

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Court No 1****ORIGINAL APPLICATION No. 411 of 2020**

Monday, this the 20th day of September, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt Ram Maya Gurung, Wife of Ex Serviceman No 533993
Late Nk Lal Bahadur Ghale, Resident of Village – Longghallel,
Machhapuchhre Gaupalika-9, (Nepal).

.....Applicant

Counsel for the Applicant : **Shri Veer Raghav Chaubey,
Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence,
Govt of India, South Block, New Delhi-110011.
2. Office of the PCDAP, Draupadi Ghat, Allahabad.
3. Officer in Charge, Records, Gorkha Rifles, Subathu
(Shimla Hills)- 173206, DSC, C/o 56 APO.
4. Record Office, Indian Embassy, Kathmandu, Nepal

.....Respondents

Counsel for the Respondents : **Ms. Anju Singh,
Central Govt. Counsel**

ORDER**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

“(i). This Hon’ble Tribunal may kindly be pleased to direct the opposite parties to grant the family pension to the applicant w.e.f. the death of her husband on 23.11.2016.

“(ii). Pass any other order or direction which this Hon’ble Tribunal may deem fit and proper under the circumstances of the case.”

2. Facts giving rise to Original Application in brief are that Ex Late Lal Bahadur Ghale alleged husband of applicant was enrolled in the Army on 04.09.1968 and discharged from service on 01.10.1985 and was granted service pension vide PPO No S/C/22974/1985. Ex Late Lal Bahadur Ghale died on 23.11.2016. On demise of service pensioner, Smt Ram Maya Gurung reported at Pension Paying Office, Pokhara for Life Time Arrear payment and grant of family pension. Her claim for grant of family pension was denied by the respondents. Being aggrieved, the applicant has filed instant O.A. for grant of family pension.

3. Learned counsel for the applicant submitted that deceased soldier Ex Late Nk Lal Bahadur Ghale alleged husband of the applicant was enrolled in Indian Army 04.09.1968 and discharged from service on 01.10.1985 and was granted service pension vide PPO No S/C/22974/1985. After death of Ex Late Nk Lal Bahadur Ghale, Smt Ram Maya Gurung preferred representation for grant of family pension being legally wedded wife. Her name is recorded as wife in service documents of the deceased soldier. She submitted many representations for grant of family pension but she was denied family pension. Learned counsel for the applicant pleaded that in view of aforesaid, respondents be directed to grant family pension to the applicant.

4. Per contra, learned counsel for the respondents submitted that after death of Ex Late Nk Lala Bahadur Ghale, applicant approached for grant of family pension. Case was investigated by the respondents and it was found that caste of deceased pensioner was recorded as Ghale (Gurung) whereas as per his Nagarikta Praman Patra (NPP), it is mentioned as Tamang which is different caste of deceased pensioner. Her case was referred to Pension Paying Office, Pokhara for establishing the genuineness of the claimant. On checking of documents produced by the applicant, it was revealed that

caste of deceased pensioner was Ghale which comes under larger Gurung whereas as per Nagrikta Praman Patra, it was mentioned as Tamang. It is also revealed that as per service documents, father's name of deceased pensioner was Deomane Ghale, whereas as per Nagarikta Praman Patra his father's name was mentioned as Dewan Singh Tamang. The deceased pensioner was enrolled in Indian Army in the vacancy of Ghale (Gurung), but his actual caste is Tamang. Ghale and Tamang are totally different castes. Caste of the widow was also found differ as Ram Maya Gurung in the service documents and Ram Maya Gurung in Govt of Nepal documents. As per records of deceased pensioner, he was never convicted for an offence under Army Act Section 43/44. If the facts regarding caste of deceased pensioner and difference in father's name might have revealed during service period, his services was liable to be terminated administratively and he would not have been entitled for pension. He further submitted that due to polygamy, and veracity of Govt of Nepal documents which can easily be manipulated for getting pensionary benefits cannot be ruled out. In Nepal documents can easily be manipulated for getting pensionary benefits as there is no financial burden on Govt of Nepal to pay pension to the claimant. There is no provision for change of caste/name of

deceased pensioner, hence in such cases legal remedy has been suggested by IHQ of MoD. Her case for grant of family pension was taken with Govt of India, Min of Defence and a decision on the same is awaited. Learned counsel for the respondents submitted that name and caste entered in service documents as well as in record of Nepal Govt are different, hence applicant is not entitled for any pension. He pleaded that Original Application being devoid of merit is liable to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. The questions which needs to be answered is when name of applicant in service documents of deceased soldier as well as in Govt of Nepal records is different, the applicant is entitled for grant of full family pension or not?

7. As per Regulation 66 of Pension Regulation for the Army 1961 (Part-I) as amended in 2008, definition of family has been defined as under:-

DEFINITION OF FAMILY

“66. Family for the purpose of Regulations in this Section shall consist of the following:-

(i) Wife in the case of male service personnel or husband in the case of female service personnel lawfully married before or after retirement.

(ii) A judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.

(iii) Unmarried daughters/ unmarried sons (including those legally adopted widowed/ divorced daughters.

(iv) Parents who were wholly dependent on the service personnel when he was alive.”

8. Regulation 63 of Pension Regulation for the Army 1961 (Part-I) as amended in 2008, reads as under:-

(b) Ordinary Family Pension

“Para 63. *Where Service personnel dies in the circumstances mentioned in the Category A of the Regulation 82 of these Regulations :-*

(i) Either while in service, provided he had been found fit after successful completion of the requisite training and medical examination for commission, or at the time of enrolment in the case of Personnel Below Officer Rank, or

(ii) After release/retirement/discharge/invalidment with a pension of any kind under these regulations”

9. In view of the policy and documents produced by the applicant, we consider it appropriate to believe that Smt Ram Maya Gurung is legally wedded wife of Ex Late Nk Lal Bahadur Ghale and she is entitled for grant of Family Pension. In the instant case, applicant’s name is recorded in service documents of her husband as well as in PPO of her husband issued by PCDA (P), Allahabad.

10. In view of the facts and circumstances of the case, we are of the considered view that the applicant is entitled for grant of Family Pension from the next date of death of her husband and objection raised by the respondents rejecting her claim for grant of family pension is rejected. Though there may be some discrepancy in particulars of deceased soldier in the documents issued by Nepal Govt as well as particulars recorded in service documents, but same being human error may be corrected, if considered necessary.

11. Thus, in the result, Original Application succeeds and is **allowed**. Applicant is directed to submit documents, if any, asked by the respondents immediately. Respondents are directed to grant family pension to the applicant from the next date of death of her husband. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 8% on the amount accrued from due date till the date of actual payment.

12. No order as to costs.

13. Pending applications, if any, are disposed of accordingly.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 20 September, 2021

Ukt/-

