

2024:PHHC:131912-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-26079-2023
Reserved on: 17.09.2024
Pronounced on: 30.09.2024

Champa ThakurPetitioner

Versus

Union of India and OthersRespondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Navdeep Singh, Advocate with
Ms. Roopam Atwal, Advocate
for the petitioner.

Mr. Anil Chawla, Sr. Panel Counsel
for the respondent – UOI.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein prays for setting aside the relevant part of the order dated 03.02.2021 (Annexure P-1), as passed by the learned Armed Forces Tribunal concerned, whereby the arrears of liberalized family pension have been restricted to three years from the date of filing of the Original Application, by the petitioner.

2024:PHHC:131912-DB

**Factual Background**

2. The husband of the applicant, ex Naik Surinder Kumar, was enrolled in the Indian Army on 25.04.1994. In the year 2009, the husband of the applicant was deployed in an operational area near the Indo-China Border. On 12.03.2009, while helping civil administration and military authorities in quelling a natural calamity, i.e. a massive forest fire, in the said operational area; the husband of the applicant suffered fatal injuries when a burnt tree fell on him and resulted in his death. The husband of the petitioner had suffered fatal head injuries along with cardio-respiratory collapse and was duly declared a Battle Casualty. In fact, petitioner's child has been issued Educational Scholarship Entitlement Card by the respondents which provides for educational concessions sanctioned by the Central Government for children of Armed Forces personnel killed, missing or permanently disabled in Wars/Counter Insurgency Operations. Moreover, the death of applicant's husband had taken place while performing bonafide military duty in an operational area on Indo-China Border and, therefore, the applicant (widow) is entitled to Liberalized Family Pension. The applicant made a representation to the respondents for grant of Liberalized Family Pension but her representation was rejected by the authority concerned on the ground that the death of the applicant's husband lies in category 'C' instead of category 'D' or 'E' of Para 4.1 of Government policy letter dated 31.01.2001.

2024:PHHC:131912-DB



3. The petitioner filed O.A. before the learned Armed Forces Tribunal, Regional Bench, Chandigarh at Chandimandir (hereinafter for short called as the AFT, Chandigarh) for grant of Liberalized Family Pension instead of Special Family Pension. On the said O.A., an affirmative order dated 03.02.2021 became passed by the learned Tribunal concerned. The operative part of the said order is extracted hereinafter.

10. It is also pertinent to mention that Court of Inquiry in this regard was held according to which the death of applicant's husband was declared as Battle Casualty, as is evident from Para 3 of the reply filed on behalf of the respondents. On that count also, the death of applicant's husband falls in the category of Battle Casualty and accordingly, lies in the category 'D' of Para 4.1 of the aforesaid Government policy letter. The positive declaration of the Brigade Commander or the Court of Inquiry cannot be over-turned or rejected by the administrative authorities such as PCDA (P) Allahabad, unless, of course it is a perverse declaration. The authorities ought to have released the requisite pension in such circumstances.

11. The ruling cited by the respondents' counsel is distinguishable on the facts and circumstances of the matter. In the case relating to the ruling, the death of the petitioner's husband had taken place due to heart attack and in that case the scope of category 'E' of the aforesaid Government policy letter was under consideration but in the case at hand, the death of the applicant's husband had taken place in an operational area while fighting the forest fire, which falls in category 'D' of Para 4.1 of the

2024:PHHC:131912-DB



aforesaid Government policy letter. So this ruling is not applicable in this case.

12. In the result, this Original Application is allowed and the applicant is held entitled to the Liberalized Family Pension instead of Special Family Pension for life.

4. Further, the learned Tribunal held that *since the applicant has come to this Tribunal after a lapse of more than 10 years after the death of his husband, so the arrears of Liberalized Family Pension are restricted to three years prior to the date of filing of this Original Application i.e. 04.04.2019.*

5. Aggrieved from the afore part of the relevant order, whereby the arrears of Liberalized Family pension have been restricted to three years from the date of filing the application, the petitioner has filed the instant writ petition.

Submissions of the learned State Counsel.

6. At the outset, the learned counsel for the respondents has contended that the writ petition assailing the order passed by the AFT, Chandigarh was required to be assailed before the High Court of Himachal Pradesh, as the territorial jurisdiction in respect of the cause of action rather became vested in the said High Court. However, the said argument is not accepted. The reason for rejecting the said argument is based upon.

a) As evident on a reading of the impugned order, the same was rendered by the AFT, Chandigarh. Consequently, since the impugned order was not rendered by the AFT, Regional Bench while

2024:PHHC:131912-DB



holding circuit Court at Shimla, whereas, upon the order being passed by the said Regional Bench while holding circuit Court at Shimla, may be then, it was permissible for the respondents to argue that the impugned order is challengeable before the High Court of Himachal Pradesh, than before this Court.

