

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-1769-2019 (O&M)
IN CWP-15269-2016
Date of Decision: 19.04.2021

Smt. Krishna Devi

...Appellant

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

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

Mr. Sudhir Nar, Sr. Panel Counsel
for respondents-UOI.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

SANT PARKASH, J.

CM-543-LPA-2021

Application is allowed, as prayed for. Exemption sought is granted.

CM-544-LPA-2021

Prayer in the present application is for placing on record synopsis on behalf of the respondents in view of the order dated 04.12.2019.

Application is allowed. Synopsis is taken on record.

Main appeal

Instant *intra* court appeal under clause X of the Letters Patent is directed against the order dated 02.07.2019 passed by the learned Single

Judge, whereby writ petition preferred by the petitioner (herein appellant), was dismissed, declining the request of the petitioner for grant of extra-ordinary family pension.

Brief facts of the case are that the husband of the appellant served CRPF 114 Battalion for 32 years. He expired on 02.10.2001 due to Carcinoma Cancer at Base Hospital New Delhi. The appellant was granted family pension on 02.10.2001. After a period of around 13 years, the appellant sought for medical documents and post-mortem report of her husband who was suffering from cancer vide application dated 16.06.2014. In response to the application dated 16.06.2014, the respondents vide Annexure P-1 replied that medical documents including post mortem report of the appellant's husband were not available. The request for grant of extra-ordinary family pension was declined vide Annexure P-2 on the ground that husband of the appellant died due to cancer which was not covered under Extra-Ordinary Family Pension Rules.

Aggrieved therefrom, the appellant-writ petitioner approached this Court by way of CWP No. 15269 of 2016, which has been dismissed vide order dated 02.07.2019.

Learned counsel for the appellant submits that the husband of the appellant was medically fit at the time of enrollment and he served CRPF for more than 32 years and, therefore, his death or disease should be considered attributable to service. Thus, he prays that the impugned order passed by the learned Single Judge be set aside and appeal of the appellant be accepted.

Learned counsel for the respondents submits that the case for

production of medical documents was raised for the first time after about 13 years, i.e. on June, 2014 (P-1). He further submits that the case for grant of the extra-ordinary family pension is also not covered under the Central Civil Services (Extra Ordinary Pension) Rules, 1939 (for short 'Rules, 1939) as husband of the appellant died due to natural causes and cannot be considered as attributable to the government service. Finally, he prays for dismissal of the present appeal.

We have heard the learned counsel for the parties at length and perused the case file carefully.

Before advertng to the matter in hand, it is noted that Letters Patent Appeal (LPA) is an appeal by the writ petitioner against the decision of a learned Single Judge to another Bench of the same Court. It is an *intra-court* appeal in High Court. The scope of the LPA is limited to the extent whether the order under appeal is permissible in law and is in consonance with the settled canons of law. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in ***Management of Narendra and Company Vs Workmen: 2016(3) SCC 340***, wherein it has been held that unless the Appellate Bench reaches to a conclusion that the finding of the learned Single Bench is perverse, it shall not disturb the same and there should be no interference with the order passed by the learned Single Judge merely because another view or a better view is possible.

The only question that has to be determined is as to whether death, on account of Carcinoma Cancer while on duty, could be attributable to natural causes or could it be attributed to the Government service for grant of extra-ordinary family pension.

The Rules 1939 for grant of extra-ordinary family pension has been succinctly dealt with by the learned Single Judge. As per Rule 3-A of the Rules 1939, the death for the purpose of grant of extra ordinary family pension is to be accepted due to government service provided that it was due to or hastened by a disease which was attributable to Government service. Further, it is specifically mentioned at point No.(i) of Schedule 1-A (II) that Malignant disease, i.e. cancer and Carcinoma are not normally affected by service. As per Schedule 1-A of the Rules 1939 provides a list and classification of the diseases which can be contracted by service. The same reads as under:-

- a. Diseases affected by climatic conditions;
- b. Diseases by stress and strain;
- c. Diseases by dietary compulsions;
- d. Diseases by training marching etc; and
- e. Environmental diseases.

From perusal of the relevant rules as above, it is evidently clear that the husband of the appellant died due to carcinoma/cancer, therefore, death of appellant's husband is not attributable to government service. Moreover, the appellant kept sleeping over the matter for more than 13 years for raising claim of extra-ordinary family pension for the reasons best known to her.

The appellant's husband died due to carcinoma/cancer which is covered under natural death as per Category 'A' of Schedule-II of the Rules, 1939 under which family is entitled to normal pension only. Thus, the argument of learned counsel for the appellant that the disease is attributable to the Government service is without any basis or substantiated

as it has been classified that the said disease is not normally affected by service conditions. Learned Single Judge has considered each and every aspect of the matter and thus, there is no scope for interference in the impugned order.

For the reasons recorded above, the present *intra* court appeal is **dismissed**, being devoid of any merit.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

19.04.2021
mks

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO