

dated 08.05.2024 passed by the Central Administrative Tribunal, Lucknow Bench, Lucknow in Original Application No. 332/00365 of 2023 and to permit fresh disciplinary proceedings against the opposite party no. 2, although for reasons different from the reason mentioned by the tribunal in the impugned order.

24. Accordingly, the writ petition is dismissed. Costs made easy.

(2025) 1 ILRA 792
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.01.2025

BEFORE

THE HON'BLE ATTAU RAHMAN MASOODI, J.
THE HON'BLE SUBHASH VIDYARTHI, J.

Writ -A No. 12938 of 2024

Smt. Pin Maya Kumal ...Petitioner
Versus
Govt. of India & Ors. ...Respondents

Counsel for the Petitioner:
 Ashok Kumar Srivastava

Counsel for the Respondents:
 A.S.G.I.

A. Service Law – Pension - Defence Service Regulation: Regulation 333; Hindu Marriage Act, 1955 - Second marriage can be contracted only in certain circumstances and that too after obtaining sanction from the competent authority and any violation of this provision may attract termination of service of concerned employee. (Para 16)

In the present case, Late Tek Bahadur Thapa was a Nepalese Gorkha and as per Regulation 333 quoted above, he could have remarried in the following circumstances: -

(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. (Para 7)

Late Tek Bahadur Thapa had four daughters and a son from his first marriage and it is nobody's case that his first wife Smt. Dalli Maya Kumal suffered from any disease/infirmity mentioned in Regulation 333(B)(a) of Army Regulations. Sri Tek Bahadur Thapa did not apply for sanction to contract plural marriages on any of the grounds mentioned in Regulation 333(B)(b). Service of the person who has contracted plural marriages without obtaining sanction from the competent authority can be terminated under the provisions contained in Regulation 333(B)(g) of Army Regulations, but the fact of Late Tek Bahadur Thapa having entered into plural marriages was not brought to the notice of the authorities during his service period or even thereafter during his life time. Therefore, no administrative action for termination of his service was taken. (Para 6, 8)

B. The petitioner could not point out any provision of law under which this marriage (1st marriage) was void. Therefore, it cannot be accepted that the marriage of late Tek Bahadur Thapa with Smt. Dalli Maya Kumal was void. (Para 14)

C. The submission that the petitioner is an illiterate person and she was not responsible for proper upkeep of the service records of her deceased husband and it was for the authorities to correctly maintain the service records of late Tek Bahadur Thapa and record the name of the petitioner therein as wife, does not hold any force as information about family members/dependents is given to the authorities by the concerned employee/officer himself. (Para 15)

The Armed Forces Tribunal dismissed the original application filed by the petitioner on the

ground that her name is not recorded in the service record of the deceased soldier. (Para 9)

Late Tek Bahadur Thapa had mentioned the name of Smt. Dalli Maya Kumal as his wife and it is admitted by the petitioner that Smt. Dalli Maya Kumal was in fact the wife of late Tek Bahadur Thapa. The petitioner's marriage with late Tek Bahadur Thapa was in contravention of the provisions of Regulation 333 and it would not confer any right on the petitioner so far as any benefits relation to or arising out of services rendered by late Tek Bahadur Thapa is concerned. (Para 16)

Writ petition dismissed. (E-4)

Precedent distinguished:

1. Vidhyadhari Vs Sukhrana Bai, (2008) 2 SCC 238 (Para 17)
2. Tulsa Devi Nirola Vs Radha Nirola, 2020 SCC OnLine SC 283 (Para 17)
3. Rameshwari Devi Vs St. of Bihar, (2000) 2 SCC 431 (Para 18)

(Delivered by Hon'ble Attau Rahman Masoodi J. & Hon'ble Subhash Vidyarthi J.)

1. Heard Sri Ashok Kumar Srivastava, the learned counsel for the petitioner, Sri S.B. Pandey, the learned Senior Advocate/Deputy Solicitor General of India assisted by Sri Varun Pandey, the learned counsel for the opposite parties and perused the material available on record.