b) Consequently, since the impugned order was evidently rendered by the AFT, Chandigarh and not by the AFT, Regional Bench, Chandigarh, while holding circuit Court at Shimla, nor when it is shown that any proceedings relating to the instant petition were drawn during the course of the AFT Chandigarh, holding circuit Court at Shimla, thereby the jurisdictional competence to decide the challenge raised by the present petitioner against the impugned order, thus becomes vested in this Court.

c) Primarily the “seat” from where the adjudication becomes rendered or the seat where the relevant proceedings become initiated, or the situs of the adjudicatory forum, thus to the considered mind of this Court, becomes the plank for determining whether the jurisdiction becoming vested in one or the other of the jurisdictionally competent Courts of law. Since evidently, the “situs” of the AFT Regional Bench, Chandigarh was throughout at Chandigarh, and, never was at Shimla, thereupon, with the High Court of Punjab and Haryana also holding its principal seat at Chandigarh. Resultantly, the jurisdiction to try the instant petition is vested in this High Court.

Submissions of the learned counsel for the petitioner.

2024:PHHC:131912-DB



7. It is vehemently argued before this Court that the placing of the deceased defence personnel in category 'D' was inapt, whereas, he submit that the deceased army personnel was required to be placed in category 'E'. However, the said argument is required to be rejected. Before rejecting the said argument, it is necessary to extract the relevant portion of para 4.1 of Government policy letter dated 31.01.2001 (Annexure A-9).

“4.1 For determining the pensionary benefits for death or disability under different circumstances due to attributable/aggravated causes, the cases will be broadly categorised as follows :-

Category A to B x x x x x.

Category C

Death or disability due to accidents in the performance of duties such as:-

- (i) Accidents while travelling on duty in Government Vehicles or public/private transport.*
- (ii) Accidents during air journeys.*
- (iii) Mishaps at sea while on duty.*
- (iv) Electrocution while on duty, etc.*
- (v) Accidents during participation in organised sports events/adventure activities/expeditions/training.*

Category D

*Death or disability due to acts of violence/attack by terrorists, anti-social elements, etc whether on duty other than operational duty or even when not on duty. Bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc would be covered under this category, **besides death/disability occurring while employed in the aid of civil power in dealing with natural calamities.***

Category E

Death or disability arising as a result of :-

2024:PHHC:131912-DB



- (a) *Enemy action in international war.*
- (b) *Action during deployment with a peace keeping mission abroad.*
- (c) *Border skirmishes.*
- (d) *During laying or clearance of mines including enemy mines as also mines sweeping operation.*
- (e) *On account of accidental explosions of mines while laying operationally oriented mine-filled or lifting or negotiating minefield laid by enemy or own forces in operational areas near international borders or the line of control.*
- (f) *War like situations, including cases which are attributable to/aggravated by : –*
 - (i) *Extremist acts, exploding mines etc while on way to an operational area.*
 - (ii) *Battle inoculation training exercises or demonstration with live ammunition.*
 - (iii) *Kidnapping by extremists while on operational duty.*
- (g) *An act of violence/attack by extremists, anti-social elements, etc.*
- (h) *Action against extremists, anti-social etc. Death/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.*
- (i) *Operations specially notified by the Government from time to time.”*

8. A reading of the (supra) extracted paragraph, makes it abundantly clear, that when the death or disability rather becomes so encumbered upon the Army Personnel concerned, thus during his rendering employment in aid of civil administration, besides when upon his dealing with natural calamities, thereupons, the respective disability or death as befalls upon the defence personnel, thus would make supra fall in category 'D'.

9. Emphatically also since there is an explicit declaration in

2024:PHHC:131912-DB



either death or disability, while his aiding civil administration in dealing with natural calamities, thereupons, the happening of the said ill event rather requiring the case of the defence personnel being construed to fall in category 'D'. Resultantly with the instant ill event also evidently falling within the scope of the above expressed declaration as becomes carried in category 'D'. In sequel, the case of the deceased defence personnel was required to be placed in Category 'D', than in category 'C', thus as aptly done.

10. Now, it is to be determined whether the learned Tribunal aptly concluded that since there was a delay on the part of the present petitioner to agitate her claim before the competent adjudicatory forum, therebys thus concomitantly there was any requirement for restricting the arrears of pension for three years.

11. In the said regard, it is necessary to refer to paras 18.1 and 18.2, as becomes embodied in Annexure A-8, appended to the writ petition. The said paragraphs are extracted hereinafter.

Part – IV – Liberalized Pensionary Awards (Battle Casualty and such other cases as may be specially notified by Government)

War Injury Pension

18.1 War Injury Pay will now be known as War Injury Pension which will henceforth not consist of service element and disability element but will be a consolidated amount. War Injury Pension for 100 % disability shall be equal to the reckonable emoluments last drawn, as defined in para 3 above on the date of invalidment.

18.2 Where disability is less than 100 % the amount of War Injury Pension as in para 18.1 above shall be proportionately reduced. In no case, however, the amount of War Injury Pension shall be less than

2024:PHHC:131912-DB



60% of the reckonable emoluments last drawn in the case of officers and 80% of the reckonable emoluments last drawn in the case of personnel below officer rank.

