

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12676 OF 2017

Smt. Saramma Kathirvelu	...Petitioner
Versus	
Union of India and ors.	...Respondents

Mr. K. Mano Prabhakaran for the Petitioner.
Mr. A.M. Sethana i/b Mrs. N.V. Masurkar for Respondent
No.1/UOI.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 24.04.2018.

ORAL JUDGMENT

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgment and order dated 17.07.2015 made by the Central Administrative Tribunal (CAT), Mumbai in O.A. No.85 of 2014 instituted by the petitioner seeking disability family pension in addition to the regular family pension already

granted to her.

4] For the order, which we propose to make, it is not necessary to advert to the facts in great details. Suffice to mention that the petitioner is a widow of late A.Kathirvelu, who was working as a Machinist with the respondents and who died of respiratory failure (Fibrosis Alveolitis) on 17th September 1988 whilst in service. The petitioner has been awarded family pension, but she relies upon the office memorandum dated 3rd February 2000, which provides that special benefits/disability pension has to be awarded to the dependents where death or disability is due to causes which are accepted as attributable to or aggravated by government service.

5] The O.M. dated 3rd February 2000 clarifies that diseases contracted because of continued exposure to hostile work environment, subjected to extreme weather conditions or occupational hazards resulting in death or disability would be examples where such special benefits/disability pension is required to be granted.

6] The CAT by the impugned judgment and order has dismissed the petitioner's claim mainly relying upon a certificate issued by the Resident Surgeon, Breach Candy Hospital and Research Centre. This certificate also mentions that from history, clinical examination and investigations which included chest X-ray, blood tests and pulmonary function testing, the deceased was diagnosed as having progressive interstitial Pulmonary Fibrosis with respiratory failure and Diabetes Mellitus. From this, the CAT has concluded that it cannot be said with certainty that death occurred only on account of hostile environment at the work place. Apart from the certificate of the Resident Surgeon, Breach Candy Hospital and Research Centre, the CAT does not appear to have adverted to other materials on record, including in particular, the medical case records of the Armed Forces Medical College, Pune, where the petitioner's late husband was treated whilst in service.

7] From the record, we find that the petitioner had produced before the CAT on 20th February 2015 copies of the complete medical treatment records relating to the petitioner's deceased husband. This compilation is at

Exhibit-D (page 72 to the paper book in the present petition). This includes the case papers which, at least *prima facie*, suggest that ailments due to which the petitioner's deceased husband succumbed, relates to occupational exposure to metal/oil fumes.

8] At this stage, we may not be taken as having expressed any opinion on this issue. However, all that we wish to say is that all this material in the form of medical treatment records of the petitioner's deceased husband has not been considered by the CAT in making the impugned judgment and order.

9] Excluding consideration of relevant or vital material is a good ground for exercise powers of judicial review. On this short ground, without ourselves advertent to the merits of the matter, we propose to set aside the impugned judgment and order and remand the matter to the CAT for fresh adjudication, *inter alia*, by taking into consideration all the relevant and vital materials on record including the complete medical treatment records relating to the petitioner's deceased husband.

10] It is pertinent to note that the medical treatment records do not pertain to the treatment in some private hospital, but these are medical treatment records from the Armed Forces Medical College, Pune where the petitioner's deceased husband was taking treatment whilst in service. Therefore, at least *prima-facie*, this is relevant and vital material, which could not have been excluded from consideration by the CAT.

11] Accordingly, we set aside the impugned judgment and order and remand the petitioner's O.A. No.85 of 2014 to the CAT for fresh adjudication in accordance with law and on its own merits.

12] We request the CAT to take into consideration all the relevant and vital material on record, including in particular, the complete set of medical treatment records in relation to the petitioner's deceased husband. These medical treatment records were produced before the CAT on 20th February 2015.

13] We also request the CAT to dispose of O.A. No. 85 of 2014 as expeditiously as possible, since the matter relates to grant of disability pension to a widow.

14] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)