

Form No. 4
{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

(SI. No. 25)

O.A. No. 10 of 2020 with M.A. No. 06 of 2020

Smt. Shyanda Rani Khatun

Applicant

By Legal Practitioner for the Applicant : Ms. Alakananda Chakrabarty, Advocate

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents : Shri B. Kumar, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>06.04.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Air Marshal Balakrishnan Suresh, Member (A)</u></p> <p>Heard Ms. Alakananda Chakrabarty, Ld. Counsel for the applicant, Shri B. Kumar, Ld. Counsel for the respondent Nos. 1 to 5 and Ms. Dipamoni Kalita, Ld. Counsel for the respondent No. 6.</p> <p>This application has been filed for condoning delay of 04 years, 09 months and 05 days in filing Original Application for the grant of family pension to the applicant claiming herself as 2nd wife of deceased soldier.</p> <p>It is submitted by the Ld. Counsel for the applicant that delay in filing the Original Application is not intentional, but for the reasons stated in the affidavit filed in support of delay condonation application.</p> <p>The Ld. Counsel for the respondents has vehemently opposed the prayer.</p> <p>Upon hearing submissions of Ld. Counsel of both sides we find that cause shown is sufficient. Accordingly, delay is condoned. Delay condonation application stands disposed of.</p> <p><u>O.A. No. 10 of 2020</u></p> <p>Heard Ms. Alakananda Chakrabarty, Ld. Counsel for the applicant, Shri B. Kumar, Ld. Counsel for the respondent Nos. 1 to 5 and Ms. Dipamoni Kalita, Ld. Counsel for the respondent No. 6.</p> <p>Original Application is allowed.</p> <p>For orders, see our order passed on separate sheets.</p> <p>Misc. Application(s), pending if any, shall be treated to have been disposed of</p> <p>(Air Marshal Balakrishnan Suresh) Member (A)</p> <p>(Justice Umesh Chandra Srivastava) Member (J)</p> <p>AKD/MC/-</p>

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

Original Application No 10 of 2020

Thursday, this the 6th day of April, 2023

"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)"
"Hon'ble Air Marshal Balakrishnan Suresh, Member (A)"

Smt. Shyanda Rani Khatun 2nd wife of Late Gnr MD Atowar Rahman
 R/O: Koraitari P.O: Fakiragram District: Kokrajhar (Assam), PIN -
 783345.

-----Applicant

Ld. Counsel for : **Shri Alakananda Chakrabarty, Advocate**
 the Applicant:

Versus

1. Union of India, Represented by the Secretary, Ministry of Defence, Sena Bhawan, New Delhi - 110011.
2. The Chief of the Army Staff, Indian Army, Integrated Head Quarters, Ministry of Defence (Army), L. Block, Church Road, New Delhi - 110011.
3. The Officer - In- Charge. The Artillery Records. Pin (Army) - 908802, C/o 56 APO.
4. The Zila Sainik Welfare Office, Kokrajhar (Assam).
5. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad, PIN - 211014.
6. Ajminara Begum, W/O -KuddusAlom R/O: Village Udmari P.O: Lakhiganj, P.S: Bilasipara, Dist: Dhubri, Assam

..... Respondents

Ld. Counsel for the Respondents : **Shri Shri B Kumar and**
Ms. Dipamoni Kalita,
Central Govt. Counsel.

ORDER**"Per Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)"**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- "a) To grant family pension and children allowances to the applicant of No: 14437599 Late Gnr Atowar Rahman of the Artillery.*
- b) to any other relief or reliefs to which the applicant is entitled to in law and in equity."*

2. Briefly stated facts of the case are that Ex Late Gnr Atowar Rahman was enrolled in the Indian Army on 05.03.2001 and he was invalided out from service on 30.08.2008 on medical ground. He was granted disability pension vide PPO dated 23.03.2009. He died on 23.07.2012 due to gun shot during riot in Kokrajhar District, Assam. He was married with Smt Ajminara Begum as per Muslim rites on 21.09.2006 and her name was recorded in service documents of deceased soldier. After death of Ex Late Gnr Atowar Rahman, Smt Shyanda Rani, alleged 2nd wife of deceased soldier applied for grant of family pension as 1st wife Smt Ajminara Begum of deceased soldier has divorced and re-married with Md Kuddus Alam. Her claim for grant of family pension was rejected by the respondents stating that her

name was not recorded in service documents of deceased soldier. Being aggrieved, the applicant has filed instant O.A. for grant of family pension.

