

**RESERVED**  
**(Court No 2)**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**ORIGINAL APPLICATION No. 989 of 2022**

Monday, this the 20<sup>th</sup> day of November, 2023

**"Hon'ble Mr. Justice Anil Kumar, Member (J)"**

**"Hon'ble Lt Gen Anil Puri, Member (A)"**

Smt Pin Maya Kumal, w/o JC-138571 Ex Sub (late) Tek Bahadur Thapa, C/o Kamal Bahadur, 999/14, Katria Bagh, Nilmatha Bazar, Lucknow Cantt (UP)-226002.

..... Applicant

Ld. Counsel for the : **Col AK Srivastava (Retd)**, Advocate.  
Applicant

Versus

1. The Government of India, through Secretary, Ministry of Defence (Army), South Block, DHQ, PO-New Delhi-110011.
2. The Chief of the Army Staff, IHQ of MoD (Army), South Block, DHQ, PO-New Delhi (India)-11001.
3. OC Records, 14 GTC, Sabathu Simla Hills, Himachal Pradesh, India.
4. The OC Records Indian Embassy, Kathmandu (Nepal).
5. The Principal CDA, PCDA (P), Draupadi Ghat, Allahabad (UP)-211014.

.....Respondents

Ld. Counsel for the : **Dr. Shailendra Sharma Atal**, Advocate  
Respondents. Central Govt. Counsel

**ORDER**

1. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 vide which the following reliefs have been sought:-

*(i) Issue/pass an order or direction of appropriate nature to summon and quash/set aside orders leading to denial of applicant's family pension w.e.f. 08.08.2016 i.e. after her husband's death on 08.08.2016.*

*(ii) Issue/pass an order or direction of appropriate nature to respondents to consider the grant family pension, LTA and ensuing benefits w.e.f. 08.08.2016 i.e. after her husband's death on 08.08.2016.*

*(iii) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*

2. Brief facts of the case are that JC-138571X Ex Sub Tek Bahadur Thapa was enrolled in 4<sup>th</sup> Gorkha Rifles of the Indian Army on 28.11.1961 and he was discharged from service w.e.f. 30.11.1969 on fulfilling the terms of enrolment under Rule 13 (3) III (i) of Army Rules, 1954. On discharge, he was granted service pension vide PPO No. S/038168/1989 dated 21.08.1989. Being Nepali domicile, his service documents were forwarded to Record Office, Indian Embassy (ROIE), Kathmandu (Nepal) for further maintenance as per policy in vogue. After his death on 13.07.2016, Smt Dalli Maya Kumal, claiming herself to be first widow of the deceased pensioner, reported to Pension Paying Office, Pokhara for award of Life Time Arrear of pension and grant of family pension in respect of her deceased husband on the ground of widow of the deceased soldier and joint notification.

Since there was mismatch in her name and date of birth, the case was referred to Record Office, Indian Embassy, Kathmandu (Nepal) on 30.09.2016 for investigation. After investigation, it was revealed that the deceased pensioner had contracted two marriages during his lifetime, however, this fact was concealed by him. A call up notice was sent to both the widows to report to Record Office, Indian Embassy, Kathmandu (Nepal) for further investigation and finalisation of the case.

3. Applicant Smt Pin Maya Kumal reported Record Office, Indian Embassy, Kathmandu (Nepal) with marriage certificate but Smt Dalli Maya Kumal (1<sup>st</sup> wife of the deceased soldier) did not report there. Thereafter, both the widows reported the Record Office where it was found that though name of first wife was recorded in service documents but name of second wife was not recorded therein and the deceased soldier during his lifetime did not apply for publication of Part-II Order regarding second marriage with Smt Pin Maya Kumal even after retirement. This O.A. has been filed for grant of family pension to second widow of the deceased soldier on the ground that first widow of the deceased soldier died on 15.03.2019 and she being second widow of the deceased soldier is entitled for grant of family pension.

4. Learned counsel for the applicant submitted that the applicant was married to the deceased soldier on 06.03.1969 when he was serving in the Indian Army after being enrolled in the Indian Army on 28.11.1961. It was further submitted that

being happily married, they were blessed with two sons and a daughter. It was also submitted that being illiterate woman from remote area of Nepal, applicant was unaware of publication of various casualties pertaining to her marriage and birth of children.

5. Learned counsel for the applicant further submitted that after 2 to 3 years of applicant's marriage she came to know that her husband was already married to Smt Dalli Maya Kumal (first wife) on 07.02.1953 and she had four daughters and one son. It was further submitted that after death of the deceased pensioner, she was denied pension and LTA on the ground that her name is not entered in service record of the deceased pensioner and her marriage is void.

6. In support of contention with respect to grant of family pension, learned counsel for the applicant has produced relationship certificate dated 23.05.2018 issued by Bhanu Municipality, Tanahun and letter dated 08.08.2016 issued by District Administration Office, Tanahun, Damauli recommending grant of family pension to both the wives.

