(SEE RULE 102(1))

ARMED FORCES TRIBUNAL , KOLKATA BENCH

APPLICATION NO : O. A NO. 55/2014

ON THIS 9TH DAY OF MARCH, 2016

CORAM : HON'BLE JUSTICE N.K. AGARWAL , MEMBER (JUDICIAL)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER(ADMINISTRATIVE)

Smt Rekha Sarkar, Vill & P.O. Kastadanga
Dist Nadia, West Bengal - 741257

……Applicant

-VS-

1. Union of India, Service through the Secretary,
   Ministry of Defence, South Block, DHQ
   New Delhi – 110 001
2. The Chief of the Army Staff
   Through Adjutant General
   Integrated HQ of MOD (Army)
   South Block, DHQ PO
   New Delhi – 110 001
3. The Secretary,
   Department of Ex-Servicemen Welfare and Pension
   Ministry of Defence, South Block,
   New Delhi – 110 001
4. The Officer-in-Charge,
   ASC Records (South)
   Bangalore – 560 007
5. The Principal Controller of Defence Accounts (Pension)
   Draupadi Ghat,
   Allahabad – 211 014

…. …. Respondents.

For the Applicant : Mr. S.K. Choudhury, Advocate

For the respondents : Mr. Dipak Kumar Mukherjee, Advocate

O R D E R

PER JUSTICE N.K. AGARWAL, MEMBER (Judicial)

This application is filed by the applicant seeking for the grant of family pension on the service of her husband, Late Nk Birendra Chandra Sarkar after setting aside the impugned order passed by ASC Records (South) vide its letter No.13831604/LN/Legal Cell dated 12th May, 2014.

2. The case of the applicant is that Late Nk Birendra Chandra Sarkar, husband of Smt Rekha Sarkar was enrolled in ASC on 30th January 1969. On 6th February, 1975 the husband of the applicant married to Smt Sanchaya Sarkar (since deceased). Out of the wedlock they were blessed with four children, i.e. three sons and one daughter. The husband of the applicant retired from service on 31st January, 1986 and he was in receipt of service pension. Smt Sanchaya Sarkar, the wife of the applicant expired on 28th October, 1990 and after her death, Nk Birendra Chandra Sarkar married to one Rekha Dutta on 18th November, 1991. Out of the second wedlock they were blessed with one son in 1992. The Second marriage was registered with the Registrar General of Marriage, West Bengal at Barrackpore Sub Division on 23rd March, 2001. The applicant further contended in her application that in order to apportion

service benefits to the third son viz. Pankaj Sarkar, the date of marriage was wrongly mentioned as 18th November 1984 by the deceased soldier and the same was recorded in the marriage certificate. It is further stated in the application that apparently realizing the mistake and with a view to rectify the defect, Late Nk Birendra Chandra Sarkar affirmed an affidavit before the Ld. Judicial First Class Magistrate, Kalyani, Nadia on 19th April, 2011 wherein he had clearly stated that the correct date of his second marriage with Smt Rekha Sarkar was 18th November 1991. She further contended that the deceased pensioner submitted documents through the Zila Sainik Board, Nadia District for rectification of service records for entitlement of Family Pension in favour of Smt Rekha Sarkar to the ASC Records (South) vide Secretary Zila Sainik Board, Nadia District letter dated 31st May 2011. That the ASC Records (South) vide their letter dated 13 July, 2011 returned the documents forwarded by Secretary, Zila Sainik Board, Nadia District without taking any action. That on 5th February, 2014 Nk Birendra Chandra Sarkar expired at his residence at Kestodanga. The applicant further contended that Kastodanga-1 Gram Panchayat issued 'Legal Heirs Certificate' on 01 July 2014 wherein Late Sanchaya Sarkar, Smt Rekha Sarkar (the applicant), Shri Rajib Sarkar, Smt Anushree Kar, Shri Pankaj Sarkar and Shri Badal

Sarkar have been listed as legal heirs of Late Nk Birendra Chandra Sarkar, the deceased NCO. Shri Badal Sarkar, son of the applicant visited Zila Sainik Board, Nadia for assistance with regard to claim for family pension in April 2014, but the Zila Sainik Board expressed their inability to admit the claim. The applicant further contended that a legal notice seeking grant of family pension to Smt Rekha Sarkar was issued to OIC, ASC Records (South) on 1st May, 2014, but the same was rejected vide its letter dated 12-5-2014.