3. Learned counsel for the applicant submitted that applicant is the 2nd wife of Ex Late Gnr Atowar Rahman. Ex Late Gnr Atowar Rahman was married to Ajminara Begum. She separated from deceased soldier and re-married to Kuddas Alam and settled down with him. There was no issue from his first wife. Ex Gnr Atowar Rahman re-married to Smt Shyanda Rani on 01.10.2009 before the Kaji and a baby boy was born out of their wedlock on 06.08.2010. At the time of his death, he left behind his 2nd wife i.e. the applicant, his minor son. Applicant applied for grant of family pension which was denied. She was asked to submit certain documents. Applicant submitted documents but the same were returned to the applicant with some observation and asked the applicant to resubmit the documents with necessary correction mentioned in said letter and informed that the claim of the family pension will be processed after receipt of corrected documents. The applicant submitted fresh documents as asked for by Record Officer for grant of family pension. Applicant is an unhealthy senior citizen and facing hardship for her livelihood due to non-grant of family pension. Learned counsel for the applicant submitted that applicant is legally wedded wife of the deceased soldier. He prayed that directions be issued to concerned authority for grant family pension to the applicant.

4. Per contra, learned counsel for Respondents submitted that Ex Gnr Atowar Rahman was enrolled in Army on 05.03.2001 and invalided out of service on 30.08.2008. He was granted disability pension vide PPO dated 23.03.2009. As per service record, he was married to Smt Ajminara Begum as per Muslim rites on 21.09.2006 and nominated her as next of kin. Ex Gnr Atowar Rahman died on 23.07.2012 due to gun shot during riot in Kokrajhan District Assam. After death of Ex Gnr Atowar Rahman, Smt Shyanda Rani, 2nd wife applied for grant of family pension as his 1st wife Smt Ajminara Begum has divorced and re-married with Kuddus Alam. Smt Shyanda Rani was informed that her name has not been recorded in service document of ex-serviceman. She was advised to submit certain documents for publication of re-marriage Part II Order and processing claim for grant of family pension to her. As per para 216 of Pension Regulations for the Army 1961 (Part -1), family pension is admissible to only a legally married widow. Ex Gnr Atowar Rahman during his life time solemnized second marriage with Smt Shyanda Rani without obtaining the decree of divorce from his first wife (Smt Ajminara Begum) from any court of law. Thus marriage of applicant with Ex Gnr Atowar Rahman is null and void in terms of Special Marriage Act 1954, Therefore, Smt Shyanda Rani is not a legally wedded wife of deceased soldier and she is not eligible for grant of family pension. Learned counsel for Respondents pleaded that instant O.A. has no substance and is liable to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the documents placed on record.
6. The question which needs to be answered is "whether the applicant being 2nd wife of deceased soldier is entitled for grant of family pension in terms of Muslim Law?
7. As per Regulation 66 of Pension Regulation for the Army 1961 (Part-I) as amended in 2008, definition of family has been defined as under:-

DEFINITION OF FAMILY

"66. Family for the purpose of Regulations in this Section shall consist of the following:-

- (i) Wife in the case of male service personnel or husband in the case of female service personnel lawfully married before or after retirement.*
- (ii) A judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.*
- (iii) Unmarried daughters/ unmarried sons (including those legally adopted widowed/ divorced daughters.*
- (iv) Parents who were wholly dependent on the service personnel when he was alive."*