12. A reading of the above said paragraphs makes it crystal clear that the benefits endowed thereunders vis-à-vis a defence personnel would be endowable only if the respective entailments of death or disablements upon the army personnel, thus were a sequel of the said becoming entailed in a war. Resultantly, since the above extracted paragraphs, do imminently declare, that the endowments spelt thereunders, thus appertain only to war injury pension. Now, since evidently the death of the defence personnel concerned did not occur during war nor when the injury (supra) became entailed upon the present petitioner during the course of his fighting a battle on behalf of India, thus with the enemy country. Contrarily, when as stated (supra), when the befallment qua the defence personnel, of the ill event of demise, thus evidently was a sequel of his aiding civil administration, rather in fighting a natural calamity, whereupon, when the said ill event does clearly fall within category 'D' (supra). Consequently, the effect of the above, is that, especially when as revealed by Annexures A-2 and A-5, a prompt intimation became made to the widow of the deceased qua the latter incurring a fatal head injury during his fighting a forest fire, yet when despite the said prompt intimation being made to the present petitioner, nonetheless, hers sleeping over the claim relating to the endowment vis-à-vis her of the relevant pensionary benefits.

2024:PHHC:131912-DB



13. In sequel, the slumberings over by the petitioner vis-à-vis her espousal, thus gains a conclusion, that therebys as declared in judgments rendered by the Hon'ble Apex Court in case Civil Appeal No. 5151-5152 of 2008 (Arising out of SLP (C) Nos. 3820-3821 of 2008 titled as Union of India and Others Vs. Tarsem Singh and in Civil Appeal No. 274 of 2007 (Arising out of SLP (Civil) No. 881 of 2006) titled as Shiv Dass Vs. Union of India and Others, decided on 18.01.2007, qua upon there being an evident abysmal failure on the part of the concerned, to promptly raise an espousal before the competent adjudicatory forum. Resultantly therebys the said delay entrenching the relevant motion with a vice of delay and laches. Moreover, when it has been further declared therein, that yet bestowment of the apposite benefits to the concerned, rather cannot be denied, but with a restriction that arrears are to be restricted for a period of three years, as aptly done. Therefore, this Court finds no error in the impugned verdict.

14. Lastly, though the counsel for the petitioner has vehemently argued before the Court, that since the last sentence of Annexure A-3, last sentence whereof becomes extracted hereinafter, thus classifies the fatal head injury as became entailed upon the deceased defence personnel, rather as battle causality.

“ It is certified that No. 2485261H Late L/HAV Surinder Kumar of Ex 19 Punjab while a part of fire fighting duty died on 12 Mar 2009 by sustaining HEAD INJURY AND FRACTURE RIGHT HIP BONE during Forest fire which broke out in Gen area (MU 3185)

2024:PHHC:131912-DB



*and a burnt tree fell down upon him. The casualty so sustained by the late NCO has been classified as **“Battle Casualty”**.*

15. Resultantly, the counsel for the petitioner places reliance on the above extracted paragraphs No. 18.1 to 18.2, as carried in Annexure A-8. Further, therebys though the counsel for the petitioner argues that given, the fatal head injury as sustained by the deceased defence personnel, thus becoming classified as battle causality, therebys there was a recurring/continuous cause of action, vis-à-vis the present petitioner. In addition, he continues to argue that as such the befallment of the ill event upon the deceased husband of the present petitioner, was a sequel of his fighting a battle for the country against the enemy nation. Therefore, he argues that with investment thereunders qua an indefeasible entitlement in the present petitioner, therebys the bar of delay and laches, does get underwhelmed thereinto.

16. However, the above argument is addressed, only on the counsel for the petitioner resting the same on the above extracted last sentence, as occurs in Annexure A-3, but without his being further mindful, that it has to be read harmoniously alongwith the previous thereto sentence. If the entire contents of Annexure A-3, are read harmoniously thereupons, besides when it is evidently clear, that it is unrebuttedly forthcoming, that the ill event which befell the deceased husband of the present petitioner rather was a sequel of his aiding the civil administration in fighting a natural calamity. Resultantly when the said ill event has been aptly classified to fall in category D (supra). As

2024:PHHC:131912-DB



such, the last sentence of Annexure A-3, cannot be torn out of context, so as to ill classify the demise of the defence personnel to fall in paras No. 18.1 to 18.2 of Annexure A-8, especially when thereby the effective import of the latter would become completely undermined. Moreover, when thereby the categorical classification of the ill event which befell the deceased husband of the present petitioner, thus in category 'D', rather would also become irrationally rendered ineffective. In sequel, the argument (supra) is also rejected.

Final Order of this Court.

17. In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is dismissed. The impugned verdict, as passed by the learned Armed Forces Tribunal concerned, is maintained and affirmed.
18. Disposed of alongwith all pending applications, if any.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

30.09.2024
kavneet singh

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