

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**E-Court No 1****Reserved****ORIGINAL APPLICATION No. 463 of 2018**Friday, this the 18th day of November, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**Smt Sepawali Ale, W/o Lal Bahadur Ale, R/o Village Kachhal Ward No 3,
District – Palpa (Nepal).

..... Applicant

Counsel for the Applicant : **Shri BB Tripathi, Advocate**

Versus

1. Union of India through Secretary, Ministry of Defence, Govt of India, New Delhi.
2. The Chief Records Officer, 58 GIC, Happy Valleef, Shilong.
3. The Records Officer, Indian Embassy, 336 Kapoordhara Marg, Lainchaur, Katmandu, Nepal.
4. The Principal Controller of Defence Accounts (Pension), Draupadighat, Allahabad-211014.

.....Respondents

Counsel for the Respondents : **Shri Ashish Kumar Singh,
Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

“(a). Issue an order, direction and command to the respondents to pay family pension to the applicant to each and every month and also to pay arrears thereof from the date of death of her husband, Lal Bahadur Ale w.e.f. 17.06.2009 till the date of actual payment alongwith interest @ 12% per annum.

(b). issue an order, direction and command to the respondents to consider and decide the representation of the applicant, contained in Annexure No 6 by passing a reasoned and speaking order within the time frame so fixed by this Hon’ble Tribunal by granting the relief(s) as prayed for therein.

(c). Issue such other order/direction which may be deemed just and proper in the circumstances of the case.

(d). Allow the Original Application with cost against the respondents in view of the facts and circumstances, legal provisions and Grounds raised in the application.”

2. Facts giving rise to Original Application in brief are that alleged husband of applicant namely Lal Bahadur Ale was enrolled in the Army on

22.11.1962 and was discharged from service on 29.07.1981 on completion of terms of engagement. Ex Nk Lal Bahadur Ale was granted service pension vide PPO No SC/028077/1981. Late Ex Nk Lal Bahadur Ale died on 17.06.2009. After death of Late Nk Lal Bahadur Ale, applicant claiming herself as wife of deceased soldier submitted application for grant of family pension which was rejected by the respondents. Being aggrieved, the applicant has filed instant O.A. for grant of family pension.

3. Learned counsel for the applicant submitted that Ex Late Nk Lal Bahadur Ale while in service declared Smt Sepawali Ale as his next of kin and her name is endorsed in service documents of her husband. Husband of the applicant died on 17.06.2009. After death of her husband, applicant was granted Life Time Arrears (LTA) vide Voucher Payment receipt dated 26.10.2009. Respondents issued a letter dated 02.07.2014 regarding revised entitlements of pension of her late husband Ex Nk Lal Bahadur Ale in which too the name of the applicant, Smt Sepawali Ale was mentioned. After death of her husband, applicant was granted LTA being wife but family pension was denied to her. Applicant preferred representation for grant of family pension which was not replied by the respondents. Learned counsel for the applicant placed reliance on the judgment dated 23.11.2014 passed in O.A. No 168 of 2013 in the case of **Smt**

Gnanasundari Vs. Union of India, passed by AFT, Chennai and stated that husband of the applicant being a Gorkha person was entitled to solemnize second marriage during existence of first marriage, hence applicant is entitled for grant of family pension. Learned counsel for the applicant pleaded that since name of the applicant has been recorded in service documents of her husband and she has been granted LTA after death of her husband, respondents be directed to release family pension to the applicant.

4. Per contra, learned counsel for the respondents submitted that after death of Late Ex Nk Lal Bahadur, applicant was granted LTA for the period from 01.03.2009 to 17.08.2009. Applicant approached Pension Paying Office, Pokhara (Nepal) for continuation of family pension in her favour. Matter was investigated in terms of Para 174 (a) and 174 (m) of Regulations for the Army 1987 (Revised Edition) and it was revealed that Late Ex Nk Lal Bahadur had contracted two marriages during his lifetime. He contracted first marriage with Smt Bhim Kali, who later eloped on 28.02.1980. Two months after elopement of First wife, Ex-serviceman contracted second marriage with Smt Sepawali on 20.05.1980. Both the marriages were contracted while the deceased ex serviceman was in service. This fact has been recorded in kindred roll portion of Sheet Roll.

According to certificate issued by Chief District Officer, applicant was issueless. Family details produced by the applicant shows that all children were born to Smt Bhim Kali, First Wife, who had eloped on 20.02.1980. Date of birth of children, show that three children were born after elopement of first wife, which clearly indicates that the first wife of deceased ex-serviceman did not elope before marrying with the petitioner and Late Ex Nk Lal Bahadur had given false declaration regarding date of elopement of first wife. As per family details issued by Chief District Officer, Palpa (Nepal) three children namely Narayan Baghale, Savitra Baghale and Karna Bahadur Baghale were born to Smt Bhim Kali, first wife after the marriage of applicant with Ex Nk Lal Bahadur. The first marriage of the Ex serviceman was never dissolved by Court of Law. Ex serviceman married with the second wife during currency of marriage with first wife Smt Bhim Kali. As per provisions of para 333 of Regulations for the Army 1987, (Revised Edition), the marriage of the applicant with the deceased soldier was not disclosed to respondents to avoid disciplinary action. Accordingly, first wife is entitled for grant of family pension being legally wedded wife after death of Late Ex Nk Lal Bahadur and not the applicant. Since 2010, after initiation of investigation report, applicant Smt Sepawali did not report for investigation even after issuing of call up notice. He

pleaded that in view of the facts and legal position applicant is not entitled for grant of family pension being second wife and Original Application is misconceived and devoid of merits as such liable to be dismissed.