2. By means of the instant petition filed under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs: -

“(i) Issue a writ, order or direction in the nature of Certiorari for quashing of impugned orders dated 20.11.2023 and 08 April 2024 passed by Armed Forces

Tribunal (RB), Lucknow annexed as Annexure No. 1 & 2 respectively to this petition and thereby grant her entitled Ordinary Family Pension w.e.f. 14 Jul 2016 i.e., pursuant to death of her husband on 13 Jul 2016.

(ii) Issue/pass an order or direction of appropriate nature to summon and quash/set aside orders leading to denial of petitioner's ordinary family pension w.e.f. 14.07.2016 i.e., after her husband's death on 13.07.2016.

(iii) Issue/pass an order or direction of appropriate nature to opposite parties to grant ordinary family pension, LTA and ensuing benefits to the petitioner w.e.f. 14.07.2016, i.e., after her husband's death on 13 Jul.2016.

(iv) Issue a writ, order of direction in the nature of mandamus commanding respondent to pay the arrears of all dues and arrears of ordinary family pension from the due date till actual disbursement of aforesaid arrear along with the interest of 12% per annum.

(v) Issue a writ, order of direction which this Hon'ble Court deems fit and proper under the facts and circumstances of the case in favour of the petitioner in the interest of justice.

(vi) Allow the writ petition with cost.”

3. Briefly stated, the facts of the case as pleaded on behalf of the petitioner are that the petitioner is the second wife of late Subedar Tek Bahadur Thapa (a Gorkha from Nepal). Late Tek Bahadur Thapa was enrolled in the Indian Army on 28.11.1961

and he was discharged from service with effect from 30.11.1989. He was paid pension till his death on 13.07.2016. The petitioner claims that she got married to late Tek Bahadur Thapa on 06.03.1969. After her marriage, the petitioner learnt that her husband was already married to Smt. Dalli Maya Kumal on 07.02.1953 and he had four daughters and a son out of that wedlock. At the time of death of Tek Bahadur Thapa, all five children from his first wife were above 25 years of age and married and they were not entitled to claim family pension. In the service record of late Tek Bahadur Thapa, the name of his wife is mentioned as Smt. Dalli Maya Kumal, but the photograph affixed shows the petitioner as wife of Late Tek Bahadur Thapa.

4. The petitioner made a claim for payment of family pension which was denied on the ground that her name was not entered in the service documents of late Tek Bahadur Thapa and also that late Tek Bahadur Thapa had married Smt. Dalli Maya Kumal prior to marrying the petitioner and thus he had married plural times without obtaining sanction from the competent authority.

5. Aggrieved against the denial of her claim, the petitioner filed Original Application No.989 of 2022 before the Armed Forces Tribunal, Regional Bench, Lucknow, which has been dismissed by means of a judgment and order dated 20.11.2023, which order has been assailed by means of the instant writ petition.

6. The Armed Forces Tribunal found that Late Tek Bahadur Thapa had married the petitioner during subsistence of his first marriage with Smt. Dalli Maya Kumal without taking permission from the competent authority and as per Regulation

333 of Defense Service Regulations, his second marriage with the petitioner was void. Regulation 333 of the aforesaid Regulations provide as follows: -

“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 prostituted 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.*

(c) *Applications will state the law under which the subsisting marriage was solemnised,*

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 solemnised 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 thereafter 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 Head quarters, 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 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 recognised 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 recognised 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. This 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 cognisance

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."

(Emphasis added)

7. Late Tek Bahadur Thapa was a Nepalese Gorkha and as per Regulation 333 quoted above, he could have remarried in the following circumstances: -

- (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.

