

RESERVED
(Court No 2)
(Ser No 19)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 312 of 2022

Wednesday, this the 12th day of April, 2023

**"Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)"**

Smt Lal Maya Rana, W/o No 5744127 Ex Rfn/Sep Durga Bahadur Rana, Permanent R/o-Ward No 3, VDC-Balithum, P.O.-Balithum, Distt-Gulmi (Nepal), present address-Near GRD Gate, P.O.-Kunraghat, Distt-Gorakhpur (UP).

.....Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South block, RK Puram, New Delhi-110011.
2. Integrated HQ ofr MoD (Army), Adjutant General's Branch, Addl Dte Gen Personnel Services, Room No 18, plot No 108 (West), L Block, Church Road, New Delhi-110001.
3. IHQ of MoD (Army), AG's Branch, Addl Dte Gen/MP-8 (I of R), West Block-III, RK Puram, New Delhi-110066.
4. OIC Records, Record Indian Embassy, Kathmandu (Nepal), Email-record@eoiktm.org, FAX No 00977-1-4429567.
5. OIC Record, Records Gorkha, PIN-901108.
6. OIC Record, Records the Mech Inf Regt, PIN-900476, C/o 56 APO.
7. Military Pension Branch, Embassy of India, Kathmandu (Nepal).
8. PCDA (P), Grants-4 Section, Draupadi Ghat, Allahabad (UP)-211014.Respondents

Ld. Counsel
for the applicant

Shri VK Pandey, Advocate

Ld. Counsel
for the respondents

Shri Pushendra Mishra, Advocate
Central Government Counsel

ORDER

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

"(a) That this Hon'ble Tribunal may kindly be pleased to set aside the impugned rejection order of Ordinary Family Pension dated 31.05.2016 passed by Opp party No 4, as contained in annexure No 1 to this original application, and grant the Ordinary Family Pension for life to the applicant for life with arrear w.e.f. 03.12.2012 to actual date of payment and also onwards, and provide the interest on the aforesaid delayed amount of Ordinary Family Pension with 18% p.a. since due date of actual date of payment in the interest of justice.

(b) That this Hon'ble Tribunal may kindly be awarded the cost Rs 30,000/- (Rupees thirty thousand only) to the applicant against the opposite parties.

(c) That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.

2. In brief, facts of the case are that the applicant's husband (late) Sep Durga Bahadur Rana was enrolled in the Army on 28.10.1968 and was discharged from service on 31.10.1984 (AN) on completion of service limit. After discharge from service he was granted service pension vide PPO No S/C/25792/84 dated 29.10.1984. During the course of his service he got married to Smt Shiv Kali Rana (First wife) on 21.09.1972 and the casualty of which was published vide Part-II Order No 203/14/1973 and later he got married to Smt Lal Maya Rana (Second wife i.e. the applicant) on 19.09.1977 which was notified vide Part-II Order No 13/01/1980. After retirement the ex-soldier

applied thrice for endorsement of name of second wife in the year 1991, 2008 and 2009 and also submitted application for grant of family pension in favour of the applicant. After his death on 02.12.2012 applicant, claiming herself as widow of the deceased soldier, applied for grant of life time arrears (LTA) in her favour. The case was investigated and LTA was paid to her. On 20.02.2015 applicant submitted a petition to Records the Mechanized Infantry for payment of monthly pension alongwith arrears w.e.f. 03.12.2012 followed by second petition dated 09.02.2016. On receipt of petitions a detailed reply was forwarded vide letter dated 31.05.2016 mentioning therein that 'due to varied statements of claimant and huge variations between documents issued by the Govt of Nepal and entries made in Kindered Roll Portion of the Sheet Roll of the deceased ex-serviceman, the case turned out to be a case of plural marriage and genuineness of the claimant for grant of family pension was not established. Being dissatisfied the applicant is also stated to have visited Indian Embassy alongwith Shri Mahendra Mishra, Advocate. This O.A. has been filed for grant of family pension to the applicant w.e.f. next date of death of her husband.

3. Submission of learned counsel for the applicant is that applicant's husband was enrolled in the Army and after retirement he started getting service pension. He further

submitted that during the course of his service he got married to Smt Shivkali Rana on 09.12.1965 who died on 25.07.1968. It was further submitted that applicant's husband got married with the applicant on 19.09.1977 after death of his first wife which was published vide Part-II Order No 13/01/1980. It was further submitted that applicant's husband died on 02.12.2012.

