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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4089/2014**

BHATERI DEVI Petitioner

Through Mr. Ankur Chhibber, Advocate

versus

UNION OF INDIA AND ORS Respondents

Through Mr. Kirtiman Singh, CGSC with Mr.
Rohan anand, Mr. Waize Ali Noor and
Mr. Taha Yasin, Advocate

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
18.12.2019

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1. The Petitioner is aggrieved by the rejection by order dated 3rd January, 2013 of her request for grant of Extraordinary Pension (EOP)/Liberalised Pensionary Award (LPA). She is also aggrieved by the order dated 29th October, 2013 rejecting the request for conversion of the family pension into LPA.

2. The Petitioner's husband suffered gunshot injury on his right leg below the knee on 5th June, 2000 during an encounter that took place between the militants and troops of the 105th Battalion, Boarder Security Force (BSF) in the Garat Jor area, Jammu during the encounter operation during which one militant was killed and four personnel of the 105th Battalion, including the Petitioner's husband serving as a Head Constable (HC), were injured.

3. The Petitioner's husband disability was assessed and fixed at 40% and he was granted disability grant compensation for a sum of Rs. 2, 85, 315/-. The Petitioner's husband underwent treatment at various hospitals during this period continued in service. Thrice, he was produced before the Medical Board on 16th November, 2005, 20th June, 2006 and 21st July, 2007. Although he was declared unfit for further retention in service, his wife that is the Petitioner herein persuaded the authorities to retain his service and therefore till his unfortunate demise on 27th October, 2010 while undergoing the treatment at Safdarjung Hospital, New Delhi, the Petitioner's husband died. Prior to his death on 19th April, 2010 when he was examined by Medical Board his combined total disability was reassessed at 60%.

4. In terms of the personal pension payment order no.2 dated 4th April, 2011 the Petitioner was sanctioned family pension of Rs. 6725/- with effect from 28th October, 2010 and Rs. 4035/- with effect from 28th October, 2020. The Petitioner's request for grant of LPA instead of family pension on the ground that the death of the Petitioner's husband was on account of the gunshot injury and the related consequences was rejected by the Pension Accounts Department (PAD) on 3rd January, 2013 referring to Rule 6 (ii) (a) of the CCS (EOP) (Rules).

5. Further representation of the Petitioner finally rejected on 29th October, 2013. The present petition was filed. In response to the notice issued in the present petition a counter affidavit has been filed by the Respondents enclosing therewith *inter alia* the report of the review Medical Board. The report is a detailed one listing out chronologically the treatment received by

the Petitioner's husband from the date of the sustaining the gunshot Rule on 5th June, 2000 till the date of his unfortunate demise. The opinion of the Medical Board is that 'injury sustained by late H.C. Kapoor Singh on 5th June, 2000 was not in any way related to the death of the deceased which occurred after the 10 years of the date of injury'.

6. This Court has heard the submissions of Mr. Ankur Chibber, learned counsel for the Petitioner and Mr. Kirtiman Singh, CGSC for the Respondents.

7. Rule 6 of the CCS (EOP) rules reads thus:

No award shall be made in respect of -

- (i) an injury sustained more than five years before the date of application, or
- (ii) death which occurred more than seven years -
 - (a) after the injury due to violence or accident was sustained, or
 - (b) after the Government servant was medically reported as unfit for duty on account of the disease of which he died.

8. Under Rule 6 (ii) no award can be made for the grant of EOP/LPA if the death occurs beyond seven years, either a) after the injury was sustained or b) after the Government servant was medically reported unfit for duty 'on account of the deceased of which he died'.

9. It is the submission of Mr. Kirtiman Singh, learned counsel for the Respondents, relying on the judgment of High Court of Patna in ***Aman Kumar Chobey v. Union of India (2009) 1 PLJ R 553*** that since in the present case, the Petitioner's husband continued in service till the date of his death she would not be entitled to EOP. It is further submitted that the report of the Medical Board was cleared that the death, which occurred more than 7 years after the injury being sustained, which itself disentitled to her to an award. Further, even the second contingency that the death should be on account of injury sustained that is the cause of an action, is not fulfilled.

10. On the other hand, Mr. Ankur Chhibber urges that even six months prior to Petitioner's death the Medical Board assessed his permanent disability at 60% which is related to the injury suffered by him way back on 5th June, 2000 and that the final opinion of the Medical Board does not tally with the discussion preceding in the proceedings of Medical Board.

11. In matters of medical opinion the Court cannot possibly act as an appellate authority and substitute its view for that of the Medical Board. The Medical Board have been carefully to draw distinction between the opinion given by it at various stages of treatment undergone by the Petitioner's husband as a result of gunshot injury and the ultimate cause of his death. This is an opinion of a four members Medical Board comprising of senior medical professional including one who serves as Lecturer in the Post Graduate Department of Medicine in the Government Medical College, Jammu. The Court has no means to doubt the correctness of that opinion.

12. The opinion of the medical board Rule 6(ii) (b) would come in the way of the EOP being granted to the Petitioner as prayed for. Additionally, under Rule 9 (iii) of the CCS (EOP) Rules if the Government Servant is retained in the service despite his disbarment would be entitled to compensation in view of the disability pension. In this case such compensations had already been granted and the question therefore of the grant of EOP does not arise.

13. The petition is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 18, 2019

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