7. Learned counsel for the applicant further submitted that the deceased pensioner died on 13.07.2016 and his first wife Smt Dalli also died on 15.03.2019, therefore, she being second wife of the deceased soldier, is entitled to receive family pension. His other contention is that marriages in respect of Gorkhas of Nepali domicile are governed by Personal Laws of Nepal wherein even

plural marriages are recognized even in case a previous marriage subsists and prior/post marriage permission is not required and this aspect is also included in Army Order 44/2001 (DV). It was submitted that in the instant case entitlement of applicant for grant of family pension is absolutely clear and indisputable and does not requires support of decisions of various courts. However, the judgment of Hon'ble High Court of Chennai and AFT, Chennai in O.A. No 21 of 2013, **Gottala Mary Bharati vs UOI & Ors** and AFT, Lucknow in O.A. No. 130 of 2011 are relevant. He pleaded for grant of family pension to the applicant.

8. On the other hand, learned counsel for the respondents submitted that JC-138571X Ex Sub Tek Bahadur Thapa was enrolled in the 4 Gorkha Rifles on 28.11.1961 and after discharge from service on 30.11.1989 (AN) he was granted service pension vide PPO No. S/038168/1989 dated 21.08.1989. He died on 13.07.2016. Earlier, during the course of his service he was married with Smt Dalli Maya Kumal (1<sup>st</sup> wife) whose particulars are recorded in service documents of the deceased soldier, but particulars of applicant claiming to be 2<sup>nd</sup> wife of the deceased soldier are not recorded in his service documents. It was further submitted that Name of Smt Pin Maya Kumal has neither been found recorded in service documents of deceased soldier nor deceased soldier ever applied for publication of Part-II Order regarding second marriage with Smt Pin Maya Kumal even after retirement.

9. Learned counsel for the respondents further submitted that family pension can only be granted to personnel whose name has been recorded in service documents of the deceased soldier as per paras 174 (f) and 174 (h) of Regulations for the Army, 1987 (Revised Edition) as per which only legal heir is entitled to claim family pension. It was submitted that since applicant's name is not recorded in service documents of the deceased soldier, she is not entitled for family pension.

10. Learned counsel for the respondents further submitted that as per Para 333 (b) of Regulations for the Army, 1987 (Revised Edition) in few circumstances a Gorkha person can contract plural marriage on the ground of declaration/reason of second marriage but, in the instant case no such declaration/reason was ever made by the deceased pensioner during his life time. He, however, submitted that in such circumstances his second marriage being plural marriage as per Para 333 of Regulations for the Army, 1987 (Revised Edition), applicant is not entitled to family pension. He pleaded for dismissal of O.A.

11. Heard Col AK Srivastava (Retd), learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents and perused the record.

12. The applicant's husband being Nepali domicile had contracted first marriage with Smt Dalli Maya Kumal (first wife) and during subsistence of first marriage, he contracted second marriage with the applicant (second wife) without taking prior

permission from the competent authority. Since the deceased soldier had contracted plural marriage without seeking requisite permission as per Regulation 333 of Defence Service Regulations for the Army, 1987 (Revised Edition), his second marriage falls in the category of void marriage.

13. As per Para 174 (f) of Regulations for the Army, 1987 (Revised Edition), family pension to the wife and children whose name is found recorded in the Sheet Roll during the life time of the ex-serviceman/deceased soldier will only be considered for grant of family pension. The deceased ex-serviceman during his lifetime had never applied for notification of the applicant's name in the service documents as per Documentation Procedure JCOs/OR 1992, therefore, applicant does not seem to be entitled for grant of family pension after death of pensioner. For convenience sake, Para 174 (f) of aforesaid Regulation is appended below:-

*"174 (f). In the matter of determining eligibility of heirs of JCOs, OR and NCsE to family pension and children allowance, reliance will largely be placed on the particulars of such heirs as recorded in the sheet roll during the life time of the soldier and the nomination made by him for the purpose of family pension."*

14. Under the provisions of Para 174 (h) of Regulations for the Army, 1987 (Revised Edition), family pension is admissible to heir strictly on the authority of nomination exercised by the pensioner during his life time by executing it as per performa prescribed at Appendix 'H' to Regulations for the Army, 1987 (Revised Edition). We find that in the instant case since no such nomination was

ever executed by the deceased during his life time, applicant does not seem to be entitled for grant of family pension. For convenience sake, Para 174 (h) of the aforesaid Regulation is appended below:-

*"174 (h). It will be permissible for him to change the nomination in favour of mother eligible heir at any time during his service or after discharge. In the event of such a change, a fresh nomination on Appendix 'H' will be submitted. The nomination will be attested by the Officer Commanding unit, if the soldier is serving, or by a responsible person referred to in sub-para (c) above, if he is a pensioner and will be forwarded to the Record Office concerned for retention of the Sheet Roll of the individual."*

