

RESERVED
(Court No. 2)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 574 of 2023

Thursday, this the 06th day of February, 2025

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj Gen Sanjay Singh, Member (A)”

Mrs Devaki Maya Gurung, W/o No 5238179 Ex Rflman Dhan Bahadur Gurung, R/o Sneh 28 Park Road, Lucknow.

..... Applicant

Ld. Counsel for the : Col AK Srivastava (Retd), Advocate
Applicant Shri Dharam Raj Singh, Advocate
 Shri Amrendu Srivastava, Advocate

Versus

1. The Union of India, through Secretary Ministry of Defence, IHQ of MoD (Army), South Block, DHQ, PO-New Delhi-110011.
2. The COAS, IHQ of MoD (Army), Sena Bhawan, South Block, DHQ, PO-New Delhi.
3. The O/C Records, Records Indian Embassy, Kathmandu, Nepal.
4. The OC Records, 39 GTC, Varanasi Cantt.
5. PCDA (P), Draupadi Ghat, Allahabad, PIN-211014.

.....Respondents

Ld. Counsel for the : **Shri Asheesh Agnihotri**, Advocate
Respondents. Central Govt. Counsel

ORDER

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

(i) Issue/pass an order or direction of appropriate nature to the respondents to summon and set aside such orders/letters that restrict endorsement of her name as the spouse of No 5238179 Ex Rifleman Dhan Bahadur Gurung of 1/3 GR in various necessary documents and thereafter endorse her name as his spouse in various necessary documents in view of her marriage with him on 02.10.1972 evident in District Administration office, Tanahun Ministry of Home, Nepal letter dated 0/12/2016 and 23/03/2017 (Annexure No A-2 & A-3).

(ii) Issue/pass an order or direction of appropriate nature to the respondents to summon and set aside such orders/letters that restrict the grant of entitle family pension to the applicant with effect from 26.11.2016 i.e. pursuant to death of her husband on 25.11.2016 and thereby grant her entitled family pension w.e.f. 26.11.2016.

(iii) Pass any other order or direction as deemed appropriate by the Hon'ble Tribunal.

(iv) Allow this application with costs and interest @ 18% on due entitlements.

2. Brief facts of the case are that No. 5238179 Ex Rifleman Dhan Bahadur Gurung was enrolled in the Army on 28.11.1963 and was discharged from service w.e.f. 30.11.1979 (AN) on completion of terms of engagement. After discharge from service, he was granted service pension vide PPO No. S/0093179. His pension was revised from time to time vide corrigendum PPO No. S/Corr/6th CPC/201363/2014. He died on 25.11.2016 being in receipt of service pension.

3. Prior to joining Army service, he married Miss Budhi Maya Gurung on 27.02.1952. Through this wedlock, one son and one daughter were born on 17.04.1965 and 01.01.1971 respectively. During the course of service, he was allotted family accommodation. Accordingly, he proceeded on

leave to bring his family comprising of his wife and two children but on reaching home, he was found that his wife had eloped alongwith children and was cohabiting with one Sri Harka Bahadur Gurung of Ward No 06 of Dhorphphirdi VDC, District-Tanahun, Nepal. On query, she refused to accompany him and ultimately she got re-married with Harka Bahadur Gurung on 31.10.1974. The applicant was married to Rifleman Dhan Bahadur Gurung on 02.10.1972 according to Nepal Personal Laws. Applicant was blessed with two sons and three daughters through this wedlock.

4. After death of Rifleman Dhan Bahadur Gurung, life time arrear (LTA) was paid to the applicant on 19.12.2016, but family pension was denied on the ground that the deceased soldier had contracted plural marriage. This O.A. has been filed for grant of ordinary family pension to the applicant with effect from the next date of death in respect of her husband.

5. Learned counsel for the applicant submitted that the applicant is the second wife of deceased soldier who was married to late Rifleman Dhan Bahadur Gurung on 02.10.1972 after elopement of his first wife and later she got married with Harka Bahadur Gurung on 31.10.1974. It was further submitted that two sons and three daughters were born from this wedlock and this fact is corroborated by certificate dated 23.03.2017 issued by District Administration Office, Tanahun, Nepal (Annexure A-3).

6. Learned counsel for the applicant further submitted that after death of her husband she was paid life time arrear (LTA) of her deceased husband's service pension through voucher No. 306 dated 19.12.2016 (Annexure A-4), but denying ordinary family pension to the applicant is not legally tenable. It was further submitted that since the applicant and the deceased

soldier had a long cohabitation, therefore applicant is entitled for grant of ordinary family pension after death of her husband. In support, learned counsel for the applicant has placed reliance on order passed by this Tribunal in O.A. No. 130 of 2014. He pleaded for grant of ordinary family pension to the applicant w.e.f. the next date of death in respect of her husband.

7. On the other hand, learned counsel for the respondents submitted that applicant's husband was enrolled in the Army on 28.11.1963 and was discharged from service w.e.f. 30.11.1979 (AN) after completion of terms of engagement. He was granted service pension vide PPO No. S/66931/1979 dated 16.11.1979. He is reported to have died on 25.11.2016 in Nepal as per certificate annexed at Annexure CA-2. After death of applicant's husband, Smt Devaki Maya Gurung approached Pension Paying Office (PPO), Pokhara (Nepal) for payment of life time arrear (LTA) and family pension and in turn she was paid Rs 1,61,393/- on 19.12.2016 (Annexure CA-3) on account of LTA.

8. Learned counsel for the respondents further submitted that as far as payment of family pension is concerned, verification was carried out by Record Office, Indian Embassy, Kathmandu (Nepal) which revealed that the deceased had contracted two marriages during his life time. Accordingly, she was advised to report to Record Office alongwith relevant documents for further investigation. During investigation, it was found that the deceased soldier solemnized two marriages during his life time. He married first Smt Budhe Maya/Budhi Maya Gurung on 27.02.1952 and from this wedlock one son and one daughter were born who are above 25 years of age and married.

