

RESERVED
(Court No 2)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 12 of 2021

Thursday, this the 29th day of February, 2024

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

Smt Fulmaya Lamichhane, wife of Pensioner Ex-Indian Army No 5441833 Naik Late Hari Bahadur Gurung (Lamichhane), resident of Makawanpur, District-Hetauda Sub Metropolitan City, Ward No 8 (Nepal).

..... Applicant

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

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110011.
2. Office of the PCDA (P), Draupadi Ghat, Allahabad.
3. Officer-in-Charge, Records Gorkha Rifles, Subathu (Shimla Hills)-173206, C/o 56 APO.
4. Record Office, Indian Embassy, Kathmandu, Nepal.
5. 6/5 GR (D.S.C.).

.....Respondents

Ld. Counsel for the : **Ms Amrita Chakraborty**, Advocate
Respondents. Central Govt. Counsel

ORDER

1. This application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007. The applicant has prayed 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 w.e.f. the death of her husband on 30.09.2017.

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

2. Brief facts of the case are that No. 5441833 Ex Nk (late) Hari Bahadur Gurung @ Hari Bahadur Lamichhane was initially enrolled in 58 Gorkha Training Centre on 18.12.1963 and discharged from service with effect from 02.09.1974. During the course of his service, he was married to Smt Tek Maya on 06.12.1968 who eloped in the year 1970 and re-married with Dhalke alias Chandra Bahadur Adhikari of Manuwa, GVS Ward No 02, Distt-Gorkha. Thereafter, he married to Smt Fulmaya Lamichhane on 15.05.1970. After discharge from Army service, he was re-enrolled in Defence Security Corps (DSC) on 13.01.1976. His former colour service of 10 years and 259 days was counted towards DSC service. After completion of 25 years and 278 days aggregate qualifying service, he was discharged from DSC service on 31.01.1991 (AN) under the provisions of Rule 13 (3) III (i) of Army Rules, 1954. He was granted service pension vide PPO No. S/2177/1990 in which his wife's name is

recorded as Smt Ful Maya Gurung. He died on 30.09.2017. After death of pensioner, applicant being NOK of the deceased soldier applied for grant of family pension but due to disparity in her name, family pension could not be started. This O.A. has been filed for grant of family pension.

3. Submission of learned counsel for the applicant is that applicant is second wife of the deceased soldier as her name is duly recorded in service documents. After death of her husband, she submitted a representation dated 30.12.2018 to Indian Embassy, Kathmandu (Nepal) alongwith certificate of identity for grant of family pension but respondents have not considered her case for grant of family pension.

4. Further submission of learned counsel for the applicant is that the Govt of Nepal has issued certificate dated 18.12.2017 which establishes that applicant Smt Phul Maya Lamichhane @ Phul Maya Gurung is the legally wedded wife of the deceased soldier and her name is duly entered in PPO. It is also mentioned in the certificate issued by the District Administration that Smt Fulmaya Lamichhane and Smt Fulmaya Gurung is same lady. He pleaded for grant of family pension to the applicant.

5. Per contra, submission of learned counsel for the respondents is that after death of pensioner, Smt Phul Maya Lamichhane claiming to be wife of the deceased soldier approached Military Pension Branch, Embassy of India, Kathmandu (Nepal) for payment of family pension, but since

there being mismatch in surname of the claimant, family pension could not be granted. Further submission of learned counsel for the respondents is that case of the applicant was investigated through Record Office, Indian Embassy through which it came to light that first marriage of the deceased soldier had never been dissolved by a Court of Law and he married to Smt Ful Maya Gurung during the subsistence of his first marriage with Smt Tek Maya.

6. Further submission of learned counsel for the respondents is that since applicant had contracted second marriage with the applicant during subsistence of first marriage, therefore, marriage of the deceased soldier with the applicant is plural in accordance with Para 333 of Pension Regulations for the Army, 1987 (Revised Edition). As per this rule, no person subject to Army Act, can marry again when his previous marriage is subsisting without prior sanction of the Govt. It was further submitted that in the instant case the deceased soldier had married with Smt Ful Maya Lamichhane during life time of first wife of the deceased soldier, hence the marriage of the deceased soldier with the applicant is illegal and she is not entitled to family pension. She pleaded for dismissal of O.A.