3. The Respondents have contested the application by filing affidavit in opposition wherein they have stated that the husband of the applicant married to Smt Sanchaya Sarkar on 8th February, 1975, which the applicant has **mentioned as 6th February, 1975.** The Respondents further contended that the husband of the applicant vide his petition dated nil had approached ASC Records (South) for recording of the name of the applicant in service records as his wife, stating that his first wife died in the year 1990. On which ASC Records (South) vide its letter dated 3rd January, 2000 had asked the husband of the applicant to forward the death certificate of his first wife and marriage certificate of his second wife. In response to that the husband of the applicant had submitted some documents along with an affidavit dated 21-5-2001 to

ASC Records (South) through Indian Ex-Services League (WB) (Kampa-Kanchrapara unit) vide their letter dated 6th August, 2000. The respondents further stated that in the said affidavit, the husband of the applicant did not mention the date of second marriage but he mentioned the birth occurrences of his sons, viz Pankaj Sarkar, born on 7th January, 1986 and Badal Sarkar, born on 25th August, 1992. The respondents further contended that as per para 10, (details of family) of supporting documents, the husband of the applicant had mentioned the name of his second wife, viz. Rekha Sarkar and his two sons, viz Pankaj and Badal. Thus, it is evident from the date of birth of the children born out of the second marriage that his marriage took place with the applicant during the life time of the first wife, which is a void marriage in accordance of Hindu Marriage Act, 1955. It has further been contended that after the death of first wife, Nk Birendra Chandra Sarkar, the husband of the applicant approached ASC Records (South) for endorsement of family pension in favour of Rekha Sarkar, the second wife. The respondents further stated that Nk Birendra Chandra Sarkar the husband of the applicant married to Smt Rekha Sarkar on 18th November, 1984 during the life time of Smt Sanchaya Sarkar and two children named Pankaj and Badal were born out of that wedlock. The

respondents further contended that since the applicant's husband, Nk Birendra Chandra Sarkar had contracted plural marriage on 18th November, 1984, during the life time of the first wife, hence the applicant was not eligible for grant of family pension as the second marriage held during the life time of first wife is void as per Hindu Marriage Act, 1955. Hence, the case of the applicant could not be processed for grant of family pension. Further it has been contended by the respondents that though the applicant is not entitled for grant of family pension, but children born out of void marriage are eligible for family pension provided they fulfill certain criteria. The respondents also advised the learned counsel for the applicant to forward documents to ASC Records for grant of family pension to applicant's children, but no such document has been received by the ASC Records (South).

4. The applicant vide her affidavit in reply to the affidavit in opposition submitted that the date of birth of the applicant is 6th August, 1977 and the date of birth of Pankaj is 7th January, 1986. The age difference between them is 8 years and 5 months, which establishes that Pankaj is not the biological son of the applicant. She further contended that the marriage between Late Birendra Chandra Sarkar and the

applicant was wrongly mentioned as 18th November, 1984 and the correct date of their marriage is 18th November, 1991.

5. We have heard the learned counsel for the parties and perused the records.

6. Shri S.K. Choudhury, the learned counsel for the applicant, would submit that the marriage between Smt Rekha Sarkar and Late Nk Birendra Chandra Sarkar took place after the death of the first wife, Smt Sanchaya Sarkar and thus she being the legally wedded wife of Late Soldier, is entitled for family pension. Referring to the affidavit in reply to the affidavit-in-opposition, Mr. Choudhury, the learned counsel for the applicant further contended that the date of birth of the applicant is 6th August, 1977 and the date of birth of Pankaj is 7th January, 1986. The age difference between them is 8 years and 5 months, which establishes that Pankaj is not the biological son of the applicant.

