

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

94.

OA 1745/2019 WITH MA 2000/2021

Mrs. Pabitra Chettri @ Pabitra Karki Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Ms. Sangeeta Tomar, Advocate
For Respondents : Mr. KK Tyagi, Sr. CGSC

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HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
17.10.2024

MA 2000/2021

Counter affidavit has been filed. There being some delay in filing the same, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

2. The MA stands disposed of.

OA 1745/2019

3. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal, 2007, the applicant claiming to be legally married second wife of Late Hav Chhetra Bahadur Chhetri has filed this application and seeks grant of Ordinary Family Pension after death of her husband.

4. Facts in brief indicate that the applicant is a citizen of Nepal and when she invoked the jurisdiction of this Tribunal in the year 2019, she was around 62 years of age. According to her, she was married to Late Hav Chhetra Bahadur Chhetri on 11.03.1972 according to Hindu rites and rituals. The marriage was duly consummated and four children were born from the said wed-lock and the details of the family are indicated in a tabulated form in Para 4.1 of the OA which includes the applicant and four children, namely, two sons and two daughters all beyond the age of 25 years and married. It was also indicated that earlier Late Hav Chhetra Bahadur Chhetri was married to one Smt. Chola Kumari his first wife who had expired on 05.08.1971 much before the marriage of the present applicant. Certificates with regard to relationship, discharge certificate of her late husband, the pension payment orders and other documents have been filed as Annexure A-1, A-2, A-3 (Colly) and A-5 (Colly) and the prayer made for grant of Ordinary Family Pension.

5. Respondents have put an appearance and the facts stated hereinabove are more or less admitted. However, it is the case of the respondents that Late Hav Chhetra Bahadur Chhetri was discharged from military service with effect

from 31.12.1982 on his own request after fulfilling the terms and conditions of the enrollment after rendering about 20 years and 01 month of service. He was granted pension by the PCDA (P), Allahabad vide Pension Payment Order No.S/C/859/1983 dated 22.01.1983. According to the respondents, as per the service documents of the Late employee, it is seen that he was married to Smt. Chola Kumari on 16.07.1968 and has nominated her as his Next of Kin (NOK) for the purpose of grant of family pension and death-cum-gratuity. It is also an admitted position that Late Hav Chhetra Bahadur Chhetri was drawing his service pension through the Indian Embassy, Pension Paying Office, Pokhara, Nepal and, therefore, all his service documents were transferred to the Record Office, Indian Embassy, Kathmandu, Nepal on 19.01.1984.

6. It is the objections of the respondents that now after 37 years, Smt. Pabitra Karki, the present applicant claiming to be second wife of Late Hav Chhetra Bahadur Chhetri is claiming Ordinary Family Pension and as in the Sheet Roll and the records of the Army nothing is available and they are unable to process her case. However, they admit in the counter affidavit that since all the service documents were

already transferred to the Record Office, Indian Embassy Kathmandu, Nepal, a copy of the OA and other documents were forwarded to the said Embassy Office on 20.11.1999. The case was investigated by the Assistant Military Attaché, Records Office of Indian Embassy, Nepal in terms of Para 174 (a) and 174 (m) of the Regulations for Army, 1987, and as per the investigating report furnished by the Record Office of the Embassy Authorities dated 17.05.2021 (Annexure R-1), the following facts emerged as are detailed in the counter affidavit and the report (Annexure R-1):

“(a) Consequent upon death of No 1177746F Late Hav Chhetra Bahadur Chhetri on 11 Nov 2015, Smt Pabitra Karki, claiming herself as widow of the deceased and reported to Pension Paying Office, Pokhara for payment of Life Time Arrear (LTA) and continuation of Family Pension in her favour. After initial investigation, the case was referred to Record Office, Indian Embassy by Pension Paying Office, Pokhara for carryout detailed investigation and to establish genuineness of the claimant for grant of Ordinary Family Pension.

(b) The detailed investigation was carried out by Record Office, Indian Embassy Pokhara, Nepal based on the Government of Nepal documents which generally comprises of Birth Certificate, Marriage Certificate, Death Certificate, Family Details, Nagarikta Praman Patra, Voter List and Land Ownership Certificate issued by various Government of Nepal authorities, as applicable.

(c) As per Government of Nepal documents produced by the Smt Pabitra Karki alleged widow the deceased had contracted two marriages First marriage was solemnized by the deceased with Smt Chola Kumari on 09 Jun 1968, later she eloped with another person on 25 Nov 1969 and died on 05 Aug 1971 and she was issueless. After demise of 1st wife, the deceased had contracted second marriage with Smt Pabitra Karki on 11 Mar 1972. As per family details issued by Chief District Officer, Syangja, four children born to Smt Pabitra

Karki all are married over 25 years of age and neither handicapped nor widow at present. However, as per the held Family details held at Sheet Roll, the deceased veteran and his first wife out of their wedlock had one son namely, Yam Bahadur (Son) date of birth 26 Nov 1983 and daughter namely Man Kumari Chhetri date of birth 11 Dec 1977.

(d) However, as per service documents, the deceased was married to Smt Chola Kumari on 16 Jul 1968 during service time and her name has been recorded in kinder Roll Portion of Sheet Roll as well as other nomination forms including Extended Army Group Insurance. Name of Smt Chola Kumari has also been recorded in all pension related documents of the deceased prepared during the year 1982.