5. Heard learned counsel for the parties and perused the documents available on record.

6. The question before us to decide is “whether marriage of the applicant with Ex Nk Lal Bahadur is legal marriage and whether applicant is entitled for grant of family pension?”

7. In this connection on subsistence of first marriage an individual may apply for contracting second 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) His wife has been medically certified as being insane;*
- (c) Infidelity of the wife has been proved before a court of law;*

8. The Defence Services Regulations are framed under the authority of Section 192 of the Army Act, 1950. Gorkha personnel can solemnise plural marriage but they have also to follow certain procedure prescribed by the Government. Regulation 333 relating to plural marriage reads as under:-

333.Plural Marriages.- *(A) The Special Marriage Act 1954 and Hindu Marriage Act 1955 lay down the rule of „Monogamy“ that is, neither party has a souse*

living at the time of marriage. These Acts also provide for decrees of nullity of marriage, restitution of conjugal rights, judicial separation and divorce and also orders for alimony, and custody of children. The Hindu Marriage Act applies to all Hindus, Budhists, Jains and Sikhs and also applies to all other persons (with certain exceptions), who are not Muslims, Christians, Parsis or Jews by religion. Christians, Parsis and Jews are also prohibited under their respective personal laws from contracting a plural marriage. Thus no person who has solemnized or registered his/her marriage under the Special Marriage Act or who is a Christian, Parsi or Jew or to whom the Hindu Marriage Act 1955 applies, can now remarry during the life time of his or her, wife or husband. Sub-para (C) (a) to (c) below apply to such persons only. A Muslim or such other person to whom the Hindu Marriage Act does not apply and whose personal law does not prohibit Polygamy or Polyandry can marry during the life time of his or her, wife or husband and sub-para (B) (a) to (h) below apply to such persons only.

(B) Plural Marriage by persons in whose case it is permissible:-

(a) No person subject to the Army Act except Gorkha personnel of Nepalese domicile can marry again within the life time of his wife without prior sanction of the Government. The circumstances under which such Gorkha personnel can contract a plural marriage are:-

(i) When the wife suffers from incurable insanity (madness);

(ii) When there is no birth till ten years of marriage;

(iii) When the wife is paralysed and cannot move;

(iv) When the wife becomes blind of both the eyes;

(v) When the wife is suffering from an infectious incurable sexually transmitted disease.

(b) 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:-

(i) his wife has deserted him and there is sufficient proof of such desertion;

(ii) his wife has been medically certified as being insane;

(iii) Infidelity of the wife has been proved before a court of law; and

(iv) any other special circumstances which in the opinion of the brigade or equivalent commander would justify contracting a plural marriage.

(c) Applications will state the law under which the subsisting marriage was solemnized, registered or performed and will include the following details where applicable:-

(i) Whether the previous wife will continue to live with the husband;

(ii) If the previous wife does not propose to live with the husband, what maintenance allowance is proposed to be paid and in what manner; and

(iii) Name, age and sex of each child by previous marriage and maintenance allowance proposed for each in case any such child is to live in the custody of the mother.

In all the cases, the applicant will render a certificate to the effect that he is not a Christian, Parsi or Jew by religion, that he had not solemnized or registered his previous marriage under the Special Marriage Act, 1954 and that the Hindu Marriage Act, 1955 is not applicable to him.

(d) Applications will be forwarded through normal channels and each intermediate commander will endorse his specific recommendations. Such recommendations will be signed by the commander himself or be personally approved by him. Before making his recommendations a commander will satisfy himself that the reasons given for the proposed plural marriage are fully supported by adequate evidence.

(e) An individual whose marriage is alleged to have been dissolved according to any customary or personal law but not by a judicial decree will report, immediately after the divorce, the full circumstances leading to and culminating in dissolution of the marriage together with a valid proof of the existence of the alleged custom or personal law. The existence and validity of the alleged custom or personal law, if considered necessary, will be got verified from civil authorities and if it is confirmed by the civil authorities, action will be taken to publish casualty for the dissolution of the marriage. The individual therefore will not be required to obtain sanction for contracting the second marriage.

(f) An application which is not recommended by the Commanding Officer and an authority superior to him need not be sent to Army Headquarters, but may be rejected by the GOC- in-C of the Command concerned.

(g) Cases where it is found that an individual has contracted plural marriage without obtaining prior Government sanction as required in clause (a) above will be dealt with as under:-

(i) Cases of officers will be reported through normal channels to Army Headquarters (AG/DV-2) with the recommendations as to whether ex-post-facto sanction should be obtained or administrative action should be taken against the individual.