7. Per contra, Mr. Dipak Kumar Mukherjee, the learned counsel for the respondents would submit that the applicant is claiming her marriage with Late Soldier on the basis of Certificate of Marriage issued by the Registrar General, West Bengal, Barrackpore Sub Division. According to that Certificate, the date of marriage of applicant with Late Soldier is 18th November, 1984, i.e. the date on which Soldier's first wife

was alive. Therefore, the marriage of the applicant is *ab initio* null, and void in view of Section 5 read with Section 11 of the Hindu Marriage Act, 1955. The Special Marriage Act 1954 also contends the similar provision and even if it is said that marriage between the applicant and Late Soldier was registered under the provision of Special Marriage Act, then also is void and it has also been contended by the Learned Counsel that the affidavit of Late Soldier filed by the applicant said to be executed in 2011, i.e. after a lapse of 10 years is neither admissible nor believable. According to the learned counsel, therefore the claim of the applicant has rightly been declined by the authority and the application deserves to be dismissed with heavy cost.

8. Undisputedly, Late Nk Birendra Chandra Sarkar and also the applicant Smt Rekha Sarkar have not approached the respondents before 2011 for correction of their family declaration. It is also not in dispute that the date of marriage of the applicant and deceased soldier mentioned in the certificate of marriage as 18th November, 1984 was not by mistake but was a conscious act, as according to the applicant the same has been mentioned in order to apportion the service benefit to their third son Pankaj Sarkar. No person whatever his status may be could be allowed to state incorrect fact before the statutory authority.

Besides above, the contents of affidavit executed after about 10 years after getting marriage registered, and the explanation regarding mentioning the date of marriage as 18th November, 1984 before the Registrar of Marriage is neither plausible nor believable and is the only self serving statement, in-as-much-as, as per para 212 of Pension Regulations for the Army Part I (1961) unmarried son/unmarried daughter are also entitled for ordinary family pension and for that there was no necessity to state untrue facts before the Registrar. Para 212 of Pension Regulations reads as under:

"Eligible members of family for ordinary family pension

(A) The following members of the family will be eligible in order of priority as indicated below for grant of ordinary family pension;

(i) ***Wife*** *lawfully married and also judicially separated wife subject To the condition that such separation has not been granted on the ground of adultery and the person surviving was not held guilty of committing adultery.*

(ii) ***Unmarried Son/Unmarried Daughter*** *below the age of 25 years (including those illegitimate and adopted legally before or after retirement) or till the date of earning livelihood i.e. not more than Rs. 3,500/-p.m. whichever is earlier.*

Note 1*. Eligible Son/daughter includes a posthumous child as well as step child.*

Note 2*. The financial benefit of the ordinary family pension in r/o children adopted legally after retirement will be available w.e.f. 18-1-93 only vide Govt. of India Min of Def. Letter No. B/40015/AG/PS-4(d)/300/B/ D (Pen/Sers) dt. 26-3-98 but all cases arising even before 18-1-93 will be covered.*

(iii) ***widowed/divorced daughter*** *till she attains the age of 25 years or upto the date of her remarriage and their earning is not more than Rs. 3,500/- + D.R. p.m. whichever is earlier.*

(iv) ***Parents*** *who were wholly dependant on Armed Forces personnel when he was alive and Armed Forces personnel has not left behind a widow, widower, eligible son or daughter or a widowed divorced daughter who will have a prior claim and the earning of the parents is not more than Rs. 3,500/- + D.R. p.m. It will be the responsibility of the PSA concerned to satisfy themselves based on a scrutiny of the service records and other relevant documents that the parents were, in fact, wholly dependent on the deceased Armed Forces Personnel when he was alive and that he has not left behind any of the other specified beneficiaries who have a prior claim to*

the family pension. Any Affidavit sworn before a Magistrate as per specimen annexed in GOI MOD letter No. 241/B/D/Pen/Sers/2001 dt. 28-8-2001 or a succession certificate from a court may be furnished, which may be treated as sufficient proof in the matter for the claim.

