

**Reserved**

**Court No. 1**

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

**ORIGINAL APPLICATION No. 159 of 2017**

Monday, this the 4<sup>th</sup> day of October, 2021

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

Smt. Maha Kali Widow of Late Budha Prasad Gurung, Ex.  
Service man Indian Army No 5031055 of 1/1 GR Mailing  
V.D.C. Ward- 3, Lamjung, Nepal.

**..... Applicant**

Ld. Counsel for the : **Shri RK Mishra, Advocate**  
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence Government of India, New Delhi.
2. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad 211014.
3. Bhartiya Rajdutas Abhilekh Karyalaya, Indian Embassy Kathmandu, Nepal9 Through Record office Commanding officer).

**.....Respondents**

Ld. Counsel for the : **Ms. Deepti Prasad Bajpai,**  
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 be pleased to call for the records and to set aside the decision of PCDA (P), Allahabad dated 31.01.2008 as well as the order dated 01.03.2012 issued by officer in charge, Embassy of India, Pension Paying Pokhara, Nepal in which reference of decision of PCDA (P) Allahabad dated 31.01.2008 has been mentioned and further to set aside the order dated 29.01.2013 issued by B Mohanti, Major, Assistant Military (R) whereby the representation of the applicant for grant of family pension has been rejected.*

2. Succinctly stated, husband of the applicant Late Budha Prasad Gurung was enrolled in the Indian Army on 26.10.1943 and was discharged from service on 02.07.1961 after rendering 18 years of service. After retirement, husband of the applicant was granted service pension for his services rendered in the army. Husband of the applicant died on 07.09.2005. the Deceased soldier solemnised first marriage with Pappi Gurung who died on 27.09.1968 and after 09 years

of the death of first wife, the applicant was married with Late Budha Prasad Gurung. Budha Prasad Gurung died on 07.05.2005. 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 Budha Prasad Gurug and is resident of Village – Maling, Ward No 3, Lamjung, Anchal Gandaki (Nepal). On 26.10.1943 when husband of the applicant was recruited in Indian Army, he was unmarried, hence he mentioned the name of his sister Dhan Guru as nominee in the service record. After joining army service applicant married with Pappi Gurung and her name was recorded in service document of deceased soldier. Smt Pappi Gurung died on 27.09.1968. After death of first wife, applicant was married with Budha Prasad Gurung who died on 07.05.2005. After death of her husband the applicant submitted application for release of family pension being widow of late Budha Prasad Gurung. Her claim for grant of family pension was rejected by the respondents vide letter dated 31.01.2008 and said order was communicated to the applicant vide letter date3d 01.03.2012 by Embassy of India. Learned counsel for the applicant submitted that Life Time Arrears (LTA)

have been granted to daughter of the applicant but despite best efforts, family pension has not been granted to her. She filed representation for grant of family pension but she was informed that late Budha Prasad Gurung first married with Dhan Guru, thereafter he married to Pappi Gurung and after her death he married with the applicant, Thus he contracted plural marriage in life time of his first wife and marriage of the deceased soldier with the applicant was not valid marriage as per Nepal Govt Marriage Registration Act. Learned counsel for the applicant submitted that late Budha Prasad Gurung never contracted plural marriage in the life time of his first wife. Correct facts are that Smt Dhan Guru was real younger sister of Budha Prasad Gurung, but due to mention of her name in service record an inference was drawn as if she was wife of Budha Prasad Gurung. He submitted that with the wedlock of applicant and late Budha Prasad Gurung, two children all daughters took birth. Late Budha Prasad Gurung firstly married with Pappi Gurung and after her death married with the applicant. Thus being legally wedded wife, applicant is entitled for family pension. Learned counsel for the applicant submitted that once Life Time Arrears (LTA) have been paid, then there is no justification for not granting the family pension to the applicant. This action of respondents is not only arbitrary and illegal, but also discriminatory on part of the respondents. He pleaded that

applicant be granted family pension from the date of death of her husband.

4. Per contra, learned counsel for the respondents submitted that case of the applicant for grant of family pension was examined by Record Office and it has emerged that after death of Budha Prasad Gurung, Life Time Arrears (LTA) was paid to Smt Maita Kumari Gurung, daughter of the deceased pensioner on 21.02.2006 by Officer in charge, Pension paying Officer (PPO), Pokhara (Nepal). Thereafter Maha Kali Gurung reported PPO Pokhara for ordinary family pension. On investigation under the provisions of Para 174 (a) and (m) of Regulations for the Army 1987 (Revised Edition) it was revealed that late Budha Prasad Gurung solemnised first marriage with Dhan Guru (1<sup>st</sup> wife) Smt Papi Gurung (2<sup>nd</sup> wife) and Smt Maha Kali Gurung (3<sup>rd</sup> wife). Smt Maha Kali Gurung did not disclose the name of Smt Dhan Guru recorded in service documents of the deceased soldier. It is mandatory under the administrative provisions under Documentation Procedure JCO/OR 1992 for an ex serviceman to notify any change in the family due to birth, death, divorce etc by submitting a self signed declaration duly witnessed by two witness and countersigned by the Secretary of the District Soldier Board or the Pension Disbursing Agency. As per para 174 (f) of Regulations for the Army 1987 (Revised Edition), family pension to the wife and children whose name

