

E-Court**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 462 of 2018****Thursday, this the 12th day of August, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Smt. Ram Maya Thapa W/o Lil Bahadur Thapa, R/o Ward No. 4, Gram
Vikas Samiti, Chitum Dhara, District-Palpa (Nepal).

.... Applicant

Ld. Counsel for the: **Shri Amit Verma & Shri BB Tripathi**, Advocate.
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence, Govt of India, New Delhi-110010.
2. The Chief Records Officer, 58 GR, Happy Valley, Shillong.
3. The Officer Incharge, Record Office, Indian Embassy, 336 Kapoordhara Marg, Lainchaur, Kathmandu, Nepal.
4. The Principal Controller of Defence Accounts (Pension), Draupadighat, Allahabad-211014.

... Respondents

Ld. Counsel for the **Mrs. Anju Singh**, Advocate
Respondents. Govt Standing Counsel**ORDER (Oral)**

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

(a) issue an order, direction and command to the respondents to pay family pension to the applicant to each and every month and also to pay arrears thereof from the date of death of her husband-Lil Bahadur Thapa w.e.f. 25.05.2013 till the date of actual payment along with interest @ 12% per annum.

(b) issue an order, direction and command to the respondents to consider and decide the representation of the applicant, contained in Annexure No. 5 by passing a reasoned and speaking within the time frame so fixed by this Hon'ble Tribunal by granting the relief(s) as prayed for therein.

(c) issue such other order/direction which may be deemed just and proper in the circumstance of the case.

(d) Allow the Original Application with cost against the respondents in view of the facts and circumstances, legal provisions and Grounds raised in the Application.

2. Brief facts of the case are that Lil Bahadur Thapa (applicant's husband) was enrolled in the Indian Army on 14.08.1976 and was discharged from service on 31.10.1997 at his own request in the rank of Nb Sub. He was granted service pension vide PPO No. S/049484/97 dated 06.11.1997. After demise of Lil Bahadur Thapa on 25.05.2013, applicant claiming herself to be widow of deceased soldier approached pension paying office, Pokhara (Nepal) for payment of Life Time Arrear and grant of Ordinary Family Pension. The case was referred to Record Office, Indian Embassy, Kathmandu for investigation who informed that applicant is not eligible for grant of Ordinary Family Pension in terms of para 333 (b) of Regulations for the Army, 1987 (Revised Edition). Life Time Arrear has been paid to applicant on 21.01.2014 as her name was

found recorded in deceased soldier's PPO and Descriptive Roll. Thereafter, detailed investigation was carried out in terms of paras 174 (a) and 174 (m) of Regulations for the Army, 1987 (Revised Edition). During the course of investigation, it emerged that the deceased soldier contracted 2nd marriage with applicant when his first marriage was subsisting. Since Life Time Arrear has been paid to applicant, she has filed this O.A. for grant of Ordinary Family Pension.

3. Submission of learned counsel for the applicant is that since applicant Smt Ram Maya Thapa being legally wedded wife of deceased soldier has received Life Time Arrears after death of Lil Bahadur Thapa, therefore, she is entitled to receive Ordinary Family Pension being NOK of deceased soldier as her name is entered in service records including PPO No S/049484/97 and Corrigendum PPO No. S/Corr/075800/98 in respect of the deceased soldier.

4. Per contra, submission of learned counsel for the respondents is that Smt Kumari Thapa, first wife of the ex-serviceman, who was married on 27.11.1973, had not eloped before marrying with Smt Ram Maya Thapa in the year 1977. His further submission is that since the ex-serviceman contracted 2nd marriage with Smt Ram Maya Thapa on 17.05.1977 and Smt Kumari Thapa eloped on 03.01.1986, therefore marriage with Smt Ram Maya Thapa, claimant comes under clause 'plural marriage' in accordance with para 333 (b) of Regulations for the Army, 1987 (Revised Edition) and hence applicant is not entitled to receive Ordinary Family Pension. He pleaded for dismissal of O.A.