(v) Dependent disabled siblings (i.e. brothers/sisters).

***Note:** The financial benefits of ordinary family pension to dependant parents and windowed /divorced daughter is admissible with effect from 01.01.1998 or the date following the date of death whichever is later but cases, where death occurred prior to 01.01.1998 will also be included subject to following :*

(a) The family pension wherever admissible to parents, the mother will receive the pension first and after her death the father will receive the family pension.

(b) The beneficiary is required to produce Income Certificate. In case, they are self employed or are in receipt of income from sources other than employment, Income Certificate furnished by the concerned beneficiaries themselves may be accepted for the purpose.

(c) Income criterion will be taken into account for both the parents when both are alive and it will be taken for single parent when only one of them is alive.

(d) Eligible sons/daughters will also be required to furnish half yearly certificate in regard to their marital status.

(B) In addition to family members as listed above, the following members of the family who are placed in peculiar situations shall also be eligible for ordinary family pension under the provisions of "Family Pension Scheme, 1964."

*(i) **Handicapped Children** : If the son or daughter of service personnel is suffering from any disorder or disability of mind or physically crippled or disabled so as to render him or her to earn a living even after attaining the age of 25 years, the ordinary family pension shall be payable to such son or daughter for life subject to conditions laid down vide Govt. of India, Min. of Def. letter No.A/49601/AG/PS4(E)/3363/B/D(Pen/Sers) dated 27.08.1987 as amended vide that Min.'s letter dated 21.12.1989*

The benefit of family pension to such son or daughter of Armed Forces personnel shall be admissible to those who retired/died on or after 30.09.1974. However, with effect from 20.05.87, the above benefits has been extended to such sons/ daughters of those Armed Forces personnel who retired/ died before 30.09.1974.

*(ii) **Post Retiral Spouses** : The benefit of Family Pension Scheme, 1964 has been extended to post retrial spouses of the Armed forces pensioners vide Govt. of India, Min. of Def. letter No 6(7)/87/D(Pen/Sers) dated 5.04.1991.*

*(iii) **Missing personnel/pensioners** : The benefits of ordinary family pension shall also be admissible to the families of the Armed Forces personnel/pensioners who are vide Govt. of India, Min. of Def. letter No. 12(16)/86/D(Pen/Sers) dated 3.06.1988 and 20.03.1990.*

***Note :** The benefit of the family pension shall be sanctioned and paid to the eligible member of the family one year after the date of lodging FIR with the Police. The family pension will, however, accrue from the date of lodging FIR or expiry of leave of the service personnel who has disappeared whichever is later vide Govt. of India, Min. of India, Min. of Def. letter No 12(16)/86/D(Pen/Sers) dated 26.08.1993.*

*(iv) **Children born out of void or voidable marriages** : Child/children born out of voidable marriages or marriage, which are held void under Sec. 11 of Hindu Marriage Act, 1955 shall be entitled to share family pension, if otherwise in order,*

though their mother would not have been eligible for the same had she been alive at the time of death of her husband vide corrg. No 3 of A.I. 51/80.

(v) ***Children from divorced wife*** *: When the deceased soldier or pensioner is survived by a widow but has left behind eligible child/ children from a divorced wife or wives the eligible child/children shall be entitled to share the family pension which the mother would have received at the time of the death of the service personnel or pensioner had she not been divorced.*

(vi) ***Minor Child/children*** *: The minor child/children of the deceased Govt. servant are also entitled to the award of ordinary family pension in the order of their birth and the younger of them will not be eligible for family pension unless the elder next above him/her has become ineligible for the grant of family pension.*

(vii) ***Twin Children*** *: In case of twin children, the family pension admissible to them on their turn will be divided in equal share.*

Determination of entitlement of ordinary family pension

In the case of an individual who has died while in service the rate of ordinary family pension should be determined with reference to the rate prevalent at the time of death. Similarly, in the case of an individual whose death has taken place after discharge/invalidment from service the rate of ordinary family pension should be determined under that set of rates which was prevalent at the time of individual's discharge/invalidment.

