

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

Civil Writ Petition No.9498 of 2018

Date of decision: 24.07.2019

Kela Devi

...Petitioner

Versus

Union of India and others

...Respondents

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

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

Mr. Sanjay Vashisth, Advocate for the respondents.

G.S.SANDHAWALIA, J. (Oral)

In the present petition, the petitioner seeks writ in the nature of mandamus directing respondents to grant extra-ordinary family pension on account of death of the husband of the petitioner who has stated to have died on account of illness because of Tuberculosis which was contracted due to service in hilly areas.

The respondents have treated the death of husband of the petitioner as natural death as Const./Bug Ram Chander had died during his posting at Amritsar way back on 1.11.1991. It is admitted case of the petitioner that since the date of his death she had taken family pension for all these 25 years and chose not to agitate her grievance for grant of extra-ordinary family pension which has now been raked up by serving legal notice dated 12.10.2017 (Annexure P/1).

Counsel for the petitioner has heavily relied upon the observations of the Division Bench in **Ex. Naik Umed Singh Vs. Union of**

India and others 2014(3) Service Cases Today 469 that the limitation is

not such a bar. It is submitted that the benefit can be granted.

A perusal of the file would go on to show that the husband of the petitioner had joined CRPF on 30.7.1983 and thereafter as noticed had contracted the disease and unfortunately he had expired on 1.11.1991 due to Tuber-Culosis followed by liver attack/injury due to indiced Hepatitis. In the writ petition it has been averred that disease had taken place due to service in hilly areas and due to exposure to hostile work environment, subject to weather conditions or occupational hazarads. However, nowhere it has been mentioned that in which hilly areas husband of the petitioner had remained posted where due to weather condition or occupational hazards he had contracted Tuberculosis which was stated to be attributed to the Government service. Even if one is to fall back on the Schedule-A of Rule 3 (4) of the Central Civil Services (Extraordinary Pension) Rules, 1939 whereby list of diseases which can be contracted by service have been categorized it would show that Pulmonary Tuberculosis is a disease affected by climatic conditions.

The basis of getting such disease on account of being affected by the climatic conditions would have necessarily to be averred by specifically stating that the deceased remained posted at the places where the climatic conditions were adverse to his health but not a single word had averred in the petition in this regard. It is thus to be noticed that the claim has been made at this belated stage after a period of 25 years and sought to be revived by sending legal notice dated 12.10.2017 (Annexure P/1) is not liable to be accepted under the extraordinary writ jurisdiction of this Court.

In similar circumstances, the Division Bench in **Ex.Naik Umed**

Singh's case (Supra) was dealing with the issue of disability pension on

account of discharge from Armed Forces. The report of the Release Medical Board categorizing the disability either not attributable to military service or aggravated by military service and the issue of limitation as such was subject matter before the Division Bench. The Division Bench noticed that the disability pension as such is a recurring cause and therefore the right to claim pension would arise on attaining superannuation or discharge as payment of arrears could be restricted for three years. However, it was noticed that primary medical record after long delay may not be available and therefore the long silence for not lodging claim of disability pension can be said to bar the remedy. The said bar was further stated not to be absolute and it would be question of fact in each case as from the record whether it was to be attributable or aggravated by military service had to be examined to determine the cause of discharge from the Army. It was further held that if the cause of discharge is not attributable or aggravated by military service no adverse inference could be drawn against the Army authorities if there was delay in lodging of the claim and the same could not be prejudicial to the interest of the Armed Forces. The observations would apply to the facts and circumstances of the present case keeping in view the long delay as such which is occurred in approaching the authorities and the Court. Relevant paragraphs read as under:-

“31. A perusal of the entries of the Long Rolls, which are required to be preserved permanently, shows that the requirement is to record date and cause of becoming non-effective, but such entries in the Long Rolls is not primary evidence. The primary Medical record is not available after 25 years. The primary evidence of the cause of discharge having been destroyed, the Long Rolls is not conclusive to return a finding that the discharge of Armed Forces personnel was either attributable or aggravated by military

service. It is entry made from another document though made in regular course of working but the same is not primary evidence. It cannot be treated to be secondary evidence as it is only an abstract and cannot lead to conclusive opinion for the reason of discharge. Therefore, the long silence for not lodging a claim of disability pension can be said to bar the remedy.

32. However, such bar is not absolute. It would be a question of fact in each case. In case, the discharged officer has the opinion of the medical board, from which, it may be possible to find out the cause of discharge from the Armed Forces, the former Armed Forces personnel or their dependents would be entitled to seek consideration for the grant of disability pension, but for a period of not exceeding three years prior to the initiation of the lis. But if no record is available in respect of cause of discharge of the Armed Forces, the Armed Forces personnel or their legal heirs cannot draw any adverse inference of the discharge being attributable or aggravated by military service. The delay in lodging of a claim cannot be pre-judicial to the interest of the respondents though at the same time the legitimate right of the Armed Forces personnel or their dependents cannot be defeated. But in case either from the record produced by the legal heirs or the Armed Forces personnel or from the Army Authorities, the cause of discharge is not made out as attributable or aggravated by military service, no adverse inference can be drawn against the Army Authorities. In fact, the inference can be drawn only against the Armed Forces personnel or their legal heirs on account of delay leading to acquiescence in the process of discharge. Therefore, in case of weeding of the records, the claim of the Armed Forces personnel or their legal heirs would be required to be examined on the basis of available record, if possible, to determine the cause of discharge from the Army and whether such cause leads to a finding of the discharge being attributable or aggravated by military service.”

The respondents have categorically averred that one Battalion

consisting of as many as 1000 personnel was posted at Amritsar which is a historical town of Punjab and an urban area and it is not the case that any other member of Battalion was effected by the same disease.

In such circumstances, the present writ petition is held to be misconceived having been filed at such a belated stage seeking extraordinary pension and does not require further consideration.

Accordingly, the present writ petition is dismissed.

July 24, 2019
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No