

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Reserve : 16.1.2008
Date of Decision : 08.02.2008

+ **WP(C) No.3196/2006**

BIJENDER SINGH Petitioner

Versus

1. UNION OF INDIA
2. CHIEF OF ARMY STAFF
3. SENIOR RECORDS OFFICER ... Respondents

Advocates who appeared in this case :

For the petitioner : Mr.Gyanender Singh, Advocate

For the respondents : Ms.Barkha Babbar, Advocate

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE J.M. MALIK

1. Whether the Reporters of local papers
may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be
reported in the Digest? Yes

J.M. MALIK, J.

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1. Sanjay Kumar was enrolled as Sepoy in Indian Army on 20th

April, 1994. He sacrificed his life in an encounter with terrorists. He was married to Smt. Hemlata Devi only five months and nine days earlier to his death. After his death his wife left the matrimonial house and all the terminal benefits were given to her. However, Sanjay Kumar, deceased, had made his mother Smt. Rajbiri Devi, wife of Shri Bijender Singh, the petitioner in this case, as the nominee and had declared the petitioner as dependant on his wife. After the death of the sepoy, a dispute arose between Smt. Hemlata, the wife of the deceased and smt. Rajbiri Devi, the mother of the deceased for pensionary and other benefits, which was referred to Branch Recruiting Office, Meerut Cantt, which recommended for division of family pension between the ladies. Ultimately, PCDA(P), Allahabad, had adjudicated the Liberalised Family Pension(in short LFP) and sanctioned LFP at the rate of 60% to Smt. Hemlata and 40% to Smt. Rajbiri Devi with effect from 8th August, 2001 vide order dated 22nd July, 2002. The payment of AFPP Fund Balance and DLI amount were paid to both the ladies in the same ratio. The other financial assistance and death benefits were paid to Smt. Hemlata vide letter dated 19th March, 2002.

2. Smt. Rajbiri Devi expired on 25th May, 2003. The petitioner made a representation to the respondents to release his portion of LFP on 05th February, 2005, but this did not produce the desired result. Another representation was made on 17th February, 2005. Consequently his case was referred to Branch Recruiting Office, Meerut Cantt to investigate the matter and forward his recommendation for division of LFP. The petitioner as well as Smt. Hemlata were called by the Branch Recruiting Office and were interviewed on 26th October, 2005. Prior to that Smt. Hemlata intimated the authorities that the petitioner had driven her out of the matrimonial roof. The investigation was made vide letter dated 31st October, 2004. It transpired that Smt. Hemlata and her two and a half years old daughter had been disowned by the petitioner and she was living alone with no source of income. It also came to light that a sizeable part of the lump sum amount accruing from the death benefits was taken away by the petitioner on the pretext of making a memorial for his deceased son but only a fraction of the amount was actually spent on it and the remaining was retained by him. The investigation done by the department also reveals that the petitioner was living with his

son and earns adequately from agricultural land and cattle to sustain himself and his son. The relations between Smt. Hemlata and the petitioner did not remain cordial. Vide Order dated 31st March, 2005 PCDA(P), Allahabad restored the full LFP at the rate of Rs.3,560/- per month w.e.f. 26th May, 2003 till widowhood in favour of Smt. Hemlata.

3. Aggrieved by that order the petitioner has filed the present writ petition in the nature of mandamus with the prayer that the divided portion of LFP be released in his favour and he be granted interest at the rate of 18% per annum. It is also surprising to note that he has not made any attempt to array her daughter-in-law as one of the respondents in this case.

4. We have heard the learned counsel for the parties. Learned counsel for the petitioner vehemently argued that in view of LFP the petitioner is entitled to succeed to the LFP which was granted to his wife that is upto the extent of 40% of the pension of his son. The relevant portion of LFP scheme is reproduced as follows:-

“(b) PBOR

- (i) If Special Family Pension is sanctioned to the Widow
same provisions as applicable to officers.
- (ii) Where first life award is sanctioned to parents:

- | | |
|---|--|
| (aa) If widow continues to support child(ren) after re-marriage or has no issues | 50% of SFP to parents
50% of SFP to widow |
| (ab) If widow does not support children after re-marriage but the children are supported by the parents | Full SFP to parents
Ordinary Family Pension to widow |
| (ac) If children are not supported either by the re-married widow or the parents | 50% SFP to parents
50% SFP to eligible children
Ordinary Family Pension to widow |
- (ad) On death or disqualification of parents and the widow supports the children or has no issues Full SFP to widow**
- (ae) On death or disqualification of parents and the widow does not support the children Full SFP to eligible children
Ordinary Family Pension to widow

6. Liberalised Family Pension (LFP)

6.1 In case of death of an Armed Forces Personnel under the circumstances mentioned in category “D” & “E” of para 4.1 above, the eligible member of the family shall be entitled to Liberalised Family Pension equal to reckonable emoluments last drawn as defined in para 3.1 above, both for officers and PBOR. Liberalised Family Pension at this rate shall be admissible to the widow in the case of officers and to the nominated heir in the case of PBOR until death or disqualification.”

5. It is clear that the present case is squarely covered by the provision (ad) quoted above. It is clear that the nominated person, that is, the mother of the deceased has unfortunately expired. The plea raised by the petitioner that he was dependant upon his wife does not stand proved. The investigation made by the Branch Recruiting Officer, Meerut clearly goes to reveal that after the death of his son the petitioner did not allow his

daughter-in-law and grand daughter to stay with them. It is, therefore, clear that Smt.Hemlata is brining up her two and a half years daughter, who was allegedly disowned by the petitioner. The investigation dug out by the Branch Recruiting Office further goes to show that the money taken by the petitioner for raising a memorial was not fully spent by the petitioner for that purpose. The petitioner has got another son and both of them are earning enough to sustain their livelihood. Such like serious matters have to be considered with full awareness of the rude realities on the ground not with our heads in the clouds. The court is bound to take a down to earth view. It is usually seen that at the time of marriage few in-laws promise a pie in the sky but whenever they are confronted with such like tragedy like the instant one they fail to provide even the essential facilities of life to the daughter-in-law.

6. Moreover, the petitioner comes within the category of disqualification of parents as per term cited in para (ad) above. The word 'disqualification' means unfitness that bars you from participation. The bizarre conduct of the petitioner debars him from claiming any share from the pension of his deceased son.

The above said legal and factual position clearly evinces the hollowness of petitioner's case. He has no bone to pick with his daughter-in-law and grand daughter. Consequently, the writ petition is dismissed with no order as to costs.

J.M. MALIK, J.

February 08, 2008
dc/dk

A.K. SIKRI, J.