Rates of Ordinary Family Pension

Normal Rate : *The ordinary family pension at normal rate in respect of death occurring on or after 1-1-96 shall be calculated at a uniform rate of 30% of reckonable emoluments last drawn subject ot a minimum of Rs. 3,500/- p.m. vide GoI, MoD No. 17(4)/2008(2)/D(Pen/Pol) dated 12-11-2008.*

For this purpose, reckonable emoluments comprises pay in the Pay Band, Grade Pay, MSP and 'X' Group Pay including classification allowance, if any, last drawn by the PBOR.

Enhanced rate*: Where an individual who dies while in service after having rendered not less than 7 year's continuous qualifying service, ordinary family pension shall be granted at enhanced rate for a period of ten years without any upper age limit from the date following the date of death of the personnel. In the case of death of pensioner, it will be for a period of seven years or for the period upto the date on which the pensioner would have attained the age of 67 years had he/she survived, whichever is earlier.*

With effect from 01-01-1996 the amount of enhanced rate of ordinary family pension for this period shall be the lowest of the following amounts :

(a) 50% of the reckonable emoluments as defined above.

(b) The amount of service /invalid pension/service element of disability pension /special pension (before commutation) admissible under Govt. of India, Min. of Def. letter No. 1(6)/98/d(Pen/Sers) dated 3.02.1998, in cases where the deceased was a pensioner.

Division of ordinary family pension-payment of share(s) of ordinary family pension to other windows/children

Where an individual is survived by more than one eligible widow, the ordinary family pension will be paid to them in equal shares. On the death of a widow, her share of the ordinary family pension shall become payable to her eligible child. Provided that if the pension shall become payable to her eligible child. Provided that if the widow is not survived by any child, her share of ordinary family pension shall not lapse but shall be payable to the other windows in equal share, or if there is only one such other widow, in full to her.

Where a deceased is survived by a widow and has also left behind eligible child/children from another wife, who is not alive, the eligible child of the deceased wife, shall be entitled to share of ordinary family pension which the mother would have receive if she had been alive at the time of the death of the individual. Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share shall not lapse but shall be payable to other widow or widows and or to other child or children otherwise eligible, in equal shares or if there is only one widow or child, in full to such widow or child.

Where the deceased is survived by a widow but has left behind eligible child/ children from a divorced wife or wives, the eligible child or children shall be entitled to the share of family pension which the mother would have received at the time of death of the individual had he not been divorced.

If the share or shares of family pension payable to such a child or children or to a widow or widow ceasing to be payable such share or shares shall not lapse, but shall be payable to the other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.

Authority: *Govt. of India, Min. of def. letter No. A/6320/Div/AG/PS4(e)/325/B/D(Pen/Sers) dated 25.05.1992.]*

9. Clause (i) of Section 5 of Hindu Marriage Act, 1955 lays down for a lawful marriage , the necessary condition is that neither party should have a spouse living at the time of marriage. A marriage in contravention of the above condition is null and void. Similar is the position under the provisions of Special Marriage Act, 1954.

10. The Hon'ble Supreme Court in the case of **SMT. YAMUNABAI ANANTRAO ADHAV A vs RANANTRAO SHIVRAM ADHAV AND ANOTHER** reported in **(1988) 1 SCC 530** has held in para 3 as under :

