

(1991) 06 KL CK 0026
In the High Court Of Kerala
Case No : O.P. No. 9685 of 1989

Madhavi Amma

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 26-06-1991

Acts Referred:

Army Pension Rules, 1961 — Rule 213, 216

Citation : (1992) 2 LLJ 552

Hon'ble Judges : K.A. Nayar, J

Bench : Single Bench

Advocate : P.V. Narayanan Nambiar, for the Appellant; V. Ajith Narayanan, for the Respondent

Judgement

K.A. Nayar, J.—Petitioner's son was enrolled as Sepoy on February 6, 1969 in the Armed Forces, Medical College, Pune. He had about 6 years 324 days service when he died on December 26, 1975. The communication intimating this sad news to the petitioner's husband reads as under:-

"Your son was in good health and spirits on the morning of December 26, 1975. He took part in sports of the college week celebrations and won five prizes. At about 2130 hrs he was found lying unconscious. He was immediately removed to the Command Hospital (Southern Command) PUNE for treatment, but unfortunately expired on the way. A postmortem was carried out on December 29, 1975 and cause of death was assessed to be ACUTE LEFT VENTRICULAR FAILLJRE FOLLOWING CORONARY OCCLLJSION.

Your son was a fine soldier who displayed a keen sense of discipline, loyalty and courage during his service with this college. His death leaves a gap which will be difficult to fill."

2. The respondent in the counter affidavit stated that the deceased took part in unit games on December 26, 1975 from 16.30 hrs to 17.10 hrs. He also performed other routine duties on December 26, 1975 as per charier of duties

held on records. He was put on routine night duty on December 26, 1975. He died on December 26, 1975 at 22.05 hrs. due to acute left ventricular failure following coronary occlusion. From these facts it is clear that he died of heart attack while on duty.

3. The family pension is not available to father and mother according to the Entitlement Rules because they would not come within the definition of family for the purpose of family pension. But it is an admitted fact, for the benefit of special family pension the petitioner, being the mother of the deceased, is entitled if cause of the death was attributable to military service or aggravated by military service. Petitioner applied for special family pension on November 16, 1976. But by Ext. P4 dated October 21, 1977, the same was denied to the petitioner. The Captain, Record Officer, OIC Records AMC, stated that the family pension claim in respect of the deceased was rejected on the ground that the cause of death was neither attributable to nor aggravated by his military service. Ext.P4 also stated that if the petitioner is aggrieved, she can file an appeal to Government of India, Ministry of Defence, New Delhi within a period of 6 months. Appeal had been filed on November 28, 1977, but the same was rejected by Ext. P6 by the Under Secretary to the Government of India, Ministry of Defence. In that also it is stated further appeal could be filed to the Secretary, Government of India, Ministry of Defence. Petitioner thus filed an appeal to the Ministry of Defence ie. Ext- P7 . It was rejected by Ext. P9 dated January 8, 1981. In that it is stated that the petitioner is not entitled to special family pension and that further representations on the subject will not serve any useful purpose. Even thereafter, it would appear, petitioner made representation which also met with the same fate. Ultimately she filed a representation dated November 22, 1988 to the President of India which remains undisposed of.

4. It is in the above circumstances the petitioner approached this court. There was, of-course, delay in approaching this court. The petition was filed on November 16, 1989. The last statutory order denying the special family pension is dated January 8, 1981. Petitioner is entitled to get special family pension if the claim is considered in accordance with law. If the petitioner approached this court within a reasonable time from January 8, 1981, petitioner would have got the benefit from this court. Even in the counter affidavit, it is fairly conceded that the deceased took part in unit games on December 26, 1975 from 16.30 hrs. to 17.10 hrs. when he died because of acute left ventricular failure following coronary occlusion. Ext.P2 communication issued to the petitioner's husband conveying the sad news also speaks highly about the deceased and his performance in the unit's sports.

5. The respondents denied the special family pension only because of the erroneous view taken by them that the cause of death is not attributable to military service or aggravated by military service under the Army Pension Rules. Rule 213 reads as follows:-

"A special family pension may be granted to the family of an individual if his

death was due to or hastened by-

(a) a wound, injury or disease which was attribute to military service, or

(b) the aggravation by military service of a wound, injury or disease which existed before or arose during military service."

