

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

LPA-1575-2019

Reserved on : 23.10.2019

Decided on: 20.03.2020

Smt.Kela Devi

... Appellant

Versus

Union of India and others

... Respondents

CORAM: *HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE*
 HON'BLE MR. JUSTICE RAJIV SHARMA, JUDGE

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

RAJIV SHARMA, J.

This Letters Patent Appeal is instituted against the judgment dated 24.07.2019 rendered by the learned Single Judge in CWP no.9498 of 2018.

The brief facts necessary for adjudication of the present appeal are that the appellant's husband joined CRPF as Constable in the year 1983. He served upto 1991. At the time of his death, he was posted at Amritsar. Ordinary family pension was granted to the appellant. According to the averments made in the petition, she was entitled to extra-ordinary family pension because the death of husband was caused during service due to Tuberculosis. It was also averred that the appellant's husband was medically fit when he joined CRPF in 1983. He had contracted disease due to his posting in hilly areas and due to exposure to hostile working environment.

The appellant has relied upon Rule 3A(a)(b) of the Central Civil Services (Extraordinary Pension) Rules, 1939 (in short "Rules"). The

of the Rules.

According to the appellant, her case fell in Category “B”. Category 'A' 'B' & 'C' as per revised provisions with effect from 01.01.1996 regarding Disability and Extraordinary Family Pension under the CCS (Extraordinary) Pension Rules and Liberalized Pensionary Awards, reads 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 accidents in the performance of duties. Some examples are accidents while travelling 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.”

The appellant has also claimed lump sum compensation. The writ petition was contested by the respondents.

According to the averments made in the preliminary submissions, husband of the appellant died at GND Hospital, Amritsar, on 01.11.1991. The family pension was sanctioned to his widow (appellant) with effect from 02.11.1991 by the Pay and Account Office, New Delhi.

Death-cum-Retirement Gratuity was also authorised to the appellant vide Directorate General's letter dated 13.01.1992. There was inordinate delay in filing the writ petition. The appellant's husband was old patient of Tuberculosis. Since he died due to prolonged illness, as per Schedule II of the Rules, his case was covered under Category "A". Accordingly, ordinary family pension was paid to the appellant. The case does not fall under Category "B" of the Rules. The whole Battalion consisting of 1000 personnel was deployed at one place, i.e. Amritsar with the same nature of duties and only husband of the appellant developed disease. Thus, his disease was not due to service in hilly area, exposure to hostile working environment. The legal notice was duly replied vide Annexure R-1. As per reply, only those personnel are entitled to ex gratia who die in harness while performing bonafide Government duties attributable to acts of violence by terrorists, anti social elements, accidents while on duty border skirmishes and action against militants, terrorists and extremists. Thus, the appellant was not entitled to ex gratia lump sum payment. She has been paid normal family pension as per CCS(Pension) Rules, 1972. Her case seeking extraordinary family pension and ex gratia compensation is not covered under the CCS (EOFP) Rules. It was also mentioned in Annexure R-1 specifically that Tuberculosis disease was not attributable to the Government duties assigned to the individual. The disease had developed due to his carelessness or negligence but certainly not due to duties assigned to the individual. The case did not fall within the ambit of office memorandum dated 11.09.1998.

Sub Rule 4 of Rule 3 defines the disease as under:-

“(4) “disease” means a disease as is mentioned in Schedule I-A hereto annexed.”

Rules 3-A (1) and (2) read 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 casual 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.”

The appellant has not placed any contemporaneous material on record to prove that her husband was posted in hilly area. According to Annexure R-1, the appellant's husband died due to natural death. According to plain language of Rule 3-A (2), there shall be a casual connection between disablement and Government service; and death and Government service for attributability or aggravation. The appellant has failed to prove any casual connection between disablement and Government service and

or aggravation.

According to Guideline no.5 (a), in case it is established that conditions of Government service did not determine or contribute to the onset of the disease but influence the subsequent course of the disease, will fall for acceptance on the basis of aggravation. There is no medical material on record to establish that though the conditions of Government service did not determine or contribute to the onset of the disease on the appellant's husband but influenced the subsequent course of disease for the purpose of aggravation. According to plain language of Guideline no.5 (b), a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance for Government service. However, with a rider that if medical opinion holds for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service. According to the affidavit filed by the respondent, the appellant's husband died due to natural death. Guideline no.5(c) further clarifies that even if a disease is accepted as having arisen during service, it must also be established that the conditions of Government service determined or contributed to the onset of the disease and that the conditions were due to circumstances on duty in Government service. The appellant has not placed any tangible evidence on record to establish that the conditions of Government service had determined or contributed to the onset of the disease of her husband. There is also reference to Guideline no.5 (d) that in considering whether a particular disease is due to Government service, it is necessary to establish the fact in the etiology of the disease and its normal development to the

effect that conditions of service, e.g. exposure, stress, climate etc. may have had on its manifestation, as per Schedule I-A. We have perused Schedule A & C of Schedule I-A.

The case of the appellant's husband is not covered under any of the Rules and Guidelines enumerated hereinabove. His death was natural. The appellant's case is neither covered under 3-A(2) nor under Guideline no.5 read with Schedule I-A (A & C). The appellant's case seeking ex gratia lump sum compensation is not covered as per office memorandum letter dated 11.09.1998. She was only entitled to family pension (Category "A"). Moreover, the appellant has filed the petition after 25 years. There is inordinate delay in filing the writ petition which has not been explained.

The judgment of the Hon'ble Supreme Court rendered in *Civil Appeal no.3086 of 2012* titled *Balbir Singh vs. Union of India & Ors.*, decided on 08.04.2016 is not applicable. In the present case, disability suffered by the appellant's husband was attributable to military service.

Thus, there is no illegality or perversity in the judgment of the learned Single Judge. Accordingly, the appeal filed by the appellant is dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(RAJIV SHARMA)
JUDGE

March 20, 2020.

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No