found recorded in the Sheet Roll during the life time of the Ex serviceman will only be considered. The deceased ex serviceman had never applied for notification of the applicant name in the service documents. Despite that, Record Office Indian Embassy, Kathmandu (Nepal) had prepared and submitted 50% Ordinary family pension claim in favour of the applicant but the same was rejected by PCDA (P) Allahabad unactioned since the name of Smt Maha Kali Gurung was not recorded in Sheet Roll of the deceased soldier. As per para 333 (B) of Regulations for the Army 1987 (Revised Edition) and Hindu Marriage Act 1955 all Hindus, Budhists, Janis and Sikhs are prohibited under the law to contract plural marriage. In few circumstances a Gorkha Personnel can contract a plural marriage. However, in the instant case, no such declaration/reason was ever made by the deceased soldier in his life time. Applicant filed Civil Writ Petition in High Court of Judicature at Allahabad in 2012 which was dismissed on 31.03.2016. Then the applicant filed instant O.A. before this Tribunal for grant her family pension. Learned counsel for the respondents submitted that instant original application is misconceived and devoid of merit as such liable to be dismissed.

5. We have heard learned counsel for the parties and have also perused the record.

6. The controversy involved in this case is of two folds:-

(a) Whether Smt Dhan Guru is wife of Late Budha Prasad Gurung as claimed by respondents or she is sister of Late Budha Prasad Gurung as claimed by the applicant Smt Maha Kali?

(b) Whether Smt Maha Kali is legally wedded wife of Late Budha Prasad Gurung and entitled for family pension as claimed?

7. Respondents have rejected the claim of applicant for grant of family pension on the ground that Smt Dhan Guru is not legally wedded wife of Late Budha Prasad Gurung. Perusal of documents annexed along with Original Application reveal that Late Budha Prasad Gurung son of Dal Bahadur entered the name of his sister Smt Dhan Guru as his Next of Kin as he was unmarried at the time of joining army service. Death Certificate issued by Ministry of Local Development, District- Lamjung, Nepal dated 25 April 2012 reveals that Smt Dhan Guru was daughter of Dal Bahadur and sister of Late Budha Prasad Gurung and she was married with Late Kum Ras Ghale. Smt Pappi Gurung was the first wife of Late Budha Prasad Gurung, she died on 27.09.1968 and she was issueless. Late Budha Prasad Gurung solemnised second marriage with Smt Maha Kali after death of Smt Pappi Gurung. School Certificates

produced by applicant show that two daughters born with the wedlock of Late Budha Gurung and Smt Maha Kali. Name of Smt Maha Kali as wife of Late Budha Prasad Gurung is recorded in revenue record, Voter ID Card and Citizenship Certificate of Nepal issued by District Lamjung, Nepal.

8. We also observed that, applicant has forwarded all the required documents to prove that she is legally wedded wife of Late Budha Prasad Gurung. Respondent cannot deny her legal right only on the ground that Late Budha Prasad Gurung has not entered her name in service record. Once she produced various documents to prove that she is legally wedded wife of Late Budha Prasad Gurung then respondents cannot deny her legal rights on the meagre grounds of imagination. She is an old and uneducated lady and fighting for her rights from last 16 years i.e. just after death of her husband. At least respondents after ascertaining the factual position should not harass but help an old and widow lady in getting her legal rights and means of livelihood whose husband has served the nation for such a long time. The public interest demands that administration must abide by the promises held out to citizens. It is totally immoral to go back from the promises held out by the mighty state to the detriment of a small people. Therefore, it is the function of the Courts to see that the citizen's rights should be protected against the mighty state and state should be forced to abide by

the promises made to its citizens. Therefore respondents cannot be hard to say that name of the applicant was not recorded in service documents of the deceased soldier, therefore, they are not under obligation to grant family pension. Accordingly, applicant is entitled for grant of family pension after the death of her husband Late Budha Prasad Gurung.

9. In view of above, Original Application is **allowed** and the impugned order passed by the respondents rejecting the claim of the applicant for grant of family pension is set aside. Respondents are directed to grant family pension to the applicant from the next date of death of her husband. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

10. No order as to costs.

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/-