

E-Court No. 1

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

ORIGINAL APPLICATION No. 661 of 2020

Wednesday, this the 16th day of February, 2022

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

Smt Cheehom Gurang Tamang, Wife of No 5739024 Late Rfn
Sirjan Gurang Tamang, Resident of – Ganajamuna
Gaupauka-2, Dhading, (Nepal).

..... Applicant

Ld. Counsel for the : **Shri V.R. Chaubey, Advocate**
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, South Block, New Delhi - 110011.
2. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad 211014.
3. Officer in Charge, Records, Gorkha Rifles, Subathu (Shimla Hills)- 173206.
4. Record Office, Indian Embassy, Kathmandu, Nepal.

.....Respondents

Ld. Counsel for the : **Shri Ashish Kumar Singh,**
Respondents. **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 :-

- (i). The Hon’ble Tribunal may kindly be pleased to direct the opposite parties to grant the family pension to the applicant wef the death of her husband on 16.05.2014.*
- (ii). Pass any other order or direction which this Hon’ble Tribunal may deem fit and proper under the circumstances of the case.*

2. Succinctly stated, husband of the applicant Late Rfn Sirjan Gurung was enrolled in the Indian Army on 07.01.1960 and was discharged from service on 03.04.1975 after rendering 15 years of service. After retirement, husband of the applicant was granted service pension for his services rendered in the army vide PPO dated 10.10.1975. Husband of the applicant died on 16.06.2014. 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.

3. Learned counsel for the applicant submitted that applicant is widow of Late Sirjan Gurang Tamang. Govt of Nepal, Ministry of Home Affairs District Administration Office- Dhading issued a certificate dated 06.06.2019 regarding identification of the applicant. Husband of the applicant was never been convicted for any offence of false answer on enrolment. After death of her husband, applicant preferred representation dated 14.08.2014 before the respondents for grant of family pension but the same was denied. Applicant provided the copy of PPO along with copy of Pension certificate but respondents have not considered the case of the applicant for grant of family pension. Applicant again preferred representation vide letter 21.12.2019 but no action was taken. Learned counsel for the applicant submitted that the applicant is an old lady of 73 years and due to not granting family pension, she is suffering lot of financial difficulties. 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 Rfn Sirjan Gurung, applicant represented her case at Military Pension branch, Kathmandu (Nepal) for payment of Life Time Arrears and family pension. The case was investigated by Military Pension Branch,

Kathmandu, Nepal. As per service record held with Pension paying Office, Pokhara, caste of the deceased soldier is recorded as Gurung (Sinejhale) whereas, in Nagarikta Praman Patra (NPP) caste of the deceased soldier is mentioned as 'Tamang'. Gurung and Tamang signifies different tribes in Nepal. Due to variation in caste of the individual, Pension Paying Office, Pokhara, referred the case to record Office Indian Embassy, Kathmandu (Nepal) for further investigation for establishing genuineness of the claimant in terms of Paragraph 174 (a) and (m) of Regulations for the Army 1987 (Revised Edition), it was revealed that the caste of the deceased ex-serviceman is Gurung, whereas as per Nagrikta Praman Patra, the caste of deceased ex-serviceman is Tamang. The deceased ex-serviceman was enrolled in the Indian Army in the vacancy of Gurung caste of Grkhas but his actual caste was Tamang. Since no provision for change of cast/Name of deceased pensioner exists in the service rules, and a large number of such cases have come into light, the case was taken up with the competent authority i.e. CW-6 Dte, IHQ of MoD (Army) vide letter dated 23.12.2015. Decision of the competent authority is still awaited. On receipt of direction, appropriate action for grant of family pension to the widow shall be taken. In view of above, learned counsel for the respondents prayed that

Original Application is devoid of merit and 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 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, (especially Annexure 5), we consider it appropriate to believe that Smt Cheehom Gurung Tamang is legally wedded wife of Ex Late Rfn Sirjan Gurung and she is entitled for grant of Family Pension. In the instant case, applicant’s name is recorded in service documents of her husband.

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 overruled. 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.

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

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated : 04 October, 2021

UKT/-