5. Heard learned counsel for the parties and perused the material placed on record.

6. It is not disputed that Lil Bahadur Thapa was enrolled on 14.08.1976 and was discharged from service under own request on 31.10.1997. He was in receipt of service pension vide PPO No. S/049484/97. It is also not in dispute that the ex-serviceman died on 10.09.2013. Applicant had approached various agencies for grant of Ordinary Family Pension. On a query made by 58 GR vide letter dated 06.12.2017 with regard to payment of pension to applicant, Record Office Indian Embassy, Kathmandu (Nepal) had replied vide letter dated 05.01.2018 that Smt Ram Maya Thapa is not eligible for grant of Ordinary Family Pension. For convenience sake, letter dated 05.01.2018 is reproduced as under:-

“FAMILY PENSION CLAIM IN R/O JC617150 NB SUB (LATE)
LIL BAHADUR THAPA OF 5 GORKHA RIFLES (FF)

1. Please refer Records 58 GR letter No 6142/ROIE/FP dt 06 Dec 2017.
2. The case for grant of family pension in respect of Smt Ram Maya Thapa Chidi (claimant) has been investigated in details in light of service documents of the deceased vis-a-vis Government of Nepal documents produced by the claimant.
3. During the course of investigation, it is revealed that the deceased Exsm had contracted two marriages during his lifetime. Second marriage of the deceased Exsm with the claimant solemnized during the lifetime of senior co-widow after implementation of Mulki-Ain in Nepal. Therefore, marriage with Smt Ram Maya Thapa Chidi, claimant comes under 'PLURAL' in accordance with para 333 (b) of Regulations for the Army, 1987 (Revised Edition) and she is not eligible for family pension. The same has been communicated to the claimant and Pension Disbursing Office, (PPO Pokhara) on 12 Oct 2016.”

7. From perusal of records it emerges that Lil Bahadur Thapa had contracted 1st marriage with Smt Kumari Thapa on 27.11.1973.

Thereafter, the ex-serviceman contracted 2nd marriage with Smt Ram Maya Thapa Chidi on 17.05.1977. His first wife eloped on 03.01.1986. It clearly indicates that Lil Bahadur Thapa solemnized 2nd marriage with Smt Ram Maya Thapa on 17.05.1977 i.e. during life time of his first wife and also prior to elopement of Smt Kumari Thapa in the year 1986. The deceased soldier had given false declaration regarding date of elopement of 1st wife and marriage with 2nd wife Smt Ram Maya Thapa only to manipulate marriage documents to elude from plural marriage aspect and to safeguard himself against disciplinary action during active service as per para 333 (b) of Regulations for the Army, 1987 (Revised Edition).

8. From the above, we observe that Smt Kumari Thapa (first wife) had not deserted on 17.05.1977 i.e. on the date Lil Bahadur Thapa contracted 2nd marriage with Smt Ram Maya Thapa. Smt Kumari Thapa (first wife) eloped on 03.01.1986 and, therefore it is abundantly clear that Lil Bahadur Thapa (now deceased) had contracted plural marriage in contravention to para 333 (b) of Regulations for the Army, 1987 (Revised Edition).

9. Nothing has been placed on record to show that in such circumstances, the first marriage of Smt Kumari Thapa with Lil Bahadur Thapa came to an end when Lil Bahadur Thapa solemnized 2nd marriage with Smt Ram Maya Thapa in the year 1977. From the aforesaid, the second marriage would have become void had it taken place in India but since Lil Bahadur Thapa being a Nepali origin, Hindu Marriage Act, 1955 is not applicable in the case. Second marriage being contracted in

violation of para 333 (b) of Regulations for the Army, 1987 (Revised Edition), applicant is not entitled to Ordinary Family Pension.

11. With the aforesaid observations, we are of the view that marriage in respect of Smt Ram Maya Thapa (second wife of deceased soldier) being contracted in violation of para 333 (b) of Regulations for the Army, 1987 (Revised Edition) is not valid in accordance with Regulations for the Army, and hence she is not entitled to receive Ordinary Family Pension, though she has received Life Time Arrears of the deceased soldier.

12. In view of the above, we find no merit in the present O.A. and the same is **dismissed**.

13. No order as to costs.

14. Pending applications, if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 12th August, 2021
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