9. Learned counsel for the respondents further submitted that as per service records (Annexure CA-7), the date of elopement of the first wife is 01.06.1973 and date of marriage to the second wife is 10.08.1973, however as per documents issued by Govt of Nepal, the date of elopement of first wife has not been mentioned but the date of marriage of second wife is mentioned as 02.10.1972, which being earlier to the date of elopement of first wife, falls in the category of plural marriage, applicant is not entitled to grant of ordinary family pension.

10. Learned counsel for the respondents further submitted that during the course of investigation, applicant had informed the investigating agency that she had lived with first wife for about two years, therefore, she being second wife of the applicant is not entitled to family pension as the deceased soldier had not divorced the first wife before solemnizing second marriage. It was further submitted that this was the sole reason of denying family pension to the applicant being illegitimate wife of the deceased soldier. Advancing arguments, learned counsel for the respondents further submitted that the second marriage in respect of the deceased soldier being solemnized after implementation of Muluki-Ain, the second marriage being plural, applicant is not entitled to family pension as at the time of second marriage, first wife was alive and not issueless. He pleaded for dismissal of O.A.

11. Heard learned counsel for the parties and perused the record.

12. Facts with regard to date of enrolment, date of discharge and grant of service pension in respect of the deceased soldier are not disputed. Applicant's husband had married Smt Budhi Maya Gurung in the year 1959 i.e. prior to enrolment in the Army. During the course of his service, in the

year 1973, Smt Budhi Maya Gurung eloped with her two children on 01.06.1973 and married with Sri Harka Bahadur Gurung of Ward No. 06 of Dhorphphirdi VDC, District-Tanahun, Nepal. Thereafter, the deceased soldier married Smt Devaki Maya Gurung (applicant) on 10.08.1973. This fact has been conceded by the respondents in Para 8 of their counter affidavit mentioning therein that these dates are in line with the dates mentioned in record of service.

13. Army Order 44/2001 (DV) deals with plural marriage in respect of Army personnel including Nepalese domicile. For convenience sake, relevant extract of the aforesaid Army Order is excerpted below:-

“5. No person subject to the Army Act except Gorkha personnel of Nepalese domicile, whose personal law permits plural marriage and whose previous marriage is subsisting, will marry again without prior sanction of the Central Government.

6. An individual may, during the life time of his wife apply for sanction to contract a plural marriage on any one or more of the following grounds :-

(a) His wife has deserted him and there is sufficient proof of such desertion;

(b) x x x x x

(c) x x x x x”

14. In the present case, there is sufficient proof that the deceased soldier's first wife Smt Budhi Maya Gurung had eloped and re-married as mentioned in District Administration Office, Tanahun letter dated 05.12.2016 (Annexure A-2 of O.A.). On conjoint reading of letter dated 05.12.2016 and Para 8 of counter affidavit, it comes out that the deceased soldier had re-married the applicant Smt Devakai Maya Gurung after his first wife eloped and afterwards re-married Shri Harka Bahadur Gurung.

15. The fact on record shows that first wife Smt Budhi Maya Gurung had deserted in the year 1973 and re-married. Thereafter, the applicant (being married after elopement of first wife) and the deceased soldier had a long cohabitation of 43 years starting from 1973 to 2016 and had five children out of this wedlock. We observe that after death of Rifleman Dhan Bahadur Gurung in the year 2016, the applicant was paid LTA (Annexure A-4) amounting to Rs 1,61,393/- after verifying the antecedents.

16. The case in hand hinges on only one ground. Applicant's contention is that she was married to the deceased soldier after elopement of his first wife who got re-married with Shri Harka Bahadur Gurung but respondents contention is that as per record of the Govt of Nepal the deceased soldier solemnized second marriage during subsistence of first marriage, therefore it falls in the category of plural marriage. Be that as it may, we find that in service documents applicant's name being duly entered as wife of the deceased soldier, and the admission of the respondents regarding she having married the soldier after the first wife eloped and in light of the long period (43 years) of cohabitation after marriage, she seems to be entitled to family pension after death of her husband.

17. Thus, in light of the facts that the applicant was married to the deceased soldier after elopement of first wife, long cohabitation of the applicant with the deceased soldier, payment of LTA to the applicant and her name being recorded in service documents of the deceased soldier, she is entitled to receive family pension. Additionally, her claim for grant of family pension is also fortified as no other person except the applicant has come forward to claim family pension.

18. In view of the above, O.A. is **allowed**.
19. The respondents are directed to grant ordinary family pension to the applicant w.e.f. next date of death in respect of her husband i.e. from 26.11.2016 alongwith arrears with all consequential benefits within a period of four months after receipt of a certified copy of this order.
20. No order as to costs.
21. Miscellaneous application(s), pending if any, shall stand disposed of.

(Maj Gen Sanjay Singh)
Member (A)

Dated 06.02.2025
rathore

(Justice Anil Kumar)
Member (J)

RESERVED

Court No 2

Form No. 4

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

O.A. No. 574 of 2023

Mrs Devaki Maya Gurung

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<div>06.02.2025</div> <div>Hon’ble Mr. Justice Anil Kumar, Member (J)</div> <div>Hon’ble Maj Gen Sanjay Singh, Member (A)</div> <div>1. Judgment pronounced.</div> <div>2. O.A. No. 574 of 2023 is allowed.</div> <div>3. For orders, see our judgment and order passed on separate sheets.</div> <div><div>(Maj Gen Sanjay Singh)</div><div>Member (A)</div><div>rathore</div><div>(Justice Anil Kumar)</div><div>Member (J)</div></div>