

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

OA -27/2022

Smt Riva Gohain

..... Applicant
By legal practitioners for
Applicant.
AR Tahbildar

-Versus-

UOI & Others.

..... Respondents
By legal practitioner for
Respondents.
P Sharma

Date of hearing : 13.10.2023
Date of order : 13.10.2023

CORAM:

HON`BLE MR. JUSTICE SUDHIR MITTAL, MEMBER (J)
HON`BLE AIR MSHL BALAKRISHNANSURESH, MEMBER (A)

ORDER

(Sudhir Mittal, J)

The applicant Smt Riva Gohain has approached this Tribunal for grant of family pension alleging that she is the widow of Late Sepoy Indreswar Gohain. Thus, the rejection of her claim is not justified.

2. Undisputed facts of the case are that Late Sepoy Indreswar Gohain married Smt Prakhanti Gohain on 16.12.1983. She deserted Indreswar Gohain in the year 1984, whereafter, he solemnised marriage with the applicant on 02.10.1992 with the consent of the village community and in accordance with the customs of the village. Three children were subsequently born out of their wedlock. Sepoy Indreswar Gohain was discharged from service on 01.04.1994 with pension. In the year 2016, Smt Prakhanti Gohain applied for divorce under Section 13 of the Hindu

Marriage Act, 1955. The same was converted to a petition for divorce by mutual consent and divorce decree dated 16.09.2017 was granted. On 10.07.2018, Late Sepoy Indreswar Gohain and the applicant got their marriage registered before the Marriage Officer, Dibrugarh, Assam and certificate of marriage of even date was issued. Consequently, a request letter dated 12.02.2019 was submitted by the late husband of the applicant for publication of Part-II Order of marriage. The request for publication of Part-II orders of divorce was also submitted and the same was published on 25.03.2019. However, no Part-II Order regarding the marriage was published. Instead, the Records Office wrote to the Zila Sainik Welfare Office, Dibrugarh on 09.05.2019 requesting it to investigate the case of plural marriage. Vide letter dated 17.12.2021, the Records Office refused to publish the relevant Part-II Order on the ground of the 2nd marriage being illegal. Meanwhile, Indreswar Gohain died on 25.06.2021 and the Government issued 'Next of Kin Certificate' dated 29.07.2022 in favour of the applicant.

3. Learned counsel for the applicant has submitted that after issuance of marriage registration certificate dated 10.07.2018, the applicant became legally wedded wife of Sepoy Indreswar Gohain because by then the 1st marriage had been dissolved through a decree of divorce. Refusal to publish Part-II Order is not sustainable in law. Once a Part-II Order is published, the applicant automatically becomes entitled to grant of family pension and thus a direction to that effect be also issued.

4. Learned counsel for the respondents has submitted that the facts of the case clearly show that the marriage of the applicant was illegal as it had been solemnised during the currency of the 1st marriage of Indreswar Gohain. Thus, the applicant does not deserve any relief.

5. Hindu law ordains that the marriage solemnised during the currency of a subsisting marriage is void. Thus, at its inception, the marriage of the applicant solemnised on 02.10.1992 was non-existent. However,

subsequently the marriage was dissolved through the decree of divorce dated 16.09.2017. Thereafter, there was no legal bar on Indreswar Gohain to solemnise the 2nd marriage and he did so on 10.07.2018 in the Office of the Marriage Officer, Dibrugarh, Assam. Certificate of marriage of even date was issued and thus, the applicant became legally wedded wife. On the death of Indreswar Gohain, she was widowed and was entitled to grant of family pension as her late husband was a pensioner. Birth of children prior to lawful marriage is of no consequence so far as the publication of Part-II Order and grant of family pension are concerned. Thus, refusal to publish marriage Part-II Order by letter dated 17.12.2021 is not sustainable in law.

6. Accordingly, the letter dated 17.12.2021 is quashed.

7. The respondents are directed to publish necessary Part-II Order. The applicant shall simultaneously apply for grant of family pension and the same shall be considered by the competent authority keeping in view the decision hereinabove. The Part-II Order shall be published within 4 weeks from today. The applicant is at liberty to apply for grant of family pension simultaneously. An order thereupon shall be passed within 3 months from the date of filing of the application.

8. The OA is accordingly allowed.

9. At this stage, learned counsel for the respondents has made an oral request for grant of leave to appeal, which is rejected.

(Air Mshl Balakrishnan Suresh)
MEMBER (A)

(Justice Sudhir Mittal)
MEMBER (J)