

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No.91 of 2020**Monday, this the 13th day of September, 2021**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt. Aash Kumari Gurung @ As Kumari, W/o Late Ram Bahadur Gurung, R/o C/o Shri Subodh Kumar, 27 Vednath Puram Sitapur Road, Lucknow.

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence Government of India, New Delhi
2. The Chief Records Officer, MIR, PIN 900476, C/o 56 APO.
3. The Officer Incharge, Record Office, Indian Embassy, 336 Kapoordhara Marg, Lainchaur, Katmandu, Nepal.
4. Sub Treasury Officer, IE PPO, Pokhara, Nepal.
5. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad 211014.

.....**Respondents**Ld. Counsel for the Respondents. : **Shri Shyam Singh,
Central Govt. Counsel**

ORDER

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

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

- (a). *to 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 –Ram Bahadur Gurung w.e.f. 25.11.2012 till the date of actual payment along with interest @ 12% per annum.*
- (b). *issue an order, direction and command to the respondents particularly respondent No.2 to take a decision on the reference so made by the respondent No.5 vide letter dated 20.06.2019 within a time to be fixed by this Hon’ble Tribunal by passing a reasoned and speaking order in accordance with law.*
- (c). *issue such other order / direction which may be deemed just and proper in the circumstances 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. Rejoinder affidavit filed by learned counsel for the applicant is taken on record.

3. Succinctly stated, husband of the applicant Late Ram Bahadur Gurung was enrolled in the Indian Army on 23.12.1957

and was retired from service on 01.01.1982 after rendering 24 years of service. After retirement, husband of the applicant was granted service pension for his services rendered in the army. Husband of the applicant died on 25.11.2012. After death of her husband, applicant approached the respondents for grant of family pension but the same was not paid to her. Being aggrieved by denial of family pension, the applicant has filed the present Original Application.

4. Learned counsel for the applicant submitted that applicant has been granted citizenship of Nepal by issuing certificate from Home Ministry of District Administration Office Kaski, Nepal, showing the name of husband of the applicant as Ram Bahadur Gurung. Deputy Assistant Director, Army Group Insurance Fund has issued a certificate relating to extended Army Group Insurance wherein the name of the applicant has been shown as wife of Sri Ram Bahadur Gurung. District Administration Office, Kaski, has issued a certificate stating therein that Ram Bahadur Gurung, resident of Kaski district expired on 25.11.2012 and a recommendation letter dated 01.01.2013 stating to provide family pension to the applicant by verifying the family details. Learned counsel for the applicant submitted that though Life Time Arrears (LTA) has been granted to the applicant but despite best efforts of the applicant, family pension has not been granted to her. In reply to her representation, Respondent No 5 has informed that her joint

notification for family pension has not been carried out hence family pension was not granted to her. She was advised to contact concerned Record Office of her late husband for processing of claim for grant of family pension. Learned counsel for the applicant submitted that name of the applicant has been specifically mentioned in the official records and also Army Group Insurance and that LTC and arrear of LTA have been paid to the applicant, then there is no justification for not granting the family pension to the applicant. This action of respondents is not only arbitrary and illegal, but also discriminatory on part of the respondents. He pleaded that applicant be granted family pension with interest @ 12% per annum from due date.

5. Per contra, learned counsel for the respondents submitted that case of the applicant for grant of family pension was examined by Record Office and it has emerged that deceased Ex serviceman contracted three marriages during his lifetime. First marriage with Smt Maya Kumari who later absconded on 01 December 1960. The deceased ex serviceman contracted second marriage with Smt Suk Kumari on 12 January 1961, who later on died on 07 September 1979. After demise of second wife, i.e. Smt Suk Kumari, the deceased ex-serviceman married to Smt Aas Kumari (applicant) on 14 November 1979. On demise of deceased ex serviceman, the applicant requested to pension paying office, Pokhara for payment of LTA and grant of family pension. Her

case was referred to Record Office Indian Embassy, Kathmandu for detailed investigation. Record Office Indian Embassy, Kathmandu (Nepal) carried out detailed investigation in terms of Paras 174 (a) and 174 (m) of Regulations for the Army 1987 (Revised Edition). It was emerged that applicant's name was not jointly notified in PPO, while her husband was in service and thereafter till his death. Ex serviceman contracted third marriage with Smt Aas Kumari during currency of Smt Suk Kumari, Second wife, who was not issueless. Hence the third marriage is plural marriage in accordance with Para 333 of Regulation for the Army 1987 (Revised Edition). Learned counsel for the respondents submitted that instant original application is misconceived and devoid of merit as such liable to be dismissed.

6. We have heard learned counsel for the parties and have also perused the record.

7. At the outset, we would like to note that ex serviceman contracted second marriage after absconding of first wife. He contracted third marriage after death of second wife. The applicant, third wife Smt Aas Kumari has been issued certain documents which indicate that she is legally wedded wife of ex serviceman. Respondents have granted her LTA which proves that she is legally wedded wife of ex serviceman. We also observe that, applicant has forwarded all the required documents for grant of family pension to the respondents.

8. In view of above, Original Application is **partly allowed** and the impugned order passed by the respondents rejecting the claim of the applicant for grant of family pension is set aside. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of Shiv Dass v. Union of India and Others (2007 (3) SLR 445), the arrears of Family Pension will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 23.10.2019. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

9. No order as to costs.

10. Pending applications, if any, are disposed off.

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

Dated : 13th September, 2021

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