IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

228 **CWP-12146-2020**
Date of Decision: 28.04.2025

RAJ BALA DEVI

... Petitioner

VERSUS

UNION OF INDIA AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Vijay Deep Rathee, Advocate
for the petitioner.

Mr. Shivoy Dhir, Senior Panel Counsel
for the respondents.

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VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 30.03.2020 (Annexure P-20), wherein the petitioner was denied Extraordinary Family Pension and other retiral benefits w.e.f. 22.01.2017 onwards. A further prayer has also been made for directing the respondents to release the Extraordinary Family Pension, *Ex-gratia* Lump Sum Compensation and other consequential benefits to the petitioner since her husband died while in service and his death is attributable to service.

Learned counsel for the petitioner contends that late HC/GD Narender Kumar (husband of the petitioner) was enrolled in the Central Industrial Security Force on 23.06.1987 (forenoon) and he died in harness on 21.01.2017 due to disease "Obstructive Jaundice, EHBO, Pancreatic CA head with CBD structure (SP) ERCP, PD" i.e. a form of pancreatic cancer. The petitioner was released family pension at an enhanced rate w.e.f. 22.01.2017 to 21.01.2027 as per the existing policies and thereafter family pension at normal rate w.e.f. 22.01.2027 onwards vide PPO No.238011701225. Counsel further contends that the claim of the petitioner has to be considered under the Central Civil Services (Extraordinary Pension) Rule 1939 (hereinafter referred to as '1939 Rules') and that a representation in this regard was submitted by her on 08.02.2020 to the respondent-Authorities. She also sought information under the Right to Information Act, 2005 vide application dated 28.02.2020 pertaining to all medical documents of her late husband including the medical board proceedings, opinion of medical specialists and remarks of the final authority etc. The prayer of the petitioner for being supplied with the medical record pertaining to her late husband was, however, declined by the respondent-Authorities by referring to Section 24 of the Right to Information Act, 2005. It is submitted that the respondents thus chose to withhold the best record and have not disclosed the same to the petitioner, hence, she had to place reliance upon the information that was selectively furnished by the respondents to her. He further submits that as per Rule 3-A of the 1939 Rules, which prescribes the eligibility, a Govt. Servant, who suffers a disablement due to a wound or a disease which was attributable to Govt. Service or which may have been aggravated by Government Service is entitled for Extraordinary Family Pension. It is submitted that infective hepatitis (jaundice) is covered as per Schedule 1-A of 1939 Rules and the same is caused on account of "Dietary Compulsions". Reference is also made to Rule 5(b) of the Guidelines for conceding Attributability or Disablement or Death to Government Service as per which if a disease is not detected at the time of entry into service, it would be assumed to have been attributable to service. The relevant statutory provisions are extracted as under: -

*"**<u>3-A. Eligibility</u>.***

(1) (a) Disablement shall be accepted as due to Government service, provided that it is certified that it is due to wound, injury or disease which -

(i) is attributable to Government service, or

(ii) Existed before or arose during Government service and has been and remains aggravated thereby.

(b) Death shall be accepted as due to Government service provided it is certified that it was due to or hastened by–

(i) a wound, injury or disease which was attributable to Government service, or

(ii) the aggravation by Government service of a wound, injury or disease which existed before or arose during Government service.

(2) There shall be a casual connection between -

(a) disablement and Government service; and

(b) Death and Government service.

for attributability or aggravation to be conceded. Guidelines in this regard are given in the Appendix, which shall be treated as part and parcel of these Rules.

As per Scheule 1-A of Rules of 1939, disease Jaundice is due to dietary compulsions. The same is reproduced as under: -

C. Diseases affected by dietary compulsions

(i) Infective hepatitis (Jaundice).

(ii) Diseases of stomach and duodenum.

> *(iii) Worm infestations particularly Guinea worm and round worm infections.*
> *(iv) Gastritis.*
> *(v) Food poisoning, specially due to tinned food.*
> *(vi) Gastric ulcer.*
> *(vii) Duodenal ulcer.*
> *(viii) Nutritional Disorders."*

He contends that in view of the aforesaid instructions and the letter/office memorandum dated 03.02.2000 issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pensions and Pensioners Welfare, where death or disability is caused or aggravated due to continued exposure to hostile work environment and on being subjected to extreme weather conditions or occupational hazards, the benefits of Extraordinary Family Pension/Liberalized Family Pension/ Disability Pension etc. befall upon the family members of such government servant/employee. Reliance is placed on the policy dated 03.02.2000. The relevant extract of the same is reproduced hereinafter below: -

