

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-14372-2016
Date of Decision: 12.01.2023

Smt. Sukhjeet Kaur

. . . . Petitioner

Vs.

Union of India and others

. . . . Respondents

CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR

Present: Mr.R.N. Ojha, Advocate, for the petitioner.

Mr.Amit Arora, Advocate, for the respondents.

M.S. RAMACHANDRA RAO, J. (ORAL)

This Writ Petition is filed by the petitioner challenging the order dt.29.04.2016 (P8) passed by respondent No.4 [Central Administrative Tribunal, Chandigarh (for short 'the Tribunal')] rejecting the claim for family pension made by the petitioner.

One Sh.Mohinder Singh initially enrolled in the Indian Air Force as a Combatant Member on 04.01.1964.

On 21.11.1971, he was discharged from services on medical grounds and was granted disability pension @ 20% for life.

Thereafter, Sh. Mohinder Singh rejoined the Air Force Service as a Civilian Employee.

Subsequent thereto, on 26.06.1974, the petitioner got married to him. On 27.03.1975, Sh. Mohinder Singh unfortunately expired while in service. Out of the wedlock, a female child was born on 05.04.1975.

Vide Annexure P1, the petitioner was sanctioned family pension on 17.07.1976.

In the meantime in June, 1975, she had remarried the younger brother of Sh. Mohinder Singh in what is called *Chadar Chuni* ceremony.

On coming to know of the same, in April 1982, the family pension sanctioned to the petitioner was stopped by the respondents on the ground that she had remarried the younger brother of the deceased husband Sh. Mohinder Singh.

The petitioner then made certain representations to respondent Nos. 1 to 3 claiming restoration of the family pension.

On 06.01.2011, the petitioner approached the Armed Forces Tribunal, Chandigarh Bench by filing OA No. 14 of 2011 for restoration of the family pension.

But the Armed Forces Tribunal did not entertain the same and granted her liberty on 19.03.2014 to approach the appropriate forum for restoration of the same by holding that the Armed Forces Tribunal had no jurisdiction since the deceased-husband was in civilian service.

Petitioner then approached the Central Administrative Tribunal, Chandigarh (Respondent No.4) by filing OA-060/00372/2014 claiming restoration of the family pension and also arrears.

On 10.04.2015, the Central Administrative Tribunal, Chandigarh disposed of the said OA holding that the pension released to the petitioner after the death of her husband could not be discontinued as per the Rules and respondent Nos. 1 to 3 were directed to reconsider the matter in the light of Rule 54 of CCS (Pension) Rules, 1972, Rule 219 of Army Pension

Regulations, 1961 and Rule 12-A of the CCS (Extraordinary Pension) Rules.

Such consideration was directed to be made within 3 months.

Thereafter, a speaking order was passed by respondent No.3 on 16.12.2015 giving the following reasons for rejection of the claim of the petitioner for restoration of the family pension:-

- (a) The Pension related aspects of the Central Govt. Employees are governed by CCS (Pension) Rule, 1972. The criteria and procedures for grant of family pension is well defined under Rule-54 of ibid Rules. It has been clearly stipulated in Sub-Rule 6(1) of Rule 54 of CCS (Pension) Rule, 1972, that "widow will be eligible for receipt of family pension only upto the date of death or re-marriage, whichever is earlier". However, consequent to 6th CPC, childless widows are also made entitled to receive family pension even after their re-marriage subject to fulfillment of certain conditions, but in your case the said provision is not applicable as you have one girl child from your first wedlock;*
- (b) As regards CCS (Extraordinary Pension) Rule, it is pertinent to mention here that these rules are applicable in cases of regulation of pension due to death or disability of Govt. servant, which is attributable to Govt Service. However, in your case the said provision is not applicable as you were initially sanctioned normal family pension under Rule 54 of CCS (Pension) Rules, 1972. Therefore, you are not eligible for grant of family pension under CCS (Pension) Rules, 1972 and CCS (Extraordinary Pension) Rules;*
- (c) As regards applicability of Rule 219 of Army Pension Regulations, 1961, it is clarified that the same apply only in cases where military pension is applicable. As in the present case, you were drawing the family pension from the civil side, Rule 219 of Army Pension Regulation cannot be applied in your case. Moreover, Ordinary Family Pension from military side is dealt in accordance with AFI 1/S/64 and various letters issued by the Govt from time to time, and as per sub-para (c) of the said AFI, the Family Pension is admissible to a widow upto the date of death or re-marriage, whichever is earlier. In view of this, it is clear that you are not*

eligible for family pension from military side due to your re-marriage.”

Thus, on the ground of remarriage of the petitioner, the petitioner was held disentitled for restoration of the family pension.

The impugned order

Petitioner then filed OA-060/00361/2016 before respondent No.4/Tribunal. The said OA was dismissed on 29.04.2016.

Respondent No.4/Tribunal held that Rule 12A of the CCS (Extraordinary Pension) Rules cannot be relied upon by the petitioner on the ground that said Rules become applicable only in the event of death or disability of the Government servants *which is attributable to the Government service*, and so in the case of the death of the husband of the petitioner Sh. Mohinder Singh, the said Rule will not apply.

It is also held that previously family pension had been sanctioned under Rule 54 of the Family Pension Rules 1972, and therefore, for that reason also, the petitioner is not eligible for the family pension under the CCS (Extraordinary Pension) Rules.

The Tribunal also held that claim of the petitioner is a stale claim and therefore, on the ground of delay and laches, the petitioner is not entitled to relief.