15. Applicant had submitted petition dated in the month of Mar 2019 to Records 14 Gorkha Rifles for grant of family pension. On receipt of her application, comments were asked from Record Office, Indian Embassy, Kathmandu (Nepal) who vide letter dated 03.07.2019 intimated that 'since deceased pensioner solemnised marriage with Smt Pin Maya Kumal during lifetime of Smt Dalli Maya Kumal, 1<sup>st</sup> widow, and Smt Dalli Maya Kumal was not issueless, therefore, marriage solemnised with Smt Pin Maya Kumal is plural marriage'. For convenience sake copy of letter dated 03.07.2019 is reproduced as under:-

*"1. X x x x  
2. The case for grant of family pension in respect of Smt Pin Maya Kumal claiming herself as widow of JC/138571 Ex Sub (Late) Tek Bahadur Thapa of 4 GR has been investigated in detail in the light of service documents of the deceased vis-a-vis Govt of Nepal documents produced by the claimant. During the investigation, it is revealed that deceased pensioner had contracted two marriages during his service time. Name of only senior widow has been found published but name of Smt Pin Maya Kumal has neither been found recorded in KRP of Sheet Roll nor deceased pensioner applied for ParII Order regarding mrg with Smt Pin Maya Kunmal even after retirement. Deceased pensioner solemnised mrg with Smt Pin Maya Kumal, 2<sup>nd</sup> widow during the life time of Smt Dalli Maya Kumal, Sr widow. Smt Dalli Maya Sr Widow was not issue less. Therefore, marriage solemnised with Smt Pin Maya Kumal is plural. Hence, she is not*

*eligible for grant of family pension as per policy in vogue. Childrens born to both widows are also not eligible for family pension being married and over 25 years of age."*

16. Further, in the instant case as per Para 71 of Pension Regulations for the Army, 2008 (Part-I) (Revised Edition), children born to both the widows are also not eligible for grant of family pension being married and over 25 years of age.

17. Thus, from the record, it emerges that the deceased pensioner had contracted second marriage with the applicant when his first marriage was subsisting. In regard to this, the Regulations for the Army are framed under the authority of Section 192 of the Army Act, 1950. Regulation 333 relating to plural marriage reads as under:-

*"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 souse 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, Paris 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 solemnized 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 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 sexually transmitted 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 such desertion;*

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

*(iii) 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.*

*(c) Applications will state the law under which the subsisting marriage was solemnized, 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 solemnized 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 therefore 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-in-C 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.*

*(C) Plural Marriage by persons in whose case it is not permissible-*

*(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 dissolution 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 publish the casualty for the dissolution of the marriage. The individual thereafter will not be required to obtain sanction for contracting the second marriage.*

*(b) A plural marriage solemnised, contracted or performed by any such person is null and void and may, on a petition presented to a court of law by either party thereto, be so declared by a decree of nullity. Not only is the plural marriage void but the offence of bigamy is also committed. The offence is, however, triable only on a complaint made to the civil authority by an aggrieved party. The punishment for the offence*

*of a bigamy is prescribed in Sections 494 and 495 of the Indian Penal Code.*

*(c) When it is found on receipt of a 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 AA Section 19 read with Army Rule 14 or AA Section 20 read with Army Rule 17 as the case may be. No ex-post-facto sanction can be accorded as such marriages are contrary to the law of the land."*

18. We observe that marriage of the deceased soldier with Smt Dalli Maya Kumal (1<sup>st</sup> wife) was subsisting when he contracted second marriage with the applicant. This fact has also been conceded by the applicant in para 4.1 and 4.4 of O.A. There is nothing on record to show that the first marriage of the deceased soldier with Smt Dalli Maya Kumal came to an end when applicant solemnized second marriage with Smt Pin Maya Kumal in the year 1969. It could not be disputed by the learned counsel for the applicant that the second marriage in such circumstances is void in terms of Para 333 of Regulations for the Army, 1987 (Revised Edition). The first wife was very much alive on the date of the marriage of the applicant with Smt Dalli Maya Kumal. It is an admitted fact that unless and until applicant's name is not

recorded in service record of the deceased soldier, she is not entitled to pensionary benefits.

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

20. No order as to costs.

21. Pending miscellaneous applications, if any, are disposed off.

**(Lt Gen Anil Puri)**  
**Member (A)**

Dated :20.11.2023

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**(Justice Anil Kumar)**  
**Member (J)**

RESERVEDCourt No 2

Form No. 4

**{See rule 11(1)}**  
**ORDER SHEET**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

O.A. No. 989 of 2022

Smt Pin Maya Kumal

**Applicant****By Legal Practitioner for the Applicant**

Versus

Union of India &amp; Ors

**Respondents****By Legal Practitioner for Respondents**

Notes of the Registry	Orders of the Tribunal
	<p><u>20.11.2023</u>  <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u>  <u>Hon'ble Lt Gen Anil Puri, Member (A)</u></p> <p><b>Judgment pronounced.</b>  <b>O. A. No. 989 of 2022 is dismissed.</b>  <b>For orders, see our judgment and order passed on separate sheets.</b></p> <p>(Lt Gen Anil Puri)  Member (A)  <i>rathore</i></p> <p>(Justice Anil Kumar)  Member (J)</p>

