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

Date of hearing and order: 11th November 2014

+ W.P.(C) 5900/2013
SNEH LATA

..... Petitioner

Through: Ms. Archana Ramesh, Major K.
Ramesh (Retd.), Advocates

versus

UNION OF INDIA & ORS.

..... Respondent

Through: Ms. Anjana Gosain, Mr. Pradeep
Desodya, Advocates for Union of
India
Ms. Anjali Vohra, Advocate for
respondent No. 4.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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KAILASH GAMBHIR, J. (Oral)

1. The limited issue raised by the petitioner in the present petition under Article 226 of the Constitution of India is that the respondents have failed to accede to her request for grant of special family pension and also grant of full AGIF benefits which the petitioner has claimed in the light of the judgment of the Punjab & Haryana High Court in Civil Writ petition No.67/2007 titled as '*Paramjeet Singh vs. Union of India*' decided on 12th February 2008.

2. So far as the relief concerning grant of full AGIF benefits are concerned, the learned counsel for the petitioner seeks liberty to take separate legal remedy because of the fact that the petitioner is claiming full amount of AGIF benefits and not as per the nomination form filled by the deceased.

3. Concerning the relief sought for the grant of special family pension, the learned counsel for the petitioner states that the petitioner is entitled to grant of special family pension as at the time of his entering into the Army Service, he was not found suffering from any disease much less the disease due to which he had ultimately died. The learned counsel for the petitioner also submits that the petitioner was admitted in Army Hospital Research & Referral where he was diagnosed with suffering from '*malignant mesothelioma*'. The learned counsel for the petitioner submits that the case of the petitioner squarely falls under the category 'B' as the death of the petitioner had occasioned due to '*malignant mesothelioma*' which is attributable to and aggravated by military service and therefore, in terms of clause 5.1 of the policy letter, he is entitled to the grant of special family pension. The learned counsel for the petitioner also placed reliance on the judgment of the Apex Court in the case of

Dharamvir Singh v. Union of India and Ors. (2013) 7 SCC 316, wherein also the Hon'ble Supreme Court held that a member is presumed to be in a sound and physical mental condition if upon entering in service there is no note at the time of entrance that he was suffering from any kind of medical disease and in the event of subsequently being discharged on medical ground such a medical condition is to be presumed to be attributable to or aggravated by military service.

4. Controverting the aforesaid contentions, Ms. Anjana Gosain, the learned counsel for the respondents submits that the learned Armed Forces Tribunal has rightly declined the grant of special family pension to the petitioner as the disease was a case of '*malignant mesothelioma*' and as per the opinion given by the Medical Officer, the same was not attributable to nor aggravated by military service. The learned counsel for the respondents also submits that the case of the petitioner squarely falls under Clause 12 of the Chapter VI, Guide to Medical Officers, 2002 and the Amendment of 2008 (paras 9 to 12); that during his entire service, the petitioner was posted in non-hard/ peace stations, therefore, there could not have been any occasion for him to have suffered from any medical condition due to military service. The learned counsel for the respondents

also submits that even the service tenure of the son of the petitioner was quite short therefore, there were remote chances for him to have suffered with the said ailment due to military service.

5. We have heard the submissions of learned counsel for the parties and have also gone through the judgments relied upon by them.

6. It is not in dispute between the parties that at the time of entering into the service, the petitioner was not suffering from any disease much less from the said disease to which he ultimately succumbed. Without carrying on the discussion any further, we are of the view that the issue in hand has been authoritatively decided by the Supreme Court in the case of *Dharamvir Singh v. Union of India and Ors. (supra)* and the following paras of the said judgment would be of significance:

28. A conjoint reading of various provisions, reproduced above, makes it clear that:

- (i) Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).

- (ii) A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)].
- (iii) Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9).
- (iv) If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].
- (v) If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)].
- (vi) If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be

deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and

- (vii) It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical (Military Pension), 2002-"Entitlement: General Principles", including paragraph 7, 8 and 9 as referred to above.

- 29. We, accordingly, answer both the questions in affirmative in favour of the Appellant and against the Respondents.
- 30. In the present case it is undisputed that no note of any disease has been recorded at the time of appellant's acceptance for military service. The respondents have failed to bring on record any document to suggest that the appellant was under treatment for such a disease or by hereditary he is suffering from such disease. In absence of any note in the service record at the time of acceptance of joining of appellant it was incumbent on the part of the Medical Board to call for records and look into the same before coming to an opinion that the disease could not have been detected on medical examination prior to the acceptance for military service, but nothing is on the record to suggest that any such record was called for by the Medical Board or looked into it and no reasons have been recorded in writing to come to the conclusion that the disability is not due to military service. In fact, non-application of mind of Medical Board is apparent from Clause (d) of paragraph 2 of the opinion of the Medical Board, which is as follows:

- (d) *In the case of a disability under C the board should state what exactly in their opinion is the cause thereof.*

**YES Disability is not related to mil
service”**

7. The medical report which has been produced by the respondent during the course of the hearing in the present matter is an opinion given by the medical officer taking a view that the son of the petitioner had a case of ‘*malignant mesothelioma*’ and the said disease is not attributable to and aggravated by the military service. We find that the said Medical Officer has not given any reasons as to how the said disease cannot be held to be attributable to and or aggravated by the military service, considering the fact that there was no note of any kind of such disability at the time of his entering into the Army. We also find non applicability of Clause 12 of the Chapter VI, Guide to Medical Officers, 2002 and the Amendments of 2008, which primarily deals with the type of cancers due to the consumption of tobacco and from the medical documents placed on record by the respondent, the case of the petitioner’s son is not of that kind.

8. In view of the aforesaid discussion, we find merit in the

submissions of learned counsel for the petitioner. The impugned order dated 18.10.2012, passed by the learned Armed Force Tribunal is accordingly set aside and we direct the respondents to grant special family pension to the petitioner within a period of six weeks from the date of this order. However, concerning the relief for the grant of full AGIF benefit to the petitioner, the petitioner will be at liberty to take separate legal remedy before the appropriate forum.

9. With aforesaid directions, the present petition stands disposed off.

KAILASH GAMBHIR, J

NAJMI WAZIRI, J

NOVEMBER 11, 2014

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