

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 349 of 2020****Tuesday, this the 5th day of October, 2021****“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt Tila Lachhmi, Wife of Ex Serviceman No 88393 Subedar Major Hony Capt Rup Bahadur Rana, Resident of Om Satiya GVC Ward No 18, Village- Farena, Rupandehi, Lumbini (Nepal).

..... Applicant

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

Versus

1. Union of India, through Secretary Ministry of Defence, Govt of India, South Block, New Delhi- 110011.
2. Office of the PCDA (P), Draupadi Ghat, Allahabad, Pin- 211014 (UP).
3. Officer in Charge, Records, Gorkha Rifles, Subathu (Shimla Hills) -173206, DSC, C/o 56 APO.
4. Record Office, Indian Embassy, Kathmandu, Nepal.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Arun Kumar Sahu,
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). This 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 23.10.2017.

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

2. Facts giving rise to Original Application in brief are that Ex Late Sub Maj Rup Bahadur Rana, alleged husband of the applicant was initially enrolled in the army and rendered 09 years and 78 days service. Thereafter he was enrolled in DSC on 17.12.1962 and retired from DSC Service on 01.05.1991. He died on 23.10.2017. After his death, Smt Tila Lachhmi alleged wife of above named JCO filed representation for grant of family pension which was denied. Being aggrieved, the applicant has filed instant O.A. for grant of family pension.

3. Learned counsel for the applicant submitted that husband of the applicant Late Ex Sub Maj Rup Bahadur Rana was enrolled in the army on 04.12.1953 and was retired from service on 01.05.1993. As per records of deceased pensioner, he was never convicted for an offence under Section 43/44 of the Army Act. Husband of the applicant died on 23.10.2017. After death of her husband, applicant preferred representation before the respondents for grant of family pension but the same was denied. Applicant provided the copy of PPO along with copy of Pension certificate 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 of age and due to not granting 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 as per service record held with Pension paying Office, Pokhara, caste of the deceased soldier is recorded as Rana (Sinejhale) whereas, in Nagarikta Praman Patra (NPP) caste of the deceased soldier is mentioned as Shrestha

(Newar) which are different castes. Due to variation in caste of the individual, Pension Paying Office, Pokhara, referred the case to record Office Indian Embassy, Kathmandu (Nepal) for further investigation for establishing genuineness of the claimant. On investigation, it was revealed that the deceased pensioner got enrolled in Indian Army in the vacancy of caste of Rana. It is also revealed that as per service documents, his father's name is Bin Bahadur Rana whereas as per Nagarikta Praman Patra, it is recorded as Bin Narayan Shrestha. Since no provision for change of cast/Name of deceased pensioner exists in the service rules, and a large number of such cases have come into light, the case was taken up with the competent authority i.e. CW Dte, IHQ of MoD (Army) vide letter dated 23.12.2015. Decision of the competent authority is still awaited. On receipt of direction, 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 applicant in service documents of deceased soldier as well

as in Govt of Nepal records is different, the applicant is 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 policy and documents produced by the applicant, we consider it appropriate to believe that Smt Tila Lachhmi Gurung is legally wedded wife of Ex Late Sub Maj Rup Bahadur Rana and she is entitled for grant of Family Pension. In the instant case, applicant's name is recorded in service documents of her husband as well as in PPO of her husband issued by PCDA (P), Allahabad.

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 as well as particulars recorded in service documents, 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)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 05 October, 2021

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