8. Regulation 63 of Pension Regulation for the Army 1961 (Part-I) as amended in 2008, reads as under:-

(b) Ordinary Family Pension

"Para 63. Where Service personnel dies in the circumstances mentioned in the Category A of the Regulation 82 of these Regulations :-

- (i) Either while in service, provided he had been found fit after successful completion of the requisite training and medical examination for commission, or at the time of enrolment in the case of Personnel Below Officer Rank, or
- (ii) After release/retirement/discharge/invalidment with a pension of any kind under these regulations"

9. After hearing submissions of learned counsel of both sides the admitted factual position that has been emerging is as under:-

(i) Ex Gnr Atowar Rahman was enrolled in the Indian Army on 05.03.2001 and was invalided out of service on 30.08.2008. He was in receipt of disability pension. He died on 23.07.2012.

(ii) Ex Gnr Atowar Rahman was married to Smt Ajminara Begum on 21.10.2006 and her name was entered as wife in the service records of the Army.

(iii) Smt Ajminara Begum divorced Ex Gnr Atowar Rahman in the year 2007 and re-married with Kuddus Alam and settled down with him.

(iv) Ex Gnr Atowar Rahman remarried to Smt Shyanda Rani on 01.10.2009 after divorce from Smt Ajminara Begum, 1st wife and she has one son with the wedlock of Ex Gnr Atowar Rahman.

(v) Smt Shyanda Rani, 2nd wife of Ex Gnr Atowar Rahman has filed instant O.A. for grant of service pension after death of her husband and Smt Ajminara Begum, 1st wife is party as Respondent No. 6 in this case. She has not turned up to contest the case despite being served with notice.

10. Para 333 of Regulation for the Army, 1987 talks about plural marriage which for the sake of convince is reproduced below:-

"333. PLURAL Marriages.— (A)

The Special Marriage Act 1954 and Hindu Marriage Act 1955 lay down the rule of 'Monogamy' that is, neither party has a spouse living at the time of marriage, these Acts also provide for decrees, of nullity of marriage, restitution of conjugal rights, judicial separation and divorce and also orders for alimony, and custody of children. The Hindu Marriage Act applies to all Hindus, Budhists, Jains and Sikhs and also applies to all other persons (with certain exceptions), who are not Muslims, Christians, Parsis or Jews by religion. Christians, Parsis and Jews are also prohibited under their respective personal laws from contracting a plural marriage.

Thus no person who has solemnised or registered his/her marriage under the Special Marriage Act or who is a Christian, Parsi or Jew or to whom the Hindu Marriage Act 1955 applies, can now remarry during the life time of his or her, wife or husband. Sub-para (C) (a) to (c) below apply to such persons only. A Muslim or such other person to whom the Hindu Marriage Act does not apply 113 and whose personal law does not prohibit Polygamy or Polyandry can marry during the life time of his or her, wife or husband and sub-para (B) (a) to (h) below apply to such persons only.

(B) Plural Marriage by persons in whose case it is permissible: —

(a) No person subject to the Army Act except Gorkha personnel of Nepalese domicile can marry again within the life time of his wife without prior sanction of the Government, The circumstances under which such Gorkha personnel can contract a plural marriage are :— (i) When the wife suffers from incurable insanity (madness),

(ii) When there is no birth till ten years of marriage,

(iii) When the wife is paralysed and cannot move,

(iv) When the wife becomes blind of both the eyes.

(v) When the wife is suffering from an infectious incurable sexuallytransmitted disease.

