
(2011) 09 DEL CK 0070
In the Delhi High Court
Case No : Writ Petition (C) 5087 of 2011

Kamla Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Citation : (2011) 182 DLT 239

Hon'ble Judges : Sunil Gaur, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : S.R. Kalkal, for the Appellant; Anuj Aggarwal and Rahul Soni, for the Respondent

Judgement

Pradeep Nandrajog, J.—Issuing notice to show cause on 21.7.2011, we had recorded as under:

1. Two-fold claim was laid before the Armed Forces Tribunal.
2. The first was a claim for special family pension and the second was to be paid a sum of Rs. 5 lacs as ex-gratia, pursuant to a notification dated 22.9.1998.
3. The Tribunal noted the fact that the husband of the Petitioner suffered a heart attack, while on duty, on 24.2.1993 and died the same day. At the Court of Inquiry which concluded on 28.2.1993 it was opined that the death was attributable to service and in spite thereof claim for family pension was rejected on 9.1.1995. The Petitioner filed an appeal against the departmental order rejecting the claim for special family pension as also ex-gratia. Since the Petitioner heard nothing about the appeal filed by her and having waited for a number of years, during which period she made various representations, Petitioner preferred a writ petition before the Punjab and Haryana High Court which was numbered as CW 16022/2006. She claimed mandamus to be issued that the Respondents should decide her appeal. It was told to High Court by the Respondents that the appeal filed by the Petitioner stood rejected on 6.3.2000 and taking on record said fact, the writ petition was disposed of as in fructuous

on 29.9.2007, leaving it open for the Petitioner to take recourse to a substantive action. She did so when she filed OA No. 463/2010.

4. On the issue of entitlement to special family pension, vide impugned order dated 22.3.2011, the Tribunal has held in favour of the Petitioner, but has restricted the past payment to 3 years prior to when the petition was filed.

5. On the issue of denial of special family pension for the prior period, learned Counsel for the Petitioner would urge that it is not a case where the Petitioner slept over her rights. She was agitating the matter by raising a claim which was rejected on 9.1.1995. Petitioner filed an appeal. There is no proof that the appellate order dated 6.3.2000 was ever served upon her. Oblivious of the existence of the said order she approached the Punjab and Haryana High Court which disposed of writ petition noting that the appeal had already been decided and require the Petitioner to question the order in appeal. She did so, although a little late. But the facts would reveal that she was consistently, consciously and within her limited means, pursuing her case. Counsel would thus urge that the Tribunal has not applied itself correctly in restricting benefit to the preceding 3 years.

6. On the issue of ex-gratia, the Tribunal has declined it on the reason that the notification in question is dated 22.9.1998.

7. Learned Counsel would submit that there existed an earlier notification and under the notification of 1998, two changes were made. Firstly the authority which had to pay the ex-gratia got changed and secondly the quantum thereof.

8. Issue notice.

9. Counsel as above accepts notice for the Respondents.

10. Since only question of law arises for consideration and pleadings before the Tribunal have been filed, no counter affidavit needs to be filed.

11. List for disposal at the end of "After Notice Miscellaneous Matters" on 29.8.2011.

2. The facts stand noted in the said order and thus we do not reproduce the same but would simply highlight that petitioner's husband died while on duty and the Court of Inquiry opined that the death was attributable to service and in spite thereof claim for family pension was rejected on 9.1.1995.

3. Petitioner questioned the rejection order by filing an appeal and sent various reminders praying that the appeal be decided and claiming that the appeal was not decided, preferred a writ petition, being CW No. 16022/2006, before the Punjab & Haryana High Court praying that mandamus be issued to the Respondents to decide her appeal and when told that the appeal was rejected on 6.3.2000, the High Court dismissed the writ petition as in fructuous leaving it open for the Petitioner to take recourse to a substantive action.

4. Petitioner filed OA No. 463/2010 before the Armed Forces Tribunal where claim for Special Family Pension succeeded but benefit was restricted to the period preceding 3 years of petitioner's having approached the Tribunal.

5. Relevant Would it be to note that when petitioner's claim for family pension was rejected on 9.1.1995 she filed an appeal and wrote pension was various representations. The respondent's claim that the appeal was rejected on 6.3.2000 but we see no reason why in spite of the Petitioner continuing to represent till the year 2006 that her appeal was not decided, it was not so informed. It is apparent that the Petitioner was actively prosecuting her claims and the Respondents were negligent in supplying the relevant information to the Petitioner and thus we hold that the Petitioner would be entitled to special family pension from the date it was due and not restricted to the period preceding 3 years" of approaching the Armed Forces Tribunal.

6. Second prayer made by the Petitioner for being paid ex-gratia in terms of the notification dated 22.9.1998 has been rejected by the Tribunal holding that when husband of the Petitioner died in the year 1993 said notification did not even see the light of the day.

7. Notification dated 22.9.1998, in turn, refers to a notification dated 11.9.1998 and we find that the notification dated 11.9.1998 refers to 2 earlier notifications dated 24.11.1988 and 25.5.1990.

8. To put it pithily, the notification dated 11.9.1998 alters the sum of ex-gratia payable and also alters the terms on which ex-gratia payment is to be made with reference to the preceding notifications and thus the Tribunal would be right in returning a finding that petitioner's claim could not be adjudicated with reference to the notification dated 22.9.1998; but we would have expected the Tribunal to consider the claim with respect to the notifications dated 24.11.1988 and 25.5.1990 which remained in force till they were amended on 11.9.1998.

9. Directing the Respondents to place said 2 notifications before the Tribunal for its consideration, we dispose of the writ petition modifying the impugned order passed by the Tribunal pertaining to the first prayer made by the Petitioner and direct the Respondents to release Special Family Pension payable to the Petitioner with effect from the date it was due and payable.

10. As regards the prayer for payment of ex-gratia, we restore OA No. 463/2010 with a direction to the Tribunal to adjudicate petitioner's Claim with respect to her claim for ex-gratia in the context of the Government of India policy in force as on the date when husband of the Petitioner died.

11. Parties shall appear before the Registrar of the Tribunal on 30.9.2011, who shall list the matter before an appropriate Bench.

12. Arrears of Special Family Pension, after adjusting normal pension paid to the Petitioner would be disbursed within 12 weeks from today.

13. No costs.