The instant Writ Petition

Assailing the same, this Writ Petition is filed.

Counsel for the petitioner contended that the view taken by respondent No.4/Tribunal is not valid in law; that Annexure P1 order passed on 17.07.1976 initially granting family pension to the petitioner does not quote any particular Rule under which it is sanctioned; and respondent

No.4/Tribunal had erroneously presumed that such family pension had been sanctioned under Rule 54 of the Family Pension Rules, 1972.

He further quoted Rule 12A of the CCS (Extraordinary Pension) Rules which permit extraordinary pension to be granted even to a widow who had remarried provided such remarriage is to her deceased husband's brother while continuing to live with and contributing to support of other dependents of the deceased.

Counsel also placed reliance on the decision of a Division Bench of the Delhi High Court, reported in *Smt.Kashmiro Devi Vs. Union of India and others*¹.

We shall consider the said decision first.

In *Smt.Kashmiro Devi (1 Supra)*, a person who had joined the Army had died while in active service on 02.12.1975 on account of Thrombosis in the artery and his widow remarried with his real brother and sought ordinary family pension. The same was rejected by the Army authorities and she then approached the Delhi High Court. The stand was taken by the respondents in the said Writ Petition was that since the death of her husband was neither attributable to nor aggravated by military service, she is not entitled to special family pension, but was only entitled to ordinary family pension, and even that would not be admissible if she had remarried even the real brother of the deceased husband.

The Division Bench of the Delhi High Court considered the Army Pension Regulations, 1961 and held that the purpose of the provisions of granting family pension to widows of Army personnel is to provide succor to the family members of the deceased personnel who had been unfortunately

¹ 2008(5) SLR 335 (DB) (Delhi HC)

snatched away in the middle of their services; such death would cause trauma to the family both mental or financial; only the financial trauma is sought to be remedied by providing pension to the legal heirs of the deceased serving personnel done under the said Rules; that although the Rules made a distinction between person who died while engaged in active military service, and a person, who dies in service on account of factors not attributable to or aggravated by military service; and in the case of former, special family pension is granted while in the case of the latter, only ordinary family pension which is almost half of the special family pension is granted; *it is not permissible to make any distinction between a widow of a person who had died by reasons attributable to or aggravated by military service and a person who has died just in service.* The Bench observed that *the problems faced by the widows in both situations are identical and the difference in the cause of death cannot be made to result in the difference of the value of the pension.* The Bench held that the object of maintaining widow in the commune of the family remains the same and that is why an exception was carved out in Regulation 219 making her eligible for grant of family pension even though she had remarried provided that such remarriage is to her deceased husband's brother if she continues to live communal life and contributes to the support of other living eligible heirs.

We are in respectful agreement with the principle laid down in the above decision.

Counsel for the respondents strenuously contended that it is not permissible for this Court to make such an interpretation in the absence of any challenge to the Central Civil Services (Extraordinary Pension) Rules,

which specifically mandate that the death of the person in service should be attributable to the Government service.

In our view, the challenge to the Rule would be unnecessary for the reason that if the Rule is struck down, even in cases where death of a Government employee had occurred on account of causes attributable to the Government service, his widow would be disentitled to get any pension, and this would not in any way help the cause of the petitioner.

The view of the Delhi High Court in the above decision that there ought not to be a distinction between a widow of a person who had died by reasons attributable to or aggravated by military service and a person who had died just in service, since the problems faced by the widows are identical, undoubtedly applies even in the instant case if we substitute the word ‘Government service’ for the word ‘Military service’ in the said judgment.

Rule 12-A of the CCS (Extraordinary Pension) Rules specifically permits a widow of an employee who remarries deceased husband’s brother and continues to live communal life and contributes to the support of other family dependents of the deceased to get extraordinary pension like Regulation 219 of the Army Pension Regulations, 1961 which was considered by the Delhi High Court in *Smt.Kashmiro Devi (1 Supra)*.

So Rule 12-A of the CCS (Extraordinary Pension) Rules ought to be given to the petitioner ignoring the cause of death of her first husband Sh.Mohinder Singh and even though his death was not attributable to Government service.

The contention of the counsel for the respondents that laches on the part of the petitioner disentitles her to any relief cannot also be countenanced because admittedly when the petitioner had earlier filed OA-

60/372/2014 before respondent No.4/Tribunal, no such plea was taken by the respondents. Therefore, they had waived the said plea and so are barred by application of principle of constructive *res judicata* from raising the said plea in the instant Writ Petition, and they ought not to have been allowed to raise the said plea by respondent No.4/Tribunal , and it ought not to have accepted it and dismissed on 29.04.2016 in OA No. 060/00361/2016.

Accordingly, the order dt.29.04.2016 of respondent No.4/Tribunal in OA No.060/00361/2016 is set aside; the said OA is allowed and respondent Nos.1 to 3 are directed to restore pension to the petitioner from 29.04.2011 (i.e. 3 years prior to the date of filing of OA No.060/00372/2014 before the Central Administrative Tribunal, Chandigarh) with interest @ 6% from the said date till the date of payment. The respondents Nos. 1 to 3 shall make payment of arrears to petitioner under Rule 12-A of the CCS (Extraordinary Pension) Rules within three months from the date of receipt of the certified copy of this order and shall continue to pay the same to her during her lifetime.

Accordingly, this Writ Petition is allowed.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

12.01.2023

Vivek

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No