

**ARMED FORCES TRIBUNAL,
REGIONAL BENCH, GUWAHATI**

OA-27/2023

Smt Bishnu Kala Thapa

.....Applicant

By legal practitioners for Applicant
S Pandey
S Thapa
N Kharsentary
P Chettri

-Versus-

UOI & Ors

..... Respondents

By legal practitioner for Respondents
Dipanjali Bora, CGSC

CORAM:

**HON`BLE MR. JUSTICE UMESH CHANDRA SHARMA, MEMBER (J)
HON`BLE LT GEN C.P. MOHANTY, MEMBER (A)**

ORDER

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

(a) To direct the respondents to release the family pension and other benefits as applicable in favour of the applicant on account of her late husband (L) Guman Singh Thapa along with interest

within a period of one month or within any reasonable time period.

(b) The cost of the application.

(c) Any other relief(s) as the Hon'ble Tribunal may deem fit and proper.

2. The facts of the case in brief are that the applicant's late husband (L) Guman Singh Thapa was inducted into the 1/4 Gorkha Rifles on 28.03.1957 and was allotted service No. JC-91890. During his service life he was awarded with many medals and commendations. He retired from service as Hony Lieutenant on 31.03.1985 who after retirement settled in Nepal and was drawing pension from Pension Payment Office at Butwal, Nepal till his death on 30.07.2020. The applicant's late husband had married Rumarupati Thapa Magar on 01.05.1957. Rumarupati Thapa died on 22.12.1957, but they did not have any child out of their wedlock. After the death of his first wife, the applicant's late husband entered into marital relationship with Smt Moti Thapa Magar on 23.02.1961 and out of their wedlock, a son was born on 30.11.1968. Smti Moth Thapa Magar deserted the applicant's late husband and entered into a marital relationship with another man and

she died on 31.08.1988. Thereafter, on 01.05.1964, the applicant got married to her late husband Guman Singh Thapa as per the rituals and customs and out of their wedlock they had four children who are major now and living separately with their families. The name of the applicant is recorded as wife in his service documents and records. A joint photograph of the applicant with her husband Late Guman Singh Thapa is reflected on the first page of the Identity Card. After the death of her husband, the applicant has submitted before the concerned authority praying for release of family pension. However, after the death of her husband, the applicant has not received the family pension and death cum retirement benefit till date. Hence, she has approached this Tribunal by filing the present OA.

Submission on behalf of the applicant

3. Mr. S. Pandey, learned counsel appearing for the applicant has submitted that the applicant is the legally married wife of late No. JC-92890, Guman Singh Thapa. He was enrolled in service on 28.03.1957 and retired on 31.03.1985. The applicant's late husband had married Rumarupati Thapa Magar on 01.05.1957. Rumarupati Thapa died on 22.12.1957, but they did not have any child out of their wedlock. After

the death of his first wife, the applicant's late husband entered into marital relationship with Smt Moti Thapa Magar on 23.02.1961 and out of their wedlock, a son was born on 30.11.1968. Smti Moth Thapa Magar deserted the applicant's late husband and entered into a marital relationship with another man and she died on 31.08.1988. Thereafter, on 01.05.1964, the applicant got married to her late husband Guman Singh Thapa as per the rituals and customs and out of their wedlock they had four children who are major now and living separately with their families. The name of the applicant is recorded as wife in his service documents and records. A joint photograph of the applicant with her husband Late Guman Singh Thapa is pasted on the first page of the Identity Card. After the death of her husband, the applicant has submitted applications before the concerned authority praying for release of family pension. However, she has not received the family pension and death cum retirement benefit till date. Learned counsel for the applicant accordingly has prayed for allowing the instant original application directing the respondents to pay family pension and death cum retirement benefit etc.

Submission on behalf of the respondents

4. *Per contra*, Mrs Dipanjali Bora, learned CGSC appearing for the respondents has submitted that it is a case of plural marriage by the applicant's husband. First marriage was solemnised with Smt Rumarupati Thapa Magar on 01 May 1957. After the death of first wife, the applicant's husband solemnised second marriage with Smt Moti Thapa Magar on 23 Feb 1961 and out of their wedlock they had a son. He solemnised third marriage with the present applicant on 01 May 1961, after his second wife eloped on 1983 and out of their wedlock, they had 4 children. It is submitted that Records Office Indian Embassy Katmandu (Nepal) replied vide their letter dated 13 Sep 2023 has intimated the applicant that the family pension case was investigated on the basis of service documents of deceased pensioner and closed being plural marriage and the applicant was not eligible for family pension. Learned counsel for the respondents has submitted that the OA may be dismissed being devoid of merit.

Consideration

5. We have heard Mr S Pandey, learned counsel appearing for the applicant and Mrs Dipanjali Boro^B, learned Central Govt. Standing counsel for the respondents, perused the record and considered the rival submissions.

6. From perusal of record, it transpires that late No. JC-92890, Guman Singh Thapa was enrolled in the Army on 28.03.1957 and retired on 31.03.1985. The individual had married Rumarupati Thapa Magar on 01.05.1957. Rumarupati Thapa died on 22.12.1959 without children. After the death of his first wife, the applicant's late husband entered into marital relationship with Smt Moti Thapa Magar on 23.02.1961 and out of their wedlock, a son was born on 30.11.1968. Smti Moth Thapa Magar deserted the applicant's late husband and entered into a marital relationship with
(*) another man. Thereafter, on 01.05.1964, the applicant got married to her late husband Guman Singh Thapa as per the rituals and customs and out of their wedlock they had four children who are major now and living separately with their families. Smt. Moti Thapa died on 31.08.1988. The name of the applicant is recorded as wife in his service documents and

records. A joint photograph of the applicant with her husband Late Guman Singh Thapa is pasted on the first page of the Identity Card.

7. The relevant Regulation 333 of the Defence Services Regulations, 1954 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 spouse 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 solemnised 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.

8. It is admitted case of the parties that the individual was Gorkha and enrolled in the 1/4 Gorkha Rifles and was permanent resident of Nepal and was drawing pension from Pension Payment Office at Butwal, Nepal. Thus, the case of the individual is not covered under the plural marriage and the applicant is held entitled for family pension after the death of the individual.

9. In view of the above, the Original Application is allowed. The applicant is held entitled for family pension w.e.f. 01.08.2020. The respondents are directed to issue Corrigendum PPO in favour of the applicant within three months from the date of receipt of certified copy of

this order by learned counsel for the respondents/ OIC, Legal Cell. The arrears be also paid within the said period to the applicant, failing which they shall become payable with interest @ 6 % per annum.

10. There shall be no order as to costs.

Pronounced in the open Court on this 10th day of September, 2026.

(UMESH CHANDRA SHARMA)
MEMBER(J)

(LT GEN C.P.MOHANTY)
MEMBER(A)

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