> 3. For appreciating the status of a Hindu woman marrying a Hindu male with a living spouse some of the provisions of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) have to be examined. Section 11 of the Act declares such a marriage as null and void in the following terms:
>
> " 11. Void marriages-Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5.
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> " Clause (1)(i) of s. 5 lays down, for a lawful marriage, the necessary condition that neither party should have a spouse living at the time of the marriage. A marriage in contravention of this condition, therefore, is null and void. It was urged on behalf of the appellant that a marriage should not be treated as void because such a marriage was earlier recognised in law and custom. A reference was made to s. 12 of the Act and it was said that in any event the marriage would be voidable. There is no merit in this contention. By reason of the overriding effect of the Act as mentioned in s. 4, no aid can be taken of the earlier Hindu Law or any custom or usage as a part of that Law inconsistent with any provision of the Act. So far as s. 12 is concerned, it is confined to other categories of marriage and is not applicable to one solemnised in violation of s. S(1)(i) of the Act. Sub-section (2) of s. 12 puts further restrictions on such a right. The cases covered by this section are not void ab initio, and unless all the conditions mentioned therein are fulfilled and the aggrieved party exercises the right to avoid it, the same continues to be effective. The marriages covered by s. 11 are void-ipso- jure, that is, void from the very inception, and have to be ignored as not existing in law at all if and when such a question arises. Although the section permits a formal declaration to be made on the presentation of a petition, it is not essential to obtain in advance such a formal declaration from a court in a proceeding specifically commenced for the purpose. The provisions of s. 16, which is quoted below, also throw light on this aspect:
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> " 16. Legitimacy of children of void and voidable marriages.-(1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.
>
> (2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would Smt. Yamunabai Anantrao Adhav A vs Ranantrao Shivram Adhav And ... on 27 January, 1988 Indian Kanoon - http://indiankanoon.org/doc/663395/ 5 have been the legitimate child of the parties of the marriage if at the date of the decree it had

been dissolved instead of being annulled, shall be deemed to be their legitimate child not withstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents. (Emphasis added).

Sub-section (1), by using the words underlined above clearly, implies that a void marriage can be held to be so without a prior formal declaration by a court in a proceeding. While dealing with cases covered by s. 12, sub- section (2) refers to a decree of nullity as an essential condition and sub-section (3) prominently brings out the basic difference in the character of void and voidable marriages as covered respectively by ss. 11 and 12. It is also to be seen that while the legislature has considered it advisable to uphold the legitimacy of the paternity of a child born out of a void marriage, it has not extended a similar protection in respect of the mother of the child. The marriage of the appellant must, therefore, be treated as null and void from its very inception".

11. Similar view has been taken by the Hon'ble Supreme Court in the case of **Savitaben Somabhai Bhatiya vs State of Gujarat and Others (2005) 3 SCC 636**. The paras 15, 19 and 20 of the Judgement of the Hon'ble Supreme Court are quoted below:

15. In Yamunabai case it was held that the expression "wife" used in Section 125 of the Code should be interpreted to mean only a legally wedded wife. The word "wife" is not defined in the Code except indicating in the Explanation to Section 125 its inclusive character so as to cover a divorcee. A woman cannot be a divorcee unless there was a marriage in the eye of the law preceding that status. The expression must therefore be given the meaning in which it is understood in law applicable to the parties. The marriage of a woman in accordance with Hindu rites with a man having a living spouse in a complete nullity in the eye of the law and she is therefore not entitled to the benefit of Section 125 of the Code of the Hindu Marriage Act, 1955 (in short "the marriage Act"). Marriage with a person having a living spouse is null and void and not voidable. However, the attempt to exclude altogether the personal law applicable to the parties from consideration is improper. Section 125 of the Code has been enacted in the interest of a wife and one who intends to take benefit under sub-section (1)(a) has to establish the necessary condition, namely, that she is the wife of the person concerned. The issue can be decided only by a reference to the law applicable to the parties. It is only where an applicant establishes such status or relationship with reference to the personal law that an application for

maintenance can be maintained. Once the right under the provision in Section 125 of the Code is established by proof of necessary conditions mentioned therein, it cannot be defeated by further reference to the personal law. The issue whether the section is attracted or not cannot be answered except by reference to the appropriate law governing the parties.

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19. As noted by this Court in Vimala (K) v. Veeraswamy (K) when a plea of subsisting marriage is raised by the respondent husband it has to be satisfactorily proved by tendering evidence to substantiate that he was already married.

20. In the instant case the evidence on record has been found sufficient by the courts below by recording findings of fact that earlier marriage of the respondent was established".