7. Heard Shri Veer Raghav Chaubey, learned counsel for the applicant and Ms Amrita Chakraborty, learned counsel for the respondents and perused the record.

8. There is no dispute that No. 5441833 Ex Nk (late) Hari Bahadur Gurung was enrolled in the Indian Army on 18.12.1963 and after serving for 10 years and 259 days, he was discharged from service 02.09.1974. He was re-enrolled in DSC on 13.01.1976 and his former service was counted towards DSC service for pensionary benefits. He was discharged from DSC service w.e.f. 31.01.1991 (AN) on completion of 25 years and 278 days service. While in receipt of service pension as per PPO No. S/2177/1990, he died on 30.09.2017.

9. During the course of his service the deceased soldier was married to Smt Tek Maya on 06.12.1968 who being issueless eloped in the year 1970 and re-married with Shri Dhalke @ Chandra Bahadur Adhikari of Manuwa, GVS Ward No 02, Distt-Gorkha and is still living with her husband. This fact is corroborated from the records filed by the respondents during the course of hearing in which it is mentioned that Bhartiya Rajdutas Abhilekh Karyalaya, Record Office Indian Embassy, Kathmandu, Nepal had written letter dated 03.05.2022 (Annexure R-1) to DSC Records, PIN-901277, C/o 56 APO in response to DSC Records letter dated 02.02.2022 mentioning that *'Smt Tek Maya, Sr wife of No 5441833F Ex Nk (Late) Hari Bahadur Gurung of DSC was issue less and re-married with Dhalke alias Chandra Bahadur Adhikari of Manuwa, GVS Ward No 02, Distt-Gorkha and are still alive and living together. Further, one son and three daughters born to her from her second wedlock. In this*

connection, copies of ground investigation report carried out by DSB Bharatpur, Nepal and sifarish issued by Ward Chairman, Kamane, Hethauda, Makwanpur, Nepal are fwd herewith for your info and necessary action pl”.

10. Applicant Smt Ful Maya Lamichhane had submitted an application to Chief District Officer, Govt of Nepal, Ministry of Home Affairs, District Administration, Makawanpur for verification of her antecedents. In response to her application, Chief District Officer vide letter dated 18.12.2017 submitted the following report, extract of which is reproduced as under:-

“Regarding the mentioned subject, an application has submitted to this office on 2074/09/03 B.S. (December 18, 2017 A.D.) by Mrs. Phulmaya Lamichhane, wife of pensioner Ex-Indian Army No 5441833 Naik Mr. Hari Bahadur Lamichhane, resident of Makawanpur District, Hetauda Sub-Metropolitan City, Ward No 8, requesting for the certification that the name and surname of her husband has been mentioned as Hari Bahadur Gurung and her name and surname has been mentioned as Phulmaya Gurung in the Pension Book, as well as her husband’s name and surname has been mentioned as Hari Bahadur Lamichhane in her husband’s Citizenship Certificate No 1292 dated 2044/11/06 B.S (May 29, 1991 A.D.), those different name and surname having person is the same person applicant and her husband not the different person, she also requesting for the recommendation that her husband has died on 2074/04/13 B.S. (October 30, 2017 A.D.), so, recommended to the concerned body for transfer the Pension Book in her name. On the basis of the attached documents such as duplicate copy of Citizenship, Death Registration, Relationship Verification, Migration Registration and Recommendation Letter of the Office of Hetauda Sub-Metropolitan City, Ward No 8, Kamane, Hetauda, Makwanpur, Ref No 1374, Dated 2074/09/03 B.S. (December 18, 2017 A.D.), it is hereby certified that Phulmaya Gurung and Phulmaya Lamichhane, similarly Hari Bahadur Gurung and Hari Bahadur Lamichhane is the same person applicant and her husband not the different person, as well as it is hereby requested and recommended to transfer the Pension Book in her name for the same effect.”

11. On perusal of verification certificate No. 2444 dated 18.12.2017 issued by Chief District Officer, Makawanpur, Nepal, it appears that Smt Ful Maya Gurung and Phulmaya Lamichhane is same lady who was married to the deceased soldier on 15.05.1970 after pensioner's first wife eloped and re-married with Shri Dhalke @ Chandra Bahadur Adhikari of Manuwa, GVS Ward No 02, Distt-Gorkha. In view of the above, respondents' contention that applicant's marriage with the deceased soldier is plural, in view of Para 333 of Regulations for the Army, 1987 (Revised Edition), is not sustainable as applicant's marriage was solemnized with the deceased soldier after elopement of first wife Smt Tek Maya who got married with Shri Dhalke @ Chandra Bahadur Adhikari and leading married life.

