

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

C.W.P.No.9524 of 2018(O&M)

Date of decision: .04.2021

Tohto Devi

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sushil Sheoran, Advocate
for the petitioner.

Mr. Shivoy Dhir, Advocate, for Union of India

ANIL KSHETARPAL, J.

The petitioner herein is the widow of late Sh. Tuhi Lal, who was working as PNR COY in General Reserve Engineering Force (in short 'GREF'). The petitioner was in fact the second wife of late Sh. Tuhi Lal. Late Sh. Tuhi Lal met with an accident on 18.07.1991 and died on 27.07.1991. The petitioner claims that she is entitled to extra-ordinary pension in terms of the Central Civil Services(Extraordinary Pension), Rules, 1939 (hereinafter referred to as 'the 1939 Rules'). The petitioner claims that since GREF is a part of the Army and her husband died while he was on duty, therefore, she is entitled to extra-ordinary pension under the 1939 Rules as amended with effect from 01.01.1996. She also claims that ex-gratia lump-sum compensation and other statutory benefits as per the government rules.

The writ petition is opposed by the respondents and it is submitted that the petitioner's husband died due to his own negligence. Still, 50% of

the pension was paid to the petitioner, whereas 50% was paid to the daughter Kanta, who was from the first wife of late Sh. Tuhi Lal and after the daughter's marriage, 100% pension is being paid to the petitioner. It has further been pleaded that an investigation was held to find out the reasons resulting in the death of late Sh. Tuhi Lal and it was found that on 18.07.1991, he was deployed for night Santry duty and he went inside the barbed wire fencing of the electric transformer and tried to hold the main supply line of electricity and consequently died due to shock and burn injuries. It has been asserted that late Sh. Tuhi Lal was a Group-D employee and in terms of Rule-2 of the 1939 Rules as amended vide notification dated 14.02.2011, the employees who are governed by the Workman's Compensation Act, 1923 (now Employee's Compensation Act, 1923), are not entitled to extraordinary pension. Therefore, the petitioner is not entitled to the same.

The petitioner has filed a replication reiterating her stand in the writ petition. The respondents have also filed an additional affidavit.

This Bench has heard learned counsel for the parties at length and with their able assistance perused the paper book.

On liberty being granted, learned counsel representing the petitioner has also filed written synopsis.

Learned counsel representing the petitioner contends that no negligence on the part of late Sh. Tuhi Lal is proved and therefore, he cannot be said to be negligent. It is claimed that even if contributory negligence on the part of the government servant is found, it can at the most be taken into consideration while making an award but it cannot be taken into account where such an award is being made in the favour of the family

members of the government servant. It is further contended that since the husband of the petitioner was regularly appointed in GREF on a permanent post as an army personnel, therefore, he was not a civilian and hence, Workman's Compensation Act, 1923 is not applicable. Learned counsel has relied upon the judgment passed in **R. Viswan and others vs. Union of India and others, (1983) 3 SCC 401** in support of his contention.

Per contra, learned counsel representing the respondents has contended that the husband of the petitioner was a Grade-D employee, employed directly in GREF and therefore, he was not an army personnel in the strict sense. He further submitted that in the absence of any challenge to the validity of the Rules, the writ is not maintainable.

After having analyzed the arguments of learned counsel for the parties, now the stage is set to evaluate the respective submissions of the learned counsel for the parties. There is no dispute that the deceased-husband of the writ petitioner was employed in GREF and not in the Army. It is also not in dispute that he was a Group-D employee. On a careful reading of the report submitted by the One Man Commission, it is apparent that the cause of death was on account of negligence of the deceased and hence it was recommended that no compensation be paid. However, the pension is being paid to the widow.

As regards the claim of the petitioner to the extra-ordinary pension, it may be noted here that such an extraordinary family pension is payable in accordance with the rules applicable. Under Category-C, no doubt, in case of death or disability due to accidents in performance of duties including the death by electrification is included, however, these rules are not applicable to Group-D employees. Rule 2 of the 1939 Rules,

clearly provides that these rules shall apply to all persons who are paid from the Civil Estimates, other than those to whom the Workman's Compensation Act, 1923, applies. Rule 2 is extracted as under:-

"2. These rules shall apply to all persons paid from Civil Estimates, other than those to whom the Workmen's Compensation Act, 1923 (VIII of 1923), applies, whether their appointment is permanent or temporary, on the scale of pay or fixed pay or piece-work rates who are under the rule making control of the President of India;

Provided that nothing contained in these rules shall apply to the Government servants appointed on or after the 1st day of January 2004.

NOTE. - No award shall be made under these rules in respect of a civilian officer who is deputed on foreign service under UN bodies on or after 1st January, 1958 and who is allowed to join the UN Joint Staff Pension Fund as an 'Associate Member'.

Learned counsel representing the petitioner relies upon the judgment passed by 5 Judges Bench of the Hon'ble Supreme Court in **R. Viswan and others (supra)**. In the aforesaid case, certain employees of GREF were punished in the Court Martial and they had claimed that no Court Martial could be held. In that context, the Hon'ble Supreme Court considered the following questions:-

"The question is whether [section 21](#) of the Army Act 1950 read with Chapter IV of the Army Rules 1954 is within the scope and ambit of [Article 33](#) and if it is, whether Central Government Notifications Nos. SRO 329 and 330 dated 23rd September 1960 making inter alia [Section 21](#) of the Army Act 1950 and Chapter IV of the Army Rules 1954 applicable to the General Reserve Engineering Force are ultra vires that Article since the General Reserve Engineering Force is neither an Armed Force nor a Force charged with the maintenance of public order."

The Hon'ble Supreme Court after deliberating, rejected the writ petitions filed by the employees who were dismissed from service. In the aforesaid case, it was never held that Group-D employees will be the

members of the Army and governed by the Central Civil Service (Extraordinary Pension), Rules, 1939.

However, before concluding, it is important to note that after the marriage of the daughter-Kanta, the petitioner was entitled to 100% of ordinary family pension which was not released to her. It was only due to the intervention of the Court, the amount was released in 2020. There is a considerable delay in releasing the amount. As per the stand of the respondents, it was on 14.09.2017, respondent no.4 contacted respondent no.3 for the revision of pension and then due to internal communications, the delay as occurred afore-said.

Accordingly, the petitioner is held entitled to an interest @ 8% per annum from September, 2017, till the date of payment.

With these observations, the writ petition is disposed of.

20th April, 2021
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No