12. Validity of a marriage between a Hindu and a Roman Catholic Christian in the light of marriage solemnized between Hindu and Christian in accordance with Hindu Rites and Customs which was subsequently registered under Section 8 of the Hindu Marriage Act has been considered by the Apex Court in the light of Sections 5, 7 and 11 of the Hindu Marriage Act, 1955 in case of **Gullipilli Sowria Raj vs Bandaru Pavani (2009) 1 SCC 714** holding the same as void**.** The Hon'ble Supreme Court has held as under :

"18. In the facts pleaded by the respondent in her application under Section 12(1)(c) of the 1955 Act and the admission of the appellant that he was and still is a Christian belonging to the Roman Catholic denomination, the marriage solemnized in accordance with Hindu customs was a nullity and its registration under Section 8 of the Act could not and/or did not validate the same. In our view, the High Court rightly allowed the appeal preferred by the respondent herein and the judgment and order of the High Court does not warrant any interference.

> 19. The other question raised regarding the subsequent marriage of the respondent is of little relevance once we have held that the marriage purported to have been performed between the appellant and the respondent on 24.10.1996 was a nullity. Hence, no decision is called for in that regard and we also make no observation in respect thereof".

13. From the above it is clear as crystal that second marriage solemnized in the life time of first wife is null and void. Pension Regulations also provides family pension to a legally wedded wife. As discussed earlier, the applicant's marriage with late soldier took place during the life time of his first wife Smt Sanchaya Sarkar, the same is being void marriage and not legal, the applicant is not entitled for family pension.

14 The Legal Heirs Certificate issued by the Kastodanga-1 Gram Panchayat dated 20-6-2014 is also of no help to the applicant. The Certificate speaks of two wives as on 20-6-2014, whereas Smt Sanchaya Sarkar died long back, i.e. on 28th October, 1990. It is also nowhere mentioned that the applicant entered into marriage with the Late soldier after the death of Smt Sanchaya Sarkar. It also does not mention that Pankaj Sarkar born out of the wedlock of Smt Sanchaya Sarkar and Late Soldier. The certificate has also not been issued under the statutory provision so as to bind the parties. Moreover, if the date of birth of the applicant, i.e. 6th August, 1977 is taken as true, then not only the age

difference between the applicant and the third Son, Pankaj Sarkar is improbable, but also the age difference of 15 years between the applicant and the fourth son, Badal Sarkar would be improbable, which makes even factum of marriage as improbable. The School Certificates, being relied upon, were also not produced before the administrative authorities. Therefore, this view of the matter will also not help the applicant to substantiate her plea regarding the date of her marriage with the Late Soldier as 18-11-1991 and not as 18-11-1984.

15. In the instant case the applicant has come up with a definite evidence, i.e. the Registration of Marriage, therefore, the question does not arise for drawing any presumption regarding the marriage of the applicant and the Late Soldier under Section 114 of the Evidence Act. The order of AFT Chennai dated 25-11-2014 passed in O.A. No.168 of 2013 cited and relied upon by the applicant in the light of aforesaid Apex Court's decisions is of no help, to her.

16. Considering every aspect of the matter and the facts and material brought before this Tribunal, in our opinion the applicant's marriage with Late Soldier is null and void. Therefore, in view of Pension Regulations she being not legally wedded wife of the Late Soldier, is not entitled to get any family pension and the order impugned does not call

for any interference. The application thus deserves to be dismissed and hereby dismissed.

No order as to costs.

However, this order will not come in the way of the applicant to pursue her remedy before the jurisdictional Civil Court for a declaration of her status as legally wedded wife of Late Soldier and if Civil Court declares the applicant as legally wedded wife of Late Soldier, then to apply afresh claiming family pension before the respondent authorities.

The case records may be returned to the respondents observing all the usual formalities.

(LT. GEN GAUTAM MOORTHY
MEMBER(ADMINISTRATIVE)

(JUSTICE N.K. AGARWAL)
MEMBER (JUDICIAL)

tkb