

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

**E-Court No. 1**

**Reserved**

**ORIGINAL APPLICATION No. 507 of 2021**

Friday, this the 4<sup>th</sup> day of March, 2022

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

Kunwari Kuwar W/o late Lal Bahadur Kuwar No. 5737249 of  
08 GR, R/o of Ward No. 02 of Satyawati Rural Municipality,  
Gulmi, Nepal.

**..... Applicant**

Learned counsel for the Applicant : **Shri Pankaj Kumar Shukla,  
Advocate**

Versus

1. Union of India through Secretary Ministry of Defence,  
South Block, New Delhi- 110011.
2. Chief of the Army Staff, Integrated HQ of MOD (Army)  
DHQ PO- New Delhi-110011.
3. Officer –in-charge , Pension Group, 08 GR.

**.....Respondents**

Learned counsel for the Respondents: **Dr. Shailendra Sharma Atal,  
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) *To direct the respondents to quash /set aside the name of Applicant in Army Pension patra as Moti Kuwari Kuwar and enter her correct name as Kuwari Kuwar being widow W/o Late No. 5737249 Lal Bahadur Kuwar of 08 GR.*
- (ii) *To direct respondents to release all arrears of pension as applicable to release all arrears of pension as applicable after the date of demise of Applicants husband 26/08/2011.*
- (iii) *To direct the respondents to pay all consequential benefits till date.*
- (iv) *To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.*
- (v) *Allow this application with costs.*

2. Succinctly stated, husband of the applicant Ex Late Lal Bahadur Kuwar was enrolled in the Indian Army on 14.05.1957 and was discharged from service on 13.05.1972 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 No S/18257/1973. Husband of the applicant died on 26.08.2011. After death of deceased soldier, 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 Ex Lal Bahadur Kuwar was married to Smt Ishwari Kuwar (1<sup>st</sup> wife) on 01.12.1953 and her name was recorded in service documents of deceased soldier. Smt Ishwari Kuwar died on 03.07.1957 while ex serviceman was in service. The deceased soldier solemnised his second marriage with Smt Kuwari Kuwar on 28.04.1964 while he was in service. Ex serviceman mentioned name of Smt Moti Kuwar as his wife in IAFY 1948A dated 04.03.1973. On 30.11.2000 the ex serviceman submitted an application for endorsing the name as Smt Kuwari Kuwar @ Moti Kumari Kuwar as his spouse. Ex serviceman as well as Smt Kumari Kuwar had changed their Nagrikta Praman Patra on 26.08.1996. Further ex serviceman during his life time had also produced an alias name certificate issued by Chief District Officer, Gulmi (Nepal) in respect of Smt Kuwari Kuwar stating that Smt Kuwari Kuwar and Moti Kuwar are one and the same lady. Ex serviceman died on 26.08.2011. On demise of Ex Late Lal Bahadur Kuwar, Smt Kuwari Kuwar, the applicant reported to pension Paying Office, Pokhara for payment of Life Time Arrears and for the sanction of family pension in her favour. Applicant provided the copy of News Paper publication cutting

to the effect that Smt Kuwari Kuwar and Moti Kuwar are one and the same person but respondents have not considered the case of the applicant for grant of family pension. Learned counsel for the applicant submitted that the applicant is an old lady of about 76 years and due to non grant of 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 Late Ex Lal Bahadur Kuwar, applicant represented her case at Military Pension Branch, Kathmandu (Nepal) for payment of Life Time Arrears and family pension. The case was investigated by Record Office of Indian Embassy and it was revealed that Late Ex Lal Bahadur Kuwar was married to Smt Ishori (1<sup>st</sup> wife) in the year 1953 and her name was recorded in Sheet Roll of deceased soldier. Smt Ishori died on 03.07.1957 while the applicant was in service. Ex serviceman solemnized 2<sup>nd</sup> marriage with Smt Kuwari Kuwar on 28.04.1964 while he was in service. However, ex serviceman failed to endorse her name in his service documents. At the time of discharge, ex serviceman had mentioned name of Smt Moti Kuwar as his wife in his service documents. On 30.11.2000 ex serviceman submitted application for

endorsement of name of Smt Kumari Kuwar as his spouse in his service documents. Ex serviceman as well as Smt Kumari Kuwar @ Moti Kuwar had changed their Nagrikta Praman Patra on 26.08.1996. Ex serviceman during his lifetime had produced an alias name certificate issued by Chief District Officer, Gulmi (Nepal) in respect of Smt Kuwari Kuwar stating that Smt Kuwari Kuwar and Moti Kuwar are one and the same lady. On 26.08.2011, Ex Lal Bahadur Kuwar died and intimation was received by Record Office Indian Embassy, Kathmandu (Nepal). Smt Kuwari Kuwar was asked to submit documents for grant of family pension. Voter list 2063(BS) and Voter ID in respect of Smt Moti Kuwar @ Kumari Kuwar issued by District Election Officer, Tamghas, Gulmi (Nepal) were forwarded to the issuing authority for verification but the same have not yet been received back. On receipt of verification, 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 the applicant in service documents of deceased soldier as

well as in Govt of Nepal records is different, is the applicant 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 documents produced by the parties, we consider it appropriate to believe that Smt Moti Kuwar and Smt Kumari Kuwar are one and the same lady and that she is the legally wedded wife of Ex Late Lal Bahadur Kuwar and therefore she is entitled for grant of Family Pension. In the instant case, deceased soldier as well as applicant had produced necessary documents for endorsement of name of applicant in service documents of deceased soldier but the same was rejected.

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, 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.

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

**Member (A)**

**Member (J)**

Dated : 04 March, 2022

UKT/-