

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(222)

CWP-4408-2017

Date of Decision : July 05, 2022

Jyoti Devi

.. Petitioner

Versus

Union of India and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. Lokesh Narang, Sr. Panel Counsel, for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

Present petition has been filed by the petitioner seeking the extraordinary pension in respect of the service rendered by her late husband Jai Parkash, who unfortunately died while in service on 03.07.2010.

As per the facts mentioned in the petition, husband of the petitioner namely Jai Parkash son of Tara Chand joined the Sashastra Seema Bal (hereinafter referred as 'SSB') on 14.03.2006. At the time when Jai Parkash joined the service, he was medically examined and he was found fit to join the service. While in service, Jai Parkash was posted in Assam and due to working conditions, he developed a lung disease and ultimately died on 03.07.2010. After the death, the petitioner has been given ordinary pension in respect of the service rendered by her late husband Jai Parkash and the claim of the petitioner in the present petition is that the petitioner is entitled for extraordinary pension as the cause of death of late husband of

the petitioner is attributable to the service conditions.

Learned counsel for the petitioner argues that as per the guidelines which have been issued by the Department, which are in force w.e.f. 01.01.1996, death or disability, which is attributable or is aggravated by the service, an employee is entitled for disability/extraordinary family pension as the case may be. Learned counsel for the petitioner submits that in the present case, at the time when the husband of the petitioner joined the service, he was medically examined and was not diagnosed with any liver problem, which disease could have been easily detected at the time of medical examination, hence, the cause of death is attributable to the service conditions for which the petitioner is entitled for the extraordinary family pension.

Upon notice of motion, the respondents have filed the reply. In the reply, the claim of the petitioner is being contested by the respondents. In the reply, it has been mentioned that after the death of the late husband of the petitioner on 03.07.2010, a postmortem was conducted on 04.07.2010 and cause of death was stated to be due to shock following hemorrhage from "Oesophageal varices as sequel of liver disease", which according to the respondents is not covered under Rule 3A (i) (b) of the Central Service (Extraordinary Pension), hence, the claim of the petitioner is liable to be rejected.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The question which arise in the present petition is whether, the cause of death is due to the conditions of service under which the husband of the petitioner worked. Concededly, the husband of the petitioner was

medically examined at the time of the recruitment and he was found fit and was not suffering from any liver problem. It is not a case that in case a liver problem was suffered by the husband of the petitioner at the time of his recruitment was such that it was not detectable. The husband of the petitioner was working in Assam under such conditions, which can deteriorate the health of an employee. Once, the husband of the petitioner suffered the ailments while in service, the same has to be attributed to the service in question keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No. 4949 of 2013 titled as Dharamvir Singh versus Union of India and others, decided on 02.07.2013***. The Hon'ble Supreme Court of India while interpreting the similar provisions, held that where an employee who was found fit at the time of recruitment but suffered the ailment during the service, the same has to be attributed to the service. The relevant paragraph of the said judgment is as under:-

“32. In spite of the aforesaid provisions, the Pension Sanctioning Authority failed to notice that the Medical Board had not given any reason in support of its opinion, particularly when there is no note of such disease or disability available in the service record of the appellant at the time of acceptance for military service. Without going through the aforesaid facts the Pension Sanctioning Authority mechanically passed the impugned order of rejection based on the report of the Medical Board. As per Rules 5 and 9 of 'Entitlement Rules for Casualty Pensionary Awards, 1982', the appellant is entitled for presumption and benefit of presumption in his favour. In absence of any evidence on record to show that the appellant was suffering from "Generalised seizure (Epilepsy)" at the time of acceptance of his service, it will be presumed that the

appellant was in sound physical and mental condition at the time of entering the service and deterioration in his health has taken place due to service.

33. As per Rule 423(a) of General Rules for the purpose of determining a question whether the cause of a disability or death resulting from disease is or is not attributable to service, it is immaterial whether the cause giving rise to the disability or death occurred in an area declared to be a field service/active service area or under normal peace conditions. "Classification of diseases" have been prescribed at Chapter IV of Annexure I; under paragraph 4 post traumatic epilepsy and other mental changes resulting from head injuries have been shown as one of the diseases affected by training, marching, prolonged standing etc. Therefore, the presumption would be that the disability of the appellant bore a casual connection with the service conditions.

34. In view of the finding as recorded above, we have no option but to set aside the impugned order passed by the Division Bench dated 31st July, 2009 in LPA No.26 of 2004 and uphold the decision of the learned Single Judge dated 20th May, 2004. The impugned order is set aside and accordingly the appeal is allowed. The respondents are directed to pay the appellant the benefit in terms of the order passed by the learned Single Judge in accordance with law within three months if not yet paid, else they shall be liable to pay interest as per order passed by the learned Single Judge. No costs."

In the present case also, the Board has not given any medical report that the husband of the petitioner was suffering from the disease at the time of the recruitment. In the absence of any such finding by the Medical Board, once, the husband of the petitioner was hale and hearty and medically fit at the time of joining the duties, the ailment suffered by him is to be treated as an ailment due to the service conditions. Further, the

respondents in their reply has also not mentioned as to why, the ailment being suffered by the late husband of the petitioner, which was cause of the death, was not attributable to the service concerned. Merely a statement has been mentioned without supporting the same with the reasons.

Once, no reason has been put forward by the respondents to decline the benefit to the petitioner of extraordinary pension, the said bald statement of the respondents cannot be taken as a valid ground to decline the plea of the petitioner.

Keeping in view the above, the claim of the petitioner is squarely covered by the judgment of the Hon'ble Supreme Court of India in ***Dharamvir Singh's case (supra)*** and needs to be allowed. The petitioner is held entitled for the extraordinary pension as the death of the husband of the petitioner was due to an ailment which was suffered by him during the service and has to be attributable to the said service and the claim of the petitioner is covered under category B of the guidelines issued for the grant of extraordinary family pension, which are in effect since 01.01.1996. The respondents are directed to compute the benefit for which the petitioner is entitled for the grant of extraordinary pension within a period of two months from the receipt of copy of this order and the amount so calculated be released to the petitioner within one month thereafter.

The present writ petition is allowed in above terms.

July 05, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No