
(2010) 07 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 894 of 2005

Daya Kour

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-07-2010

Acts Referred:

Army Orders — Order 380, Order 60
Army Rules, 1954 — Rule 13

Citation : (2010) 3 JKJ 177

Hon'ble Judges : Hakim Imtiyaz Hussain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hakim Imtiyaz Hussain, J.—Petitioner's husband namely S. Rup Singh was appointed as a Sepoy on 10th May 1948 in Jammu and

Kashmir Malatia. He was boarded out on 25th July 1963 after undergoing about 15 years service on medical grounds as he got injured while

participating in war operation. He has now died on 18th February 2003. After his death, the petitioner filed this petition seeking grant of

pensionary benefits in her favour. She states that her husband was entitled to pension at the time he was discharged from army but the same was

not granted in his favour. She therefore prays that she being widow of said Rup Singh be given the pensionary benefits as are due to her husband.

She has already applied to the respondents for grant of pension in her favour but her prayer has been rejected by the respondents. She has sought

the following reliefs:

i. ""to quash order No. 9120070/Case/NE-Cord dated 20/04/2005 issued by respondent No. 5 Officer Incharge Records, JAK LI, Record

Office, by which the case of the petitioner, for grant of pensionary benefits, has been rejected, by issuance of writ of Certiorari; and

ii. to issue direction to the respondents to grant disability pension to the husband of the petitioner from the date the husband of the petitioner

boarded out from Jammu and Kashmir Militia (now known as JAKLI) and to fix and release the arrears of pensionary benefits retrospectively in

favour of the petitioner, by issuance of writ of mandamus; and

iii. to issue direction to the respondents to pay all the pensionary benefits to the petitioner including arrears of pension, group insurance fund and

amount of gratuity alongwith interest @ 18%, P.A., from the date the husband of the petitioner was boarded out on medical ground, by issuance of

writ of mandamus; and

iv. to declare the order No. 9120070/Case/NE Coord. dated 20-04-2005 as ultra vires, illegal, unconstitutional and contrary to the provisions of

law, by issuance of writ of mandamus.

2. Respondents have in their reply stated that as per their record, the petitioners husband was discharged from service being medically unfit under

the provisions of Army Order 380/60 and Army Rule 13 III (iii) and that his disability was not attributable to military service. They have denied

that the petitioners husband was boarded out from service.

3. Heard. I have considered the matter.

4. I have gone through the grounds taken in the present petition.

5. Learned counsel for the petitioner has strenuously urged that the petitioner is entitled to pensionary benefits which were due to her husband

namely Rup Singh. She submits that the deceased served the army for more than 15 years and was discharged from army on medical ground as he

was injured/wounded while participating in the operations. Learned counsel has in support of her contentions relied on Shiv Das v. Union of India

& Ors. AIR 2007 SC 123 and a Division Bench authority of this Court in Union of India v. Tara Singh in LPAOW No. 189/2002 decided, on

25th April 2008.

6. I have considered the contentions raised by the learned counsel for the petitioner but from the facts and circumstances of the present case, I do

not find the petitioner is entitled to any relief at all.

7. Petitioners husband admittedly was discharged from service being medically unfit on 25th July 1963. It is stated by the respondents that at the

time of discharge he was paid all his legitimate dues, i.e. service gratuity of Rs. 615 and terminal credit of Rs. 516.67 Respondents have further

stated that the petitioners husband was also in receipt of the relief granted by the State Government of Jammu and Kashmir and that after the death

of her husband, the petitioner is getting the said relief.

8. In this behalf, the respondents have stated as under:-

1. That No. 9120070 Late Sepoy Rup Singh was enrolled into erstwhile Jammu and Kashmir Militia on 10 May 1948 and discharged from

service being medically unfit with effect from 25th July 1963 under the provisions of Army Order 380/60 and Army Rule 13 III (iii). After

discharge from service, the individual died on 18th Feb. 2003. The Jammu and Kashmir Militia, prior to its re-organisation on 01 April 1964, was

purely a temporary and non pensionable state force of Jammu and Kashmir. The pensionary benefits were made admissible to the personnel of this

force only after its reorganization into a permanent force as per terms and conditions specified in Govt. of India, Ministry of Home Affairs Letter no

F16/19-63K dated 16th May 1964 9Copy attached as Annexure I). Since the petitioners husband had served in erstwhile Jammu and Kashmir

Militia and discharged from service prior to its reorganization on 01 Apr. 196, he was not entitled for any type of pension under rules. As such no

pension was granted to him. However, he was paid all his legitimate dues, that is service gratuity of Rs. 615/- and terminal credit of Rs. 516.67.

Subsequently, the personnel of erstwhile Jammu and Kashmir Militia who were discharged from service with more than 15 years of qualifying

service prior to its reorganization were initially granted financial relief of Rs. 100/- per month w.e.f. 01 October 1985 by the State of Jammu and

Kashmir which was enhanced to Rs. 500/- per month w.e.f. 25th August 1995. The relief has now been revised to Rs. 750/- per month w.e.f. 01

April 2002. Besides this, the said relief in favour of the personnel of erstwhile Jammu and Kashmir Militia with less than 15 years of service who

were not considered fit for absorption into the re-organised Jammu and Kashmir Militia have also been sanctioned by the State Govt. of Jammu

and Kashmir at the rate of Rs. 50/- per month for each completed year of service

subject to minimum of Rs. 250/- per month and maximum of Rs.

500/- per month. The petitioner's husband was also in receipt of the said relief from the state Govt. of Jammu and Kashmir. After death of her

husband, the petitioner is getting the said relief. The petitioner's-husband was discharged from service being medically unfit and no disability

pension was sanctioned in his favour by then Pension Sanctioning Authority, i.e. Accountant General. Jammu and Kashmir. Jammu and Kashmir

Militia was purely a temporary non pensionable force till its reorganization on 01 Apr. 1964. The petitioner's husband, therefore, was not entitled

for any pension under rules.

9. These facts have not been denied by the petitioner. Petitioner's husband was discharged from service on 25th July 1963 and he died on 18th

February 2003. During this period he remained contented with what the respondents gave him at the time of his discharge, and has not during his

life time claimed any pension from the respondents. After a gap of about more than 40 years, the petitioner has put forth her claim to the pension of

the deceased Sepoy which he himself never claimed during his life time. Since the petitioner is claiming through her husband namely Rup Singh and

her husband has during his life time never claimed the pension, I am of the view that the petitioner is now estopped from making any claim on this

account particularly when long delay of more than 40 years has not been explained by the petitioner at all.

10. The authorities cited by the learned counsel for the petitioner not applicable to the present case in view of its peculiar facts.

11. In these circumstances, I do not find any merit in the present petition which is hereby dismissed.