> ***"For determining the compensation payable for death or disability under different circumstances, the cases are categorized in five distinct categories as under: -***
>
> ***Category 'B'***
>
> *Death or disability due to causes which are accepted as attributable to or aggravated by Government service. Diseases contracted because of continued exposure to a hostile work environment, subject to extreme weather conditions or occupational hazards resulting in death or disability would be examples.*
>
> ***In cases covered under categories (B), (C), (D) & (E) the scales of the family pension/disability pension would be as under: -***

Family Pension – for Categories 'B' & 'C'

(1) Distinction between widows without children or those with children, for determination of the quantum of extraordinary family pension shall stand abolished. The quantum of monthly extraordinary family pension for all categories of widows shall be: -

(a) Where the deceased Government servant was not holding a pensionable post: 40% of basic pay subject to a minimum of Rs.1,650/-.

(b) ***Where the deceased Government servant was holding a pensionable post: 60% of basic pay subject to a minimum of Rs.2500/-.***

He further submits that the respondents have issued subsequent corrigendum and clarifications for extending various benefits. It is further argued that death of husband of the petitioner was on account of infective jaundice which is directly attributable to dietary compulsions and aggravated by continued exposure to hostile working environment and on being subjected to extreme weather conditions and has been acknowledged due to occupational hazard. A prayer is thus made for release of the said benefits by placing reliance on the judgment of the Hon'ble Supreme Court in the matter of ***'Dharamvir Singh Vs. Union of India and others'*** reported as ***(2013) 4 RSJ 321***. The operative part thereof reads thus: -

"28. A conjoint reading of various provisions, reproduced above, makes it clear that:

i). Disability pension to be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service in non-battle casualty and is assessed at 20% or over. The question *whether a disability is attributable or aggravated by military service to be determined under "Entitlement Rules for Casualty Pensionary Awards, 1982" of Appendix-II (Regulation 173).*

ii). *<u>A member is to be presumed in sound physical and mental condition upon entering service if there is no note or record at the time of entrance. In the event of his subsequently being discharged from service on medical grounds any deterioration in his health is to be presumed due to service. [Rule 5 r/w Rule 14(b)]</u>.*

iii). *<u>Onus of proof is not on the claimant (employee), the corollary is that onus of proof that the condition for non-entitlement is with the employer. A claimant has a right to derive benefit of any reasonable doubt and is entitled for pensionary benefit more liberally. (Rule 9)</u>.*

iv). *If a disease is accepted to have been as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service. [Rule 14(c)].*

v). *<u>If no note of any disability or disease was made at the time of individual's acceptance for military service, a disease which has led to an individual's discharge or death will be deemed to have arisen in service. [14(b)]</u>.*

vi). *If medical opinion holds that the disease could not have been detected on medical examination prior to the acceptance for service and that disease will not be deemed to have arisen during service, the Medical Board is required to state the reasons. [14(b)]; and*

vii). *It is mandatory for the Medical Board to follow the guidelines laid down in Chapter-II of the "Guide to Medical*

> *(Military Pension), 2002 "Entitlement: General Principles", including paragraph 7, 8 and 9 as referred to above."*
>
> *(Emphasis supplied)*

Counsel for the respondents, on the other hand, placed reliance on the written statement and contends that the petitioner was rightly denied Extraordinary Family Pension and other retiral benefits. It is acknowledged that HC Narender Kumar (deceased husband of the petitioner) was posted with the respondent-Authorities and was suffering from Obstructive Jaundice, EHBO, Pancreatic CA head with CBD structure (S/P) ERCP, PD due to which he was referred to NIMS Hospital, Hyderabad on 04.01.2017 for better treatment. He was discharged with an advice to follow up with the Specialized Hospital. The son of the deceased employee, however, approached Indo-American Cancer Institute, Banjara Hills and Star Hospital, Hyderabad, but he was advised to take his father Narender Kumar to New Delhi and to admit him in Dharamshila Cancer Hospital and Research Centre, Ashok Nagar, New Delhi. It was later informed to the respondent-Authorities telephonically by the son of the petitioner that late Narender Kumar had undergone surgery and that after the surgery his blood pressure could not be controlled and as a result whereof he died on 21.01.2017. A court of inquiry was accordingly ordered on 24.01.2017 comprising of three members and after in-depth study of the statements and scrutiny of documents, it was concluded that the husband of the petitioner expired at Dharamshila Cancer Hospital & Research Centre, Ashok Nagar, New Delhi on 21.01.2017 due to Cancer as a natural death and there was no negligence on the part of any Authority. It is also stated that the family pension and other DCRG benefits already stand released. It is further argued that husband of the petitioner died due to cancer as a natural death and the case of husband of the petitioner comes under Category "A" where death and disability is due to natural causes and not attributable to government service. He further contends that all admissible benefits have already been released to the petitioner.