(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 suchdesertion;

(ii) his wife has been medically certified as being insane;

(c) 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. Applications will state the law under which the subsisting marriage was solemnised, registered or performed and will include the following details where applicable :—

(i) Whether the previous wife will continue to live with the husband; (ii) if the previous wife does not propose to live with the husband, what maintenance allowance is proposed to be paid and in what manner, and

- (iii) name, age and sex of each child by previous marriage and maintenance allowance proposed for each in case any such child is to live in the custody of the mother. In all the cases, the applicant will render a certificate to the effect that he is not a Christian, Parsi or Jew by religion, that he had not solemnised or registered his previous marriage under the Special Marriage Act 1954 and that the Hindu Marriage Act 1955 is not applicable to him.
- (d) Applications will be forwarded through normal channels and each intermediate commander will endorse his specific recommendations. Such recommendations will be signed by the commander himself or be personally approved by him. Before making his recommendations a commander will satisfy himself that the reasons given for the proposed plural marriage are fully supported by adequate evidence.
- (e) An individual whose marriage is alleged to have been dissolved according to any customary or personal law but not by a judicial decree will report, immediately after the divorce, the full circumstances leading to and culminating in dissolution of the marriage together with a valid proof of the existence of the alleged custom or personal law. The existence and validity of the alleged custom or personal law, if considered necessary, will be got verified from civil authorities and if it is confirmed by the civil authorities action will be taken to publish casualty for the dissolution of the marriage. The individual thereafter will not be required to obtain sanction for contracting the second marriage.
- (f) An application which is not recommended by the Commanding Officer and an authority superior to him need not be sent to Army Headquarters, but may be rejected by the GOC-in-C of the Command concerned.
- (g) Cases where it is found that an individual has contracted plural marriage without obtaining prior Government sanction as required in clause (a) above will be dealt with as under :-

(i) Cases of officers will be reported through normal channels to Army Headquarters (AG/DV-2) with the recommendations as to whether ex- post-facto sanction should be obtained or administrative action should be taken against the individual.

(ii) Cases of JCOs and OR will be submitted to the GOC-inC Command who will decide whether ex-post-facto sanction should be obtained or administrative action should be taken against the individual. In cases, where it is decided that administrative action should be taken against the individual, his service will be terminated under orders of the competent, authority. When reporting cases to higher authorities, intermediate commanders will endorse their specific recommendations with reasons thereof. Here too recommendations will be signed by the Commanders themselves or be personally approved by them. Also, an opportunity to 'show cause' against the order of termination of service will always be given to the individual concerned.

(h) In no circumstances will disciplinary action by way of trial by Court Martial or Summary disposal be taken against an individual who is found to have contravened the provisions of clause (a) above. If, however, the individual is also found to have committed another offence connected with his act of contracting a plural marriage, disciplinary action for the connected offence may be taken and progressed in the normal manner.

“333(C) (a). An individual whose marriage is alleged to have been dissolved according to any recognized custom or special enactment under the provisions of Sec 20(2), read with Sec 3(a) of the Hindu Marriage Act, but not by a judicial decree will report immediately after the divorce, the full circumstances leading to and culminating in dissolutions of marriage together with a valid proof of the existence of the alleged recognized custom or special enactment. The existence and validity of the alleged custom or special enactment will be got verified from civil authorities and if it is confirmed by the civil authorities that the divorce is valid, action will

be taken to punish the casualty for the dissolution of the marriage. The individual thereafter will not be required to obtain sanction for contracting the second marriage.

333 (C)(b). A plural marriage solemnized, contracted or performed by any such person is null and void and may, on a petition presented to a Court of law by either thereof, be so declared by a decree of nullity. Not only is the plural marriage void but the offence of bigamy is also committed. This offence is, however, triable only on a complaint made to the civil authority by an aggrieved party. The punishment for the offence of bigamy is prescribed in section 494 and 495 of the Indian Penal Code.

333(C)(c). When it is found, on receipt of an complaint from any source whatsoever, that any such person has gone through a ceremony of plural marriage, no disciplinary action by way of trial by Court Martial or Summary disposal will be taken against him, but administrative action to terminate his service will be initiated and the case reported to higher authorities in the manner laid down in Sub Para (B) (g) above. In cases, where cognizance has been taken by civil court of competent jurisdiction the matter should be treated as sub judice and the decision of the Court awaited before taking any action. When a person has been convicted of the offence of bigamy or where his marriage has been declared void by a decree of court on grounds of plural marriage, action will be taken to terminate his service under ASS Section 19 read with Army Rule 14 or AA Section 20 read with Army Rule 17 as the case may be. No ex post fact sanction can be accorded as such marriages are contrary to the law of the land."