Under Rule 216 mother is eligible member of the family to get special family pension, provided the mother is not remarried. This court in O.P. No. 5008/89 had occasion to consider the impact of Entitlement Rules and held:

"As per the Entitlement Rules appended to the Pension Regulations, disablement shall be accepted as due to military service if it is due to a disease which is attributable to military service or which existed before military service and has been aggravated thereby. Rule 4 provides that the benefit of reasonable doubt should be given to claimant and the benefit should be given liberally in field service cases. As per Rule 7 disease which has led to an individual's discharge should ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for military service. It is further seen from the Entitlement Rules that the benefit will have to be given more liberally to the claimant in cases where the disease has arisen while in service."

6. The decision reported in *Devshi Bhanji Khona Vs. Mary Burno and Another*, related to a workman suffering from heart disease who fell down while on workspot and died. It was held that there was a casual connection between the employment and his death in the unexpected way. Therefore it was held that the accident arose out of and in the course of his employment. In that case the Division Bench further held that due to over-exertion for a long time, which a person who was having heart disease could not have withstood, he fell down, and that resulted in his death, which might not have happened otherwise. There is certainly an element of casual connection between this incident and his death.

7. In the decision reported in *Regional Director, ESIC, Ahmedabad Vs. Batulbibbi and Another*, when an employee during short recess died in canteen of myocardiac infraction, it was held that the employee died out of and in the course of employment. The relevant portion of the judgment reads (p. 32):

"11. There is no dispute that the workman in the present case had joined duty and that he was still on duty when he died in the canteen. He had gone to the canteen during the short recess to take tea, but that period is not so long as to disrupt the continuity of the employment. Mr. Shah argued that during this short period, the deceased could have gone anywhere he chose, even out of the employment premises. It is not stated before me how long the short recess was. But, if the recess was indeed short, the liberty to an employee to go away does not in reality mean anything, since he could not have gone so far as to snatch the continuity of his employment."

Yet in another case *Salamabegum and others Vs. Dt. Branch Manager, Maharashtra State Co-operative Land Development Bank, Beed and another*, the

Bombay High Court held the Bank is liable where the Driver of jeep taking officers of bank to village for carrying out recovery proceedings leaving the vehicle at rest house went to market where he was assaulted by some persons in crowd and was found dead. Accident was held to be one arising out of and in the course of employment and bank is liable to pay compensation.

8. In the present case admittedly the deceased died of cardiac arrest while on duty because it is so admitted in the counter affidavit also. No evidence have been adduced to show that the death has occurred for reasons not attributable to his duty. It has to be presumed that the cause of death of the deceased was attributable to his employment (military service) or aggravated by military service. The respondents have not produced any material to show that the cause of death was not connected with military service or aggravation is not attributable to the service.

9. Therefore, I am of the view that the death of the deceased was due to or attributable to military service or, at any rate, hastened by military service and hence, denial of special family benefit to the petitioner is not justified.

10. The petitioner's claim for family pension was within time and statutory remedies were availed which resulted in ultimate rejection on January 8, 1981. Thereafter, there was no justification for keeping idle and not pursuing the matter for about eight years. The relief available under Article 226 is only to those persons who are vigilant in pursuing their remedy. In this case for five years the petitioner pursued the remedy. The pension is available to the petitioner every month and, therefore, petitioner will be justified in claiming the correct pension from the date of filing the original petition i.e. November 16, 1989. That means, the petitioner is entitled to arrears only for 5 years i.e. from December 26, 1975 to January 8, 1981 and thereafter, petitioner is entitled to special family pension from November 16, 1989. Such amount has to be quantified and the question whether petitioner herself is eligible for the arrears also has to be considered. (It is submitted that the petitioner will be eligible for arrears only from the date on which her husband died). All these has to be computed by the respondents.

10. In the circumstances, I direct the 3rd respondent (the Controller of Defence) to dispose of Ext. P8 afresh in the light of the observations herein contained computing the arrears and the pension payable to the petitioner. I direct the 3rd respondent to pass appropriate orders in Ext. P8 within a period of 6 months.

11. The original petition is disposed of as above.