4. Learned counsel for the applicant further submitted that after death of her husband LTA for the period 01.11.2012 to 02.12.2012 amounting to Rs 11,077/- was paid to the applicant on 17.11.2014 (Annexure No 2 to O.A.). It was further submitted that during life time applicant's husband had applied thrice for endorsement of applicant's name for grant of family pension in the year 1991, 2008 and 2009 but before the said endorsement could be made, the pensioner died on 02.12.2012. He submitted that applicant being NOK of the deceased soldier is entitled for grant of family pension. In support of her contention, applicant has relied upon order dated 12.10.2021 passed by the AFT, PB, New Delhi in O.A. No. 1506 of 2017, **Smt Parvati Thapa vs Union of India & Ors**, order dated 15.04.2020 passed by the Hon'ble Allahabad High Court in Writ Petition No 6973 of 2016, **Union of India vs Smt Ganeshibai Alias Sunderibai** and order dated 03.02.1998 passed by the Hon'ble High Court

of judicature at Allahabad in the case of ***Lnk Dhan Bahadur Roka vs Union of India & Ors.***

5. Per contra, learned counsel for the respondents submitted that husband of the applicant, No 5744127K Ex Sep (late) Durga Bahadur Rana, was enrolled in the Indian Army on 28.10.1968 and he was discharged from service w.e.f. 31.10.1984 (AN) after completion of service limit. It was further submitted that vide PPO No S/C/25792/84 dated 29.10.1984 he was sanctioned service pension which he was in receipt of till his death on 02.12.2012. The respondents' counsel further submitted that during the course of his service Smt Shiv Kali Rana (first wife) was married to him on 21.09.1972 which was notified vide Part-II Order No 203/14/1973 and later he got married to Smt Lal Maya Rana (second wife i.e. applicant) on 19.09.1977 which was notified vide Part-II Order No 13/01/1980.

6. Learned counsel for the respondents further submitted that after retirement the ex-serviceman had applied thrice for endorsement of name for family pension in favour of the applicant in the year 1991, 2008 and 2009 but he died on before endorsement of her name. After death of Army person applicant approached military pension branch, Kathmandu for payment of life time arrears (LTA) which was investigated through various agencies but genuineness of applicant could not be established, however, she was

paid LTA on 17.11.2014. The learned counsel for the respondents further submitted that applicant preferred petition dated 20.02.2015 for grant of family pension which after being investigated it was found that there is variation of date of birth and marriage in the documents issued by Govt of Nepal and endorsement in kindered roll, therefore due to varied statement of claimant and huge variation the case turned out to be a case of plural marriage and genuineness of the claimant for grant of family pension was not established, which resulted in denial of family pension to the applicant. He pleaded for dismissal of O.A.

7. Heard Shri Vijay Kumar Pandey and Shri TK Shukla, learned counsel for the applicant and Shri Pushpendra Mishra, learned counsel for the respondents and perused the record.

8. There is no dispute that No 5744127K Ex Sep (late) Durga Bahadur Rana was enrolled in the Indian Army on 28.10.1968 and he was discharged from service w.e.f. 31.10.1984 (AN) after completion of service limit. During the course of his service he got married to Smt Shiv Kali Rana (first wife) on 21.09.1972 which was published vide Part-II Order No 203/14/1973 and later on her death he got married to Smt Lal Maya Rana (second wife) on 19.09.1977 which was published vide Part-II Order No 13/01/1980. After discharge from service he applied thrice for

endorsement of name for family pension in favour of Smt Lal Maya Rana (applicant) but he died on 02.12.2012.

9. After death of Ex-Durga Bahadur Rana, applicant applied for LTA which was granted to her on 17.11.2014 (Annexure No 2 to O.A.). Thereafter, she applied for grant of family pension through Military Pension Branch, Kathmandu which on investigation was denied on the ground of mismatch of certain information between the documents supplied by Govt of Nepal and Army records.

10. Respondents have contended that the deceased soldier had contracted plural marriage. This contention of the respondents has been rebutted by the applicant on the basis of facts and evidence available on the record. In this regard we find that Part-II Order related to marriage of the applicant was published in the year 1980 and Part-II order relating to marriage with first wife was published in the year 1973. It implies that the Part-II order regarding applicant's 2nd marriage with the deceased soldier was published four years prior to date of retirement. Had he contracted plural marriage, action to terminate the service of the deceased soldier on the ground of Army Act 20, read with Army Rule 17, would have been taken and he would have been dismissed from service.

11. The contention of the applicant that she was married to the deceased soldier after death of his first wife seems to

be justified in view of District Administration Office, Gulmi certificate placed at Annexure 10 of the counter affidavit. As per this certificate first wife of the deceased soldier had expired on 24.12.1968 and applicant's name is recorded as second wife.

12. In view of the above facts we consider that there is sufficient ground for the respondents to recommend the case of the applicant for grant of family pension because:-

(i) There is Part-II order confirming the marriage of the applicant with the deceased soldier

(ii) The certificate of District Administration Office, Gulmi filed by the respondents as annexure 10 of the CA in which date of death of first wife is mentioned as 24.12.1968.

(iii) Payment of LTA for the period 02.12.2012 to 17.11.2014 amounting to Rs 11,077/- made by the respondents to the applicant as NOK and lastly that no objection has been filed by any person on the fact that applicant is a legally wedded wife of the deceased soldier.

13. In view of the above, applicant is held entitled to grant of family pension w.e.f. next date of death of her husband i.e. w.e.f. 03.12.2012, but due to law of limitation arrears are restricted to three years preceding the date of filing of

this O.A. This O.A. was filed on 20.04.2022. The respondents are directed to grant the aforesaid dues within a period of four months on receipt of a certified copy of this order. Default will invite interest @ 8% p.a.

14. O.A. is **allowed** accordingly.

15. No order as to costs.

16. Miscellaneous application(s), pending if any, stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 12.04.2023
rathore