Responding to the above, counsel for the petitioner submits that the specific pleading of the petitioner about the diagnosis of Obstructive Jaundice, EHBO, Pancreatic CA head with CBD structure (SP) ERCP, PD i.e. a form of pancreatic cancer already stands acknowledged by the respondents as their own diagnosis and as per the medical record which has been withheld by them. The said disease is covered under the1939 Rules, hence, the guidelines being referred to by the respondents cannot be read over and above the statutory provisions which are directly and specifically applicable.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

Though it is a settled position of law that if a govt. employee dies of any disablement, disease, wound or injury, the same would ordinarily be deemed as attributable to government service unless proved to the contrary and that the disease such as infective hepatitis (Jaundice) has been recognized as a disease attributed to the dietary compulsions under the 1939 Rules. It is noticed that the medical record of the treatment/diagnosis of deceased Narender Kumar had not been supplied by the respondent-Authorities to the petitioner. The Court of Inquiry proceedings, conducted by the respondent-Authorities, specifically noted that the initial diagnosis was Obstructive Jaundice in the pancreas due to which HC Narender Kumar was referred to NIMS Hospital Hyderabad. The entire medical record had been considered by the Court of Inquiry and as per its analysis, the deceased was found to be suffering from obstructive jaundice for which he was referred to NIMS Hospital during the course of service. The respondent-Authorities have declined the claim solely on the ground that cancer was a natural cause and that there was no negligence on the part of any person/authority, however, the aforesaid, approach of the respondent-Authorities was contrary to the provisions of 1939 Rules itself.

For granting Extraordinary Family Pension, the negligence is not required to be established. If a disease is contracted or is aggravated on account of the working circumstances/extreme working conditions or due to dietary compulsions, the deeming provisions of the 1939 Rules would spring in action and extend the benefits admissible thereunder to the family of such government servant/employee.

The respondent-Authorities were in possession of the entire primary data, however, notwithstanding the same, they have chosen not to place the same on record or even to supply a copy thereof to the petitioner despite demand for the same under the Right to Information Act, 2005. Thus the burden befalls upon the respondent-Authorities to establish that the claim of the petitioner is not covered under the 1939 Rules and such onus cannot be shifted upon the petitioner. The petitioner having established that the respondent-Authorities themselves diagnosed Obstructive Jaundice, which was a disease notified by the respondent-Authorities under Schedule 1-A of Rule 3 of the 1939 Rules and that the same was a dietary disease, coupled with the fact that the deceased was continuously in service w.e.f. 23.06.1987 to 21.01.2017 i.e. for over a period of nearly 30 years, before he was diagnosed with the disease, it cannot be assumed to be a pre-existing disease. Further, the Rules also specify that in case no special note is made in the Service Book of the employee at the time of his induction about suffering from any disease, it cannot be assumed as a pre-existing disease.

Counsel for the respondents has also not been able to substantiate that the consequential pancreatic cancer was not a result of the obstructive jaundice and also failed to refer to any provision under which the respondent-Authorities may deny a govt. employee of Extraordinary Family Pension in case he is diagnosed with cancer, especially there was no complaint of pre-existing disease of cancer at the time of his entering the govt. service. A mere reference that it was a natural death due to cancer, which is not attributable to government service, cannot *ipso facto* be accepted as a valid argument as the respondent-Authorities have failed to prove their case from the medical record, which was in their possession, but still intentionally did not bring the same on record. Withholding of the medical record as well as non-disclosure of the circumstances under which a person may suffer from a disease, which may later lead to serious illness, injury or death, compels this Court to draw an adverse inference against the respondent-Authorities. The case of the petitioner would further be strengthened from the direction given by the Supreme Court in the matter of ***Dharamvir Singh (supra).***

Consequently, the instant petition is allowed and the impugned order dated 30.03.2020 passed by the respondents is hereby set aside. Resultantly, the petitioner is held entitled to Extraordinary Family Pension and all other consequential benefits under the 1939 Rules and instructions contained thereunder. The respondents are directed to carry out the calculation of the entire admissible benefits/dues payable to the petitioner under the 1939 Rules, as amended from time to time, and the instructions issued by the respondents within a period of three months of the receipt of certified copy of this order. The benefits so ascertained shall be released in favour of the petitioner within a further period of two months, failing which the petitioner shall be entitled to interest @ 6% per annum for the period of such delay till actual disbursement.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 28, 2025.
Rajender

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