(e) It is revealed from the documents issued by Government of Nepal which are submitted by Smt Pabitra Karki, alleged widow that Smt Chola Kumari, 1st wife was eloped and later died on 05 Aug 1971 and the deceased contracted second marriage with Smt Pabitra Karki in 1972 which is contradictory with family details mentioned in service documents as well as pension documents prepared during the year 1982. The deceased veteran has submitted all pension documents (including descriptive Roll) in the name his first wife at the time of discharge from service i.e on 31 Dec 1982, which is 10 years after the alleged 2nd marriage with petitioner.

(f) It seems that the deceased had contracted plural marriage during the life time of Smt Chola Kumari, 1st wife."

7. It is clear from the aforesaid report submitted that the present applicant had contacted second marriage with Late Hav Chhetra Bahadur Chhetri after the first marriage was solemnized by the late employee with Smt. Chola Kumari came to a legal termination on 05.08.1971 when she died issueless and before that she left the company of the late employee on 25.11.1969 when she eloped with another person before her death. The Embassy report confirms that

the applicant contacted the second marriage on 11.03.1972 after the death of Smt. Chola Kumari and the Chief District Officer of Syangja, Nepal testifies that the employee after marriage with Smt. Pabitra Karki had four children all beyond the age of 24 years and married. However, it is indicated by the respondents that in the Sheet Roll the first wife of the deceased had one son and one daughter who are also major.

8. From the facts that have come on record and the objection raised by the respondents indicate that the applicant is not entitled to Family Pension as it is only admissible to lawfully married widow as per Para 216 of the Pension Regulations for Army, 1961 (Part-1), and as the employee, namely, Late Hav Chhetra Bahadur Chhetri had solemnized second marriage before death of his first wife and without obtaining a decree of divorce from the first wife, she is not entitled to any benefit. They also raised an objection to the effect that the applicant had contacted the second marriage with late employee without contacting the Embassy Authorities, etc. They also raised objection with regard to her contentions being not correct and documents, etc., not being clear.

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9. Having considered the rival contentions, we are of the considered view that for the purpose of settling the claims of employees who are citizens of Nepal in accordance with the Para 174 (a) and 174 (m) of Regulations for the Army, 1987, arrangements have been made and Record Office in the Indian Embassy at Nepal has checked the facts of the present case, the Assistant Military Attaché at the Record Office in the Indian Embassy at Nepal had conducted the inquiry and a report (Annexure R-1) is submitted. There is nothing available on record to indicate that this report is unsustainable. The respondents are only relying upon the Sheet Roll which was maintained by their office based on the entries made at the time of discharge of the late employee on 31.12.1982, however, the fact about the employee's marriage to the present applicant is much after the same and the report submitted by the competent authorities of Indian Embassy on 17.05.2021 (Annexure R-1) clearly shows that the first wife, namely, Smt. Chola Kumari left the late employee on 25.11.1969 and eloped and contracted marriage with another person and died on 05.08.1971 and it was only after the death of his first wife that the employee contracted the marriage with the present applicant on 11.03.1972. The

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family details have been verified by the Chief District Officer, Syangja, Nepal and it is also clear from the records that after the discharge of the employee concerned, all these developments have taken place. The respondents are denying the claim only on the ground that in the service record of the employee these facts are not mentioned. When the facts that have come on record with regard to the second marriage, etc., occurred much after the employee was discharged from service, admittedly, they would not be available on the service record. However, merely because the employee during his life time or the applicant after death of her husband claimed Ordinary Family Pension based on her marriage and relationship with the employee, her claim cannot be rejected in the absence of any material being produced on record to show that she had made a false claim. As per the requirements of the Law and the Rules applicable, the claim made by the applicant based on facts as narrated by her have been investigated by the competent authorities posted in the Indian Embassy, Pokhara, Nepal, based on the documents available with the Nepal Government and the findings recorded which clearly show that the applicant is legally married wife of Late Hav Chhetra Bahadur Chhetri


and in our considered view, merely on the basis of the objections raised by the respondents on account of delay or laches, we cannot reject her claim.

10. Accordingly, holding the applicant to be the legally married wife of Late Hav Chhetra Bahadur Chhetri, we allow this OA and direct the respondents that the applicant be granted Ordinary Family Pension in accordance with the rule, the fixation of Ordinary Family Pension be undertaken w.e.f. 11.11.2015, i.e., the date on which Late Hav Chhetra Bahadur Chhetri expired and all arrears of Ordinary Family Pension be granted to the applicant from the aforesaid date, i.e., the date of death of her late husband as the applicant has invoked the jurisdiction of this Tribunal after making representations and claims on 01.10.2019, i.e., within a period of about four years from the date of death of her husband. The grant of a pension is continuous right and in this case, the applicant is a citizen of Nepal having taken steps for making the claim within a reasonable period of time, we are inclined to grant her all benefits and arrears of pension from the death of her husband and, therefore, it is directed that the Ordinary Family Pension be granted to the applicant, namely, Smt. Pabitra Karki w.e.f. 11.11.2015

along with interest @ 8% per annum and necessary PPO be issued and arrears of pension be also paid to her within a period of three months from the date of receipt of a copy of this order.

11. No order as to costs.


[JUSTICE RAJENDRA MENON]
CHAIRPERSON


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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