

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Writ Petition No.18109 of 2016
Decided on : 02.07.2019**

Phool Kaur

... Petitioner

Versus

Union of India and others

... Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. R.A. Sheoran, Advocate for the petitioner.

Mr. Arun Gosain, Senior Panesl Counsel
for the respondents.

G.S. Sandhawalia, J. (Oral)

In the present writ petition filed under Article 226/227 of the Constitution of India the petitioner seeks the benefit of dual extra-ordinary family pension w.e.f. 24.09.2012 as per the amended pension regulation dated 17.01.2013 (Annexure P-3) with all consequential benefits alongwith interest.

2. The claim is made on the basis that the husband of the petitioner, namely, Ramphal retired as Naib Subedar from the Army and after the retirement he had joined BSF in 1990. While serving with the Battalion No.1, he became seriously ill and was admitted to Silchar Medical College and Hospital on 30.04.1993 and expired on 03.05.1993. The death was due to 'Cereberal Heomerage' and it was stated to be on account of relating to service while performing duty in the area of Silchar where Cerebral Malaria is common. Reliance has been placed upon death certificate (Annexure P-1), in which the cause of death is mentioned.

3. The petitioner was drawing family pension of Naib Subedar

from the Army, since the husband had earlier retired from the Army. On account of dual family pension granted vide letter dated 17.01.2013 (Annexure P-3), which was permissible from 24.09.2012, the demand as such was made on 09.05.2016 (Annexure P-4). Resultantly, the present writ petition has been filed on the ground that the death was due to aggravation and attributable to service and the petitioner's husband was found medically fit at the time of joining the service.

4. Reliance was also placed upon the subsequent revised provisions, which came into effect from 01.01.1996, whereby the categorization as such was made in the Extraordinary Pension Rules, which was recommended by the Fifth Central Pay Commission for determining the compensation payable for death or disability under different circumstances under 5 distinct categories. The said categories read as under:-

“Category ‘A’ Death or disability due to natural causes not attributable to Government service. Examples would be chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty etc.

Category ‘B’ Death or disability due to causes which are accepted as attributable to or aggravated by Government service. Diseases contracted because of continued exposure to a hostile work environment, subjected to extreme weather conditions or occupational hazards resulting in death or disability would be examples.

Category ‘C’ Death or disability due to accident in the performance of duties. Some examples are accidents while traveling on duty in Government vehicles or public transport, a

journey on duty is performed by service aircraft, mishaps at sea, electrocution while on duty, etc.

Category 'D' Death or disability attributable to acts of violence by terrorists, anti social elements etc., whether in their performance of duties or otherwise. Apart from cases of death or injury sustained by personnel of the Central Police organizations while employed in aid of the Civil administration in quelling agitation, riots or revolt by demonstrators, other public servants including Police personnel etc, bomb blasts in public places or transport, indiscriminate shooting incidents in public etc , would be covered under this category.

Category 'E' Death or disability arising as a result of (a) attack by or during action against extremists, antisocial element, etc, and (b) enemy action in international war or border skirmishes and warlike situations, including cases which are attributable to (i) extremists acts, exploding mines, etc., while on way to an operational area (ii) kidnapping by extremists; and (iii) battle inoculation as part of training exercises with live ammunition.”

5. Reliance was placed upon Rule 3-A of the Central Civil Services Rules (Extra Ordinary Pension Rules) 1939 (for short '1939 Rules'), which reads as under:-

“3-A (1) (a) Disablement shall be accepted as due to Government service, provided that it is certified that it is due to wound, injury or disease which -

(i) is attributable to Government service, or
(ii) existed before or arose during Government service and has been and remains aggravated thereby.

(b) Death shall be accepted as due to Government service provided it is certified that it was due to or hastened by –

(i) a wound, injury or disease which was attributable to

Government service, or

(ii) the aggravation by Government service of a wound, injury or disease which existed before or arose during Government service.

(2) There shall be a causal connection between -

(a) disablement and Government service ; and

(b) death and Government service, for attributability or aggravation to be conceded. Guidelines in this regard are given in the Appendix, which shall be treated as part and parcel of these Rules.”

6. Category 'B' as noticed above provided the diseases because of continued exposure to a hostile work environment, subjected to extreme weather conditions or occupational hazards resulting in death or disability would be examples. The guidelines which have been provided and given in the index are treated as part and parcel of the rules. Guideline 5 (iii) of the 1939 Rules further provides the diseases endemic to certain areas. The same reads as under:-

“Guideline 5 (iii)- **Diseases endemic to certain areas-**

Diseases such as Malaria, Kalazar, Filariasis, Dysentery, Cholera, etc. are endemic in certain areas. These diseases may also be introduced by movements of infected persons.”

7. A perusal of the abovesaid rule would go on to show that Malaria is also mentioned as endemic in certain areas. It is a fact that the Cerebral Malaria was the disease whereby the petitioner's husband had contracted and gone into Coma. The petitioner's husband being posted in the 'Far East' area had obviously picked up the said disease and expired within 4 days of admission, as it is clear that he was admitted on 30.04.1993 and expired on 03.05.1993. The death has also taken place in

the peak summer when the conditions are ripe for such a disease to be rampant.

8. The respondents have admittedly granted the dual family pension from 24.09.2012 in terms of letter dated 16/17.01.2013. Thus, the claim of the petitioner as such for extraordinary family pension has not been acted upon.

9. The argument raised that the said categorization under Category A to E as such has only been effected from 01.01.1996 would not detain this Court for long, since this is further classification as such regarding in what instances the payment is to be made. The rule itself as noticed and the guidelines already provided that in the case of such a disease, which is attributable to Government service, the NOK would be entitled for the said benefit. Guideline 5 (iii) also provides and recognize the said disease as an endemic in certain areas. The petitioner would, thus, fall in Category 'B'

10. Keeping in view the above discussion, the respondents shall process the case of the petitioner for grant of extraordinary family pension under Category 'B' within a period of 3 months from today and grant necessary benefits. The petitioner shall be entitled for arrears for a period of 3 years 2 months from the date of the demand, in view of the judgment of Division Bench passed in '**Ex. Naik Umed Singh Vs. Union of India and others'** (2014) 4 PLR 356. The claim for interest as such in the peculiar facts and circumstances is denied, as the claim could only be

raised at a belated stage after the benefits of dual family pension became payable.

11. The writ petition is, accordingly, partly allowed.

JULY 02, 2019
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No