11. On reading the above ruling, it appears that Monogamy is the rule in Special Marriage Act and Hindu Marriage Act. The Hindu Marriage Act not only applies to Hindus but Buddhists, Jains and Sikhs. It also applies to all other persons (with certain exceptions), who are not Muslims, Christians, Parsis or Jews by religion. Christians,

Parsis and Jews are also prohibited under their respective personal laws from contracting a plural marriage. Thus, no person who has solemnised or registered his/her marriage under the Special Marriage Act or who is a Christian, Parsi or Jew or to whom the Hindu Marriage Act applies, can remarry during the life time of his or her wife or husband. **A Muslim or such other person to whom the Hindu Marriage Act does not apply and whose personal law does not prohibit Polygamy or Polyandry can marry during the life time of his or her, wife or husband and sub-para(B) (a) to (h) shall apply to such persons only.**

12. In the instant case Ex Gnr Atowar Rahman was married to Smt Ajminara Begum (1st wife) on 21.09.2006 and her name was recorded in service documents of ex-serviceman. Smt Ajminara Begum (1st wife) divorced Ex Gnr Atowar Rahman in the year 2007 as per customary law. Ex Gnr Atowar Rahman was discharged from service on 30.08.2008 on medical grounds in low medical category. He solemnized his 2nd marriage with Smt Shyanda Rani on 01.10.2009 after discharge from service. Ex Gnr Atowar Rahman being Muslim is governed by his personal law i.e. Muslim Law wherein a male Muslim is permitted to have four wives. Polygamy being permitted in case of muslims, 2nd marriage of Ex Gnr Atowar Rahman with the applicant is not a plural marriage. It is established that Ex Gnr Atowar Rahman

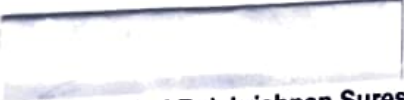
contracted second marriage with Smt Shyanda Rani on 01.10.2009 after retirement from Army, hence sanction from army authority is not required in terms of sub-para Para 333 of Regulation for the Army, Vol-1,1987. Further, Smt Ajminara Begum (1st wife) of Ex Gnr Atowar Rahman who is party in this case (Respondent No 6) has given an affidavit in the Court to the effect that she has divorced to Ex Gnr Atowar Rahman in the year 2007 as per customary law and re-married with Md. Kuddus Alam of Village Udmari, District- Dhubri and she is living happily and settled with her 2nd husband. She has also given affidavit that she has no objection if the Court grants family pension to Smt Shyanda Rani (2nd wife of Ex Gnr Atowar Rahman). There is no any other claimant for grant of family pension in this case. Applicant has also submitted copy of pariwar register and certain other documents which are sufficient to prove that she is legally wedded wife of Ex Gnr Atowar Rahman.

13. The succession certificate has also been issued certifying applicant and her children as heirs to the assets of the Ex Gnr Atowar Rahman. From the above it can be easily assumed that in the circumstances when first marriage of Ex Gnr Atowar Rahman has been dissolved and there is no other claimant for the family pension, applicant deserves the same being wife of the Ex Gnr Atowar Rahman. Thus application deserves to be allowed.

14. Accordingly, Original Application is allowed. Applicant is held

entitled to family pension from the next date of death of her husband Ex Gnr Atowar Rahman. However, due to law of limitations settled by the Hon'ble Supreme Court arrears of family pension will be restricted to three years prior to filing of the O.A. The date of filing of O.A. is 28.01.2020. Respondents are directed to grant family pension, including arrears to the applicant within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum.

15. No order as to costs.


(Air Marshal Balakrishnan Suresh) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 06 April, 2023
Ukt/-