(ii) Cases of JCOs and OR will be submitted to the GOC-in-C Command who will decide whether ex-post-facto sanction should be obtained or administrative action should be taken against the individual. In cases, where it is decided that administrative action should be taken against the individual, his service will be terminated under orders of the competent authority.

When reporting cases to higher authorities, intermediate commanders will endorse their specific recommendations with reasons thereof. Here too recommendations will be signed by the Commanders themselves or be personally approved by them. Also, an opportunity to „show cause“ against the order of termination of service will always be given to the individual concerned.

(h) In no circumstances will disciplinary action by way of trial by Court Martial or Summary disposal be taken against an individual who is found to have contravened the provisions of clause (a) above.

If, however, the individual is also found to have committed another offence connected with his act of contracting a plural marriage, disciplinary action for the connected offence may be taken and progressed in the normal manner.

(C) Plural Marriage by persons in whose case it is not permissible-

(a) An individual whose marriage is alleged to have been dissolved according to any recognized custom or special enactment under the provisions of Sec 20 (2), read with Sec 3 (a) of the Hindu Marriage Act, but not by a judicial decree will report immediately after the divorce, the full circumstances leading to and

culminating in dissolution of marriage together with a valid proof of the existence of the alleged recognized custom or special enactment. The existence and validity of the alleged custom or special enactment will be got verified from civil authorities and if it is confirmed by the civil authorities that the divorce is valid, action will be taken to publish the casualty for the dissolution of the marriage. The individual thereafter will not be required to obtain sanction for contracting the second marriage.

(b) A plural marriage solemnised, contracted or performed by any such person is null and void and may, on a petition presented to a court of law by either party thereto, be so declared by a decree of nullity. Not only is the plural marriage void but the offence of bigamy is also committed. The offence is, however, triable only on a complaint made to the civil authority by an aggrieved party. The punishment for the offence of a bigamy is prescribed in Sections 494 and 495 of the Indian Penal Code.

*(c) When it is found on receipt of a complaint from any source whatsoever, that any such person has gone through a ceremony of plural marriage, no disciplinary action by way of trial by Court Martial or Summary disposal will be taken against him, but administrative action to terminate his service will be initiated and the case reported to higher authorities in the manner laid down in sub-para (B) (g) above. In cases where cognizance has been taken by civil court of competent jurisdiction the matter should be treated as **sub judice** and the decision of the court awaited before taking any action. When a person has been convicted of the offence of bigamy or where his marriage has been declared void by a decree of court on grounds of plural marriage, action will be taken to terminate his service under AA Section 19 read with Army Rule 14 or AA Section 20 read with Army Rule 17 as the case may be. No ex-post-facto sanction can be accorded as such marriages are contrary to the law of the land.*

9. In regard to second marriage, it has been brought on record that second marriage was contracted on the basis of customary law of village

panchayat. In the instant case, we observe that after absconding of first wife Smt Bhim Kali, Ex Nk Lal Bahadur should have applied the following procedure to validate the second marriage in accordance with AO 44 /2001 if there was no decree of divorce:-

“An individual whose marriage is alleged to have been dissolved according to any customary law but not by a judicial decree will report, immediately after the divorce, the full circumstances leading to and culminating in dissolution of marriage together with a valid proof of the existence of alleged custom or personal law. Existence and validity of the same, if considered necessary, will be got verified from civil authorities and if it is confirmed by the civil authorities, action will be taken to publish casualty for the dissolution of the marriage. The individual, thereafter will not be required to obtain sanction for contracting the second marriage.”

10. Further where the individual is permitted under the law (Para 579) to have more than one wives, he cannot marry without the prior sanction of the Central Government. He shall have to apply for prior sanction on the grounds mentioned in Para 579 aforesaid as provided therein. He also ventilated that even a person whose marriage is alleged to have been dissolved under any customary law and not by a Court of law, he is still required to obtain a sanction for contracting another marriage and in such cases, he will have to show the circumstances which led to the dissolution of the marriage together with the requisite proof of the existence of the customary law. Prohibition as imposed by aforesaid provisions is in the

interest of public order, morality and health and to maintain discipline in the forces.

11. Perusal of document shows that deceased soldier solemnised second marriage with the applicant during existence of first marriage with Smt Bhim Kali without legal separation or divorce with first wife and without taking permission of competent authority. As such, marriage of the applicant with deceased soldier is a void marriage. No solid proof has been produced before the Tribunal which can ascertain that applicant is legally wedded wife of Late Ex Nk Lal Bahadur the deceased soldier, hence applicant cannot be granted family pension. Case law produced by the applicant being based on different facts are not applicable in her case.

12. In view of the facts and circumstances of the case, we find that applicant has failed to prove that she is legally wedded wife of the deceased soldier.

13. In the result, we hold that the claim of the applicant for grant of family pension has rightly been rejected by the respondents which needs no interference. Resultantly, O.A. is **dismissed**.

14 No order as to cost.

15. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 18 November, 2022

Ukt/-