8. There is no allegation that any of the aforesaid five circumstances justifying the second marriage of Late Tek Bahadur Thapa with the petitioner. Late Tek Bahadur Thapa had four daughters and a son from his first marriage and it is nobody's case that his first wife Smt. Dalli Maya Kumal suffered from any

disease/infirmity mentioned in Regulation 333 (B) (a) of Army Regulations. Sri Tek Bahadur Thapa did not apply for sanction to contract plural marriages on any of the grounds mentioned in Regulation 333 (B) (b). Service of the person who has contracted plural marriages without obtaining sanction from the competent authority can be terminated under the provisions contained in Regulation 333 (B) (g) of Army Regulations, but the fact of Late Tek Bahadur Thapa having entered into plural marriages was not brought to the notice of the authorities during his service period or even thereafter during his life time. Therefore, no administrative action for termination of his service was taken.

9. Late Tek Bahadur Thapa did not get the name of the petitioner entered in the service records as his wife. The Armed Forces Tribunal dismissed the original application filed by the petitioner on the ground that her name is not recorded in the service record of the deceased soldier.

10. The petitioner has not come forward to put her signatures on the writ petition or the affidavit filed in its support and the same have been signed and verified by one Prem Bahadur who is said to be a cousin of late Tek Bahadur Thapa.

11. A certificate issued by Bhanu Municipality, 4 No. Ward Office, Tanahun, Gandaki Province, Nepal has been annexed with the writ petition wherein it has been certified that late Tek Bahadur Thapa had two wives, first wife being Mrs. Dalli and the second wife being Mrs. Pin Maya Kumal (the petitioner). The first wife Mrs. Dalli died on 15.03.2019. Late Tek Bahadur Thapa had five children from his first wife and he had three children from

his second wife (the petitioner), the youngest of whom was born on 16.05.1990.

12. Assailing the legality of rejection of the petitioner's claim for payment of family pension, the learned counsel for the petitioner has submitted that as per information available on record, Tek Bahadur Thapa was aged 11 years and Dalli Maya Kumal was aged 12 years at the time of their marriage and they were not of marriageable age. Therefore, the first marriage of late Tek Bahadur Thapa with Dalli Maya Kumar was void and the petitioner was the only legally wedded wife of Tak Bahadur Thapa.

13. Admittedly, the petitioner is a Nepalese citizen and late Tek Bahadur Thapa and his first wife Smt. Dalli Maya Kumal were also Nepalese citizens. Their marriage was solemnized on 07.02.1953.

14. The provisions of Hindu Marriage Act, 1955 extend to the whole of India and this Act does not extend to Nepal. Even this Act which was enacted in the year 1955 was not in existence at the time of marriage of Sri Tek Bahadur Thapa on 07.02.1953. Moreover, even the Hindu Marriage Act, 1955 does not provide that marriage of a person who has not completed the age of 21 years for the bridegroom and 18 years for the bride as mentioned in Section 5 (iii) of the Act, would be void. The learned counsel for the petitioner could not point out any provision of law under which this marriage was void. Therefore, we are unable to accept the submission of the learned counsel for the petitioner that the marriage of late Tek Bahadur Thapa with Smt. Dalli Maya Kumal was void.

15. The second submission of the learned counsel for the petitioner is that the petitioner is an illiterate person and she was not responsible for proper upkeep of the service records of her deceased husband. It was for the authorities to correctly maintain the service records of late Tek Bahadur Thapa and record the name of the petitioner therein as wife.

16. We do not find force in the second submission also as information about family members/dependents is given to the authorities by the concerned employee/officer himself. Late Tek Bahadur Thapa had mentioned the name of Smt. Dalli Maya Kumal as his wife and it is admitted by the petitioner that Smt. Dalli Maya Kumal was in fact the wife of late Tek Bahadur Thapa. The provisions contained in Regulation 333 of Army Regulations quoted above clearly provide that second marriage can be contracted only in certain circumstances and that too after obtaining sanction from the competent authority and any violation of this provision may attract termination of service of concerned employee. Admittedly, Late Tek Bahadur Thapa had not obtained any sanction from the competent authority for marrying the petitioner during subsistence of his first marriage with Smt. Dalli Maya Kumal. Therefore, the petitioner's marriage with late Tek Bahadur Thapa was in contravention of the provisions of Regulation 333 mentioned above and it would not confer any right on the petitioner so far as any benefits relation to or arising out of services rendered by late Tek Bahadur Thapa is concerned.

