the other hand, Shila Das is entitled to get family pension as lawfully married wife of the deceased pensioner Subud Das as she is duly nominated as his next of kin. Therefore, there is no reason to make a declaration that the marriage between the deceased pensioner Subud Das and Shila Das is null and void.

4. Heard the learned Counsel for the Applicant and the learned Standing Counsel appearing for the Respondents.

5. The learned Counsel appearing for the Applicant advanced arguments focusing on the point that the Applicant is the lawfully married wife of the deceased pensioner Subud Das under the Hindu Marriage Act 1955 and thereby she is entitled to get family pension after making a declaration that the marital relationship between the Applicant and Subud Das was subsisting and the family pension granted to Shila Das as widow of the deceased pensioner Subud Das is null and void.

6. *Per contra*, the learned Standing Counsel appearing for the Respondents vehemently opposed the claim for declarations as stated above. According to the learned Standing Counsel, the Applicant is totally a stranger to the deceased pensioner Subud Das as per Army Records and the Army records would show that Shila Das was the wife of deceased pensioner Subud Das. That apart, the deceased pensioner willingly and duly nominated his wife Shila Das as his next of kin to receive pension and Part II order had been published in respect of the marriage with Shila Das. Therefore, there is no reason to make a declaration that family pension granted to Shila Das as widow of the deceased pensioner is null and void.

7. In view of the rival pleadings, materials on record and submissions at the Bar, the points to be considered in this TA are –

- (1) Whether the Applicant is entitled to get a declaration as prayed for in relief No.(i) & (ii)?
- (2) Whether the Applicant is entitled to get family pension as the lawfully married wife of the deceased pensioner Subud Das?
- (3) Whether the Applicant is entitled to get a permanent injunction restraining the Respondents from granting family pension to Shila Das?
- (4) Whether the Applicant is entitled to get costs of the suit?

8. It is the specific case of the Applicant that she is the lawfully married wife of the deceased pensioner Subud Das under the Hindu Marriage Act 1955 and the marriage between the deceased pensioner and Shila Das was held when the marital relationship between the Applicant and deceased pensioner was in force. Therefore, the second marriage between the deceased pensioner and Shila Das was null and void u/s 11 of the Hindu Marriage Act 1955. Due to the ill-will towards her, Subud Das has purposely omitted to nominate her as his wife and Shila Das was wrongly nominated as his wife though her marriage with the deceased pensioner was null and void.

POINT NO.(1)

9. Coming to the first relief, we *prima facie* find that the original suit itself has been filed after an inordinate delay of 10 years from the date of death of the deceased pensioner Subud Das and 18 years after his retirement from Army service. Though it is averred that she authoritatively came to know about the second marriage from the reply to Section 80 CPC notice issued to the 2nd Respondent by her, we are unable to believe such an explanation because Subud Das died on 05.07.2008 and the original cause of action had arisen from the date of death of Subud Das. Certainly, she might have enquired about the possibility of getting family pension immediately after his death. The aforesaid delay of 10 years is fatal to the claim for declaration as prayed for on merits though this TA was admitted for hearing. A declaration in respect of the marital relationship can be made against the husband only while he was alive, unless there are sufficient documents to prove the legally valid marriage beyond doubt. The Applicant has not preferred such a declaratory suit even though he was discharged from service on 21.06.2000 and was alive till 05.07.2008.

10. Similarly, the second wife Shila Das has not been made a party as Respondent/Defendant in this TA as well as original TS alleging that her name was not available. However, it was incumbent upon the Applicant/Plaintiff to obtain her address and make her a party as

respondent/defendant in this TA/TS. So, no declaration can be made against Shila Das, a necessary party, who was not made a party as Respondent/Defendant in this TA/original TS.

11. That apart, we are of the view that it has come out from the affidavit in opposition filed by the Respondents that one Sangeetha Das is the daughter born out of the wedlock between Shila Das and Subud Das and her name is also recorded as daughter who is entitled to get family pension in the order under Pension Regulations. But, she is also not made a party in this TA and the same is also fatal to the claim for declaration.

12. In short, the Applicant is seeking a marital declaration against a dead person, who is unable to contest the suit and his second wife who is not a party in this transfer application. Thus, this TA is barred by the inordinate delay and non-joinder of necessary party.

13. Let us examine whether there are sufficient documents to prove the martial relationship between the Applicant and the deceased pensioner Subud Das. Surprisingly, no document has been produced to prove the lawful marriage between the Applicant and Subud Das. Such a declaration could be made only on the basis of a marriage certificate issued by the competent authority under the Hindu Marriage Act 1955 particularly when the husband is no more. Since no document has been

produced to prove the alleged lawful marriage between the Applicant and Subud Das under the Hindu Marriage Act, no declaration can be made to the effect that she is the wife of Subud Das and their marital status was subsisting till his death. Even though it is averred in this TA that Subud Das, when he was alive, filed a suit for dissolution of marriage against her before the competent court and got it dismissed, the judgment or decree has also not been produced before us even though it is not alone sufficient to make a declaration. The Applicant's name has not been recorded as wife of Subud Das, in the Army records, whereas the name Shila Das is recorded as wife as well as next of kin, of him. Thus, we find that the Applicant miserably failed to prove that she is the lawfully married wife of deceased Subud Das under Hindu Marriage Act 1955 and their marital status was subsisting as such till his death.

14. As regards the second relief, the said relief is sought against the alleged second wife Shila Das. But it is admitted in the TA itself that though she is a necessary party, she has not been made as a party as her particulars were not available to the Applicant. Whatever be the reason for non-availability of the particulars of the second wife, we are of the view that it was incumbent upon the Applicant to obtain the address and make her a party as a declaration is sought against an individual

who is alive. The absence of the second wife in this TA for declaration against her is fatal. No such declaration can be made in her absence particularly when she is alive. In the above analysis, reliefs No.(i) and (ii) will stand rejected. Thus, the 1st point is found against the Applicant.

POINT NO.(2)

15. As regards the second point, since the Applicant stands miserably failed to prove the marital relationship between the Applicant and Subud Das as husband and wife under the Hindu Marriage Act 1955 and her name has not been recorded anywhere in service records of Subud Das as his wife and the name of Shila Das is recorded as his wife as well as next of kin, she cannot claim family pension as the wife of deceased Subud Das. Hence, she is not entitled to get family pension and such a prayer is also rejected. The 2nd point is also found against the Applicant.

POINT NO.(3)

16. Coming to the third point, the Respondents have produced Annexures A-1 to A-4 to prove that as per the existing Army records, Shila Das is the wife of deceased Subud Das. The said marriage was accepted by the Army by publishing Part II order and thereafter, Subud Das has willingly nominated Shila Das as his next of kin to receive family pension. As per Army records, Shila Das stands duly nominated as next of kin to receive family pension by her husband Subud Das. Since the

Applicant has miserably failed to prove her lawful marriage with the deceased Subud Das under Hindu Marriage Act 1955, she is not entitled to get injunction against payment of family pension to Shila Das. Hence the Applicant is not entitled to get permanent injunction restraining the Respondents from effecting payment of family pension to Shila Das. As such, the 3rd point is also found against the Applicant.

POINT NO.(4)

17. For the reasons stated above, it follows that the Applicant is not entitled to get any costs.

18. In the above analysis, we find that the TA is devoid of merit and stands dismissed accordingly, so also the pending Misc. Application No.MA-38/2019.

19. No order as to costs.

sd/-

(AIR MSHL BALAKRISHNAN SURESH)
MEMBER (A)

sd/-

(JUSTICE K.HARILAL)
MEMBER (J)

adr/mc