12. The respondents' contention is that applicant's marriage with the deceased soldier is not a valid marriage as the deceased soldier after elopement of first wife solemnized second marriage during subsistence of first marriage. In regard to this it is submitted that after elopement Smt Tek Maya re-married to Shri Dhalke @ Chandra Bahadur Adhikari and never returned to her first husband. The applicant and her husband lived together for a long time till death of the pensioner and this long cohabitation was accepted by the society as husband and wife. This long cohabitation goes a long way in establishing a valid marriage as held by the Hon'ble Apex Court in ***Challamma and Tilaga &***

Ors, (2009) 9 SCC 209. The relevant part of the judgment is reproduced as under:-

"10. It is beyond any cavil of doubt that in determining the question of valid marriage, the conduct of the deceased in a case of this nature would be of some relevance. If on the aforementioned premise, the learned trial Judge has arrived at a finding that the deceased Subramanya had married the first respondent, no exception thereto can be taken. A long cohabitation and acceptance of the society of a man and woman as husband and wife goes a long way in establishing a valid marriage."

13. Nothing has been brought on record by learned counsel for the parties to establish that elopement of first wife had taken place after marriage of the deceased soldier with the applicant. The respondents in supplementary affidavit have stated that Smt Tek Maya (first wife) eloped in the year 1970 and the deceased soldier re-married to the applicant (second wife) in the year 1970.

14. Viewed from four corners, we are of the considered opinion that the applicant, whose name is recorded in service documents, is entitled for grant of family pension being the Next of Kin (NOK) of the deceased soldier and no other person has ever disputed grant of family pension to the applicant. Consequently, the impugned order, if any, is liable to be set aside.

15. The applicant has filed this O.A. mentioning her name as Phulmaya Lamichhane but in service record of the deceased soldier her name is recorded as Ful Maya Gurung. In certificate dated 18.12.2017 (Annexure-3) the Chief District Officer, Makawanpur, Nepal has certified that Phulmaya Lamichhane and

Phulmaya Gurung is same person whose husband was the deceased soldier. Accordingly, as per service record her name has been mentioned in this order as Smt Ful Maya Lamichhane which is also recorded in Nepalese Citizenship Certificate.

16. In the result, the application is **allowed**. The respondents are directed to grant family pension as per rules in favour of the applicant as Next of Kin of the deceased soldier with effect from 01.10.2017 for life and issue PPO to that effect and also to pay the arrears within a period of four months from today. Default will invite interest @ 8% p.a. The applicant is also eligible for all consequential benefits that accrue to her as widow of an Ex-Serviceman including canteen facilities, ECHS etc.

17. No order as to costs.

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

(Maj Gen Sanjay Singh)
Member (A)

Dated: 29.02.2024
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(Justice Anil Kumar)
Member (J)

RESERVED

(Court No 2)

Form No. 4

{See rule 11(1)}
ORDER SHEETARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

O.A. No. 12 of 2021

Smt Phulmaya Lamichhane

Applicant

By Legal Practitioner for the Applicant : **Shri Veer Raghav Chaubey, Advocate**

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents : **Ms Amrita Chakraborty, Advocate**

Notes of the Registry	Orders of the Tribunal
	<p data-bbox="391 1454 529 1486"><u>29.02.2024</u></p> <p data-bbox="391 1489 1003 1524"><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></p> <p data-bbox="391 1526 1003 1561"><u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p data-bbox="488 1623 764 1658">Judgment pronounced.</p> <p data-bbox="488 1677 862 1712">O. A. No. 12 of 2021 is allowed.</p> <p data-bbox="488 1731 1284 1766">For orders, see our judgment and order passed on separate sheets.</p> <p data-bbox="407 1876 764 1946">(Maj Gen Sanjay Singh) Member (A)</p> <p data-bbox="391 1946 477 1978"><i>rathore</i></p> <p data-bbox="1040 1876 1338 1946">(Justice Anil Kumar) Member (J)</p>