17. The learned Counsel for the petitioner lastly submitted that even if the marriage of the petitioner was not legal, she lived with Late Tek Bahadur Thapa as his

wife and she is entitled to receive pensionary benefits in view of the law laid down by the Hon'ble Supreme Court in **Vidhyadhari v. Sukhrana Bai**: (2008) 2 SCC 238 and **Tulsa Devi Nirola v. Radha Nirola**: 2020 SCC OnLine SC 283.

18. **Vidhyadhari v. Sukhrana Bai** (Supra) was a case arising out of a claim of the second wife for grant of a succession certificate and the question of effect of Regulation 333 of the Army Regulations was not involved therein. Even in that case, the Hon'ble Supreme Court followed an earlier decision in the case of **Rameshwari Devi v. State of Bihar**: (2000) 2 SCC 431, wherein it was held that even if a government servant had contracted second marriage during the subsistence of his first marriage, children born out of such second marriage would still be legitimate though the second marriage itself would be void. The Court held that such children would be entitled to the pension but not the second wife.

19. In **Tulsa Devi Nirola v. Radha Nirola** (Supra) the deceased had solemnized his second marriage with respondent no. 1 on 09.05.1987, while the Hindu Marriage Act had not been brought into force in the State of Sikkim. Rule 27 of 1963 Rules reads as follows: -

“27. Nothing contained in this Rule shall effect the validity of any marriage not solemnized under its provisions; nor shall this Rule be, deemed directly or indirectly to affect the validity of any mode of contracting marriage.”

No material was placed by the appellants that the second marriage was solemnized under

1963 Rules, and therefore, the Hon'ble Supreme Court held that it does not invalidate the second marriage of the deceased with respondent no. 1. The deceased had executed a settlement deed between his two wives, both with regard to his movable and immovable properties. Having accepted and acted upon the deed it was not open to the appellant no. 1 to now renegade from the same. The Hon'ble Supreme Court further held that: -

"9. Family pension undoubtedly is not part of the estate of the deceased and will be regulated by the Pension Rules which confer a statutory right in the beneficiary eligible to the same."

20. The cases relied upon by the learned Counsel for the petitioner do not apply to the facts of the present case and the same do not deal with the effect of Regulation 333 of the Army Regulations.

21. In view of the aforesaid discussions, we do not find any illegality in the order rejecting the claim of payment of family pension to the petitioner. The writ petition lacks merit and the same is dismissed accordingly.

(2025) 1 ILRA 800

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 15.01.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ A No. 17483 of 2024

Ashish Yadav

...Petitioner

Versus

Managing Director, U.P.S.R.T.C. & Ors.

...Respondents

Counsel for the Petitioner:

Nikhil Kumar, Vagish Yadav

Counsel for the Respondents:

Mritunjay Mohan Sahai, S.M. Mishra

A. Service Law – Compassionate Appointment - U.P. Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 - The concept of compassionate ground appointments is a welfare measure taken by a model employer. However, an unjustified generous approach in compassionate ground which is not consistent with the applicable service rules will confer benefit to underserving and ineligible candidates, and simultaneously deny the rights and lawful claims of eligible and meritorious candidates from getting appointment to government posts. Treating compassionate ground appointments as an unconditional and vested right and making it a source of recruitment will shear the thin veil of legality which protects such appointments from the vice of unconstitutionality. The very concept of compassionate ground will then be exposed to the wrath of Articles 14, 15, 16 of the Constitution of India. (Para 14)

B. The purpose of grant of compassionate ground appointments can be subserved and their constitutionality can be saved only by strict compliance of the rules governing the grant of compassionate ground appointments. (Para 15)

Appointment on compassionate grounds seeks to relieve the immediate financial hardship faced by the dependants of the deceased. It acts as an exception to Articles 14 and 16 of the Constitution as the defendant are given preferential appointment ahead of other equally meritorious candidates similarly placed and hence it cannot be claimed as a right. This appointment must be done in accordance with the rules for such appointment. The