

**(2008) 05 AHC CK 0010**  
**In the Allahabad High Court**

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|---------------------------------|----|------------|
| Smt. Kamlesh Devi and Another   | Vs | APPELLANT  |
| Union of India (UOI) and Others |    | RESPONDENT |

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**Date of Decision :** 05-05-2008

**Acts Referred:**

**Citation :** (2008) 117 FLR 1061

**Hon'ble Judges :** D.P. Singh, J

**Bench :** Single Bench

**Final Decision :** Partly Allowed

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## Judgement

D.P. Singh, J.—Heard lea mod Counsel for the parties.

The relief claimed in this petition is for a mandate to the respondent to disburse the: monetary terminal benefits, including pension, between the petitioners and respondent No. 9 in the ratio of 50 percent each.

2. The son of the petitioners late sepoy Shailandra Kumar Singh after being recruited in the Indian Army in the 14th Rajpoot Regiment was posted in a insurgency area of District Koopwara in the State of Jammu and Kashmir where he died in action on 29.1.2001. He left behind his parents and his issue less widow, respondent No. 9 together with a younger unmarried brother and sister aged about 19 and 21 years respectively The mother of the late sepoy received a telegram from the Regiment to send three passport size photographs along with the negative for the purposes of processing payment of death benefits. In pursuance thereof, they sent the require documents. However, on the basis of a Will executed by the late sepoy where the benefits were to be distributed among the two parties at 50 percent each, this affidavit etc. along with the necessary documents were sent to the unit which forwarded it to the Army Group Insurance Fund vide its covering letter dated 3.3.2001. The respondent No. 2 also executed an affidavit confirming the aforesaid and served it on the respondent authorities but it appears that at the behest of the father of respondent No. 9 she resiled from her affidavit where after certain amounts were paid in full to the respondent

No. 9 thus, forcing the petitioner to prefer this writ petition.

3. The Counsel for the petitioner has urged that the parents are also entitled to payment to a share in the terminal benefits and pension in view of the nomination and the Will and also in view of the compromise, an affidavit executed by the respondent No. 9 and so accepted by the unit and other officers. It is also urged that under Hindu Succession Act, at least the mother will have equal share with the widow. To the contrary, it is urged on behalf of the widow that under law she is entitled to the entire amount to the exclusion of the parents.

Affidavits have been exchanged between the parties and they agree that the petition may be finally disposed off under the Rules of the Court. The respondent Army Authorities were requested to make available certain records which they have produced before the Court.

Certain amounts have been paid to the respondent No. 9 but in view of an interim order passed on 15.10.2001 rest of the amounts out of the balance 50 percent has been paid to the respondent No. 9 and the other 50 percent has been invested in a nationalized Bank for a fixed term.

4. From the record, it is evident that the late sepoy was married to respondent No. 9 on 8.3.1999 and it is admitted in the counter affidavit that in the 15 months of marriage she stayed at her-in-laws only for about four months. The respondent No. 9 also executed an affidavit before the Senior Accounts Officer of the Unit stating that looking to the age and financial status of the parents or her late husband, the terminal benefits may be divided between her and the parents at the ratio of 50 percent each. In pursuance of it and on the basis of the Will the Army Authorities started processing the payment of terminal benefits on the strength of the aforesaid to both the parties but before the payments could be made an objection was raised on behalf of respondent No. 9 at the behest of her father by which the terminal benefits were directed to be released in favour of the widow. The execution of the compromise and the affidavit has not been denied by the respondent No. 9. However, her father has filed a counter affidavit stating that the compromise was not executed out of her free will and this statement has been sworn on the basis of personal knowledge. No reason has been given why the respondent No. 9, if the averments are correct, could not file her own affidavit. The question whether it was executed under duress cannot be personal knowledge of the father on the basis of which the averments have been sworn. The affidavit does not meet the requirements of Order XIX of Civil Procedure Code. Therefore, under law it cannot be relied upon.

5. On perusal of the record made available by the Army Authorities, it is apparent that, the late sepoy had nominated his wife for payment of terminal benefits under various heads immediately after his marriage. However, on his return he changed the nomination and Will giving 50 percent to his wife and 25 percent each to his parents. Under law an incumbent is entitled to change

nomination or his Will at any time unless there is some legal impediment. The Counsel for the respondent has failed to point out any legal impediment.

6. Even otherwise, the nomination in favour of a person does not in any way affect the rights of the heirs unless there is some legal bar. A nominee is entitled to receive the payments for and on behalf of the legal heirs. There is no dispute that the parties are governed by the Hindu Succession Act and under it his mother of the predeceased son is also entitled to an equal share along with the widow. The Counsel for the respondent has failed to point out any provision having overriding effect over the aforesaid Act. The Supreme Court in the case of *Smt. Sarbati Devi and Another Vs. Smt. Usha Devi*, has held that a mere nomination does not deprive the heirs of their rights in the amount payable and the nomination only indicates the hands which is authorised to receive the amount but the heirs, according to law of succession, are entitled to it. A learned Single Judge of this Court has also taken a similar view in *Smt. Sobha Sharna v. Keshav Namin and Ors.* 1978 AWC 551.

7. The right of family pension, however, is personal to the widow and it does not form part of the estate of the deceased. Therefore, except for the family pension, the mother of the deceased will have equal share with the widow in all other amounts payable.

For the reasons above, this petition succeeds and is allowed partly and the respondent authorities are directed to process and pay the amounts in the ratio of 50 percent each to the wife and the mother, petitioner No. 1.

No order as to costs.