

(2004) 08 DEL CK 0049
In the Delhi High Court
Case No : Writ Petition (C) 5365 of 2003

Meer Kaur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-08-2004

Acts Referred:

Central Civil Services (Extraordinary Pension) Rules, 1939 — Rule 3A, 3A(1)

Citation : (2004) 113 DLT 387 : (2004) 76 DRJ 462

Hon'ble Judges : Gita Mittal, J; Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : S.M. Hooda and S.R. Kalkal, for the Appellant; Suman Bagga, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.

1.This writ petition is filed by the petitioner praying for a direction to the respondents to pay to the petitioner Special Family Pension w.e.f 5th August, 1994 along with interest thereon.

2.The son of the petitioner, Constable Driver Vikram Singh was enlisted in the Central Reserved Police Force (C.R.P.F) on 23rd September, 1991. While working as a Driver in the said force, he applied for and was granted earned leave on 28th July, 1994 from 29.7.94 to 26.9.94. On being granted the said leave, the son of the petitioner left for his home-town. On reaching home, however, on 4th August, 1994 he started vomiting and was immediately taken to Medical College & Hospital, Rohtak, where he died on the same day. After his death, his mother, the petitioner herein, sent a copy of the death certificate to the respondent No.2 praying for grant of Special Family Pension to the petitioner. As the son of the petitioner was a bachelor at the time of his death, he had no other claimant except his mother, who could apply for grant of Special Family Pension. However, in view of the extant rules of the relevant time, the mother of

Constable Driver Vikram Singh was not entitled to receive family pension from the respondents and, Therefore, the respondents did not pass any order with regard to payment of Special Family Pension to the petitioner. However, in 1998 the rules came to be amended where after the petitioner herein also became entitled under the rules to claim the benefit of family pension. However, before any order in that regard could be passed, the petitioner approached this court and during the pendency of the aforesaid writ petition in this court the respondents passed orders granting ordinary family pension in favor of the petitioner. The claim for grant of special family pension was rejected.

3.Mr.Hooda, counsel appearing for the petitioner has, however, submitted that this petition cannot be said to be infructuous in view of the fact that the petitioner was entitled to Extraordinary (Special) Family Pension and, Therefore, a direction should be issued to the respondents to pay such Extraordinary (Special) Family pension instead of Ordinary Family Pension.

4.Counsel appearing for the respondents, however, submits that the petitioner died due to natural cause as he suffered from diarrhoea and dehydration. Since he died in the natural course, his mother, the petitioner herein is not entitled to be paid Extraordinary (Special) Family Pension. In this connection, our attention has also been drawn to the provisions of Appendix-3 of the CCS (Extraordinary Pension) Rules wherein the expressions "accident" and "disease" have been defined. Counsel appearing for the petitioner has placed strong reliance on the definition of "disease" as appearing in the said Rules. Referring to the same the counsel submits that the disease from which the son of the petitioner suffered came within category "C " (iv) of the aforesaid list, namely, "Gastritis" and was covered under classification of the disease as provided in Schedule IA. Therefore, due to the death of the son, the petitioner is entitled to receive Extraordinary (Special) family Pension.

5.Rule 3-A (1)(a) of the aforesaid Rules provides that disablement shall be accepted as due to Government service, provided that it is certified that same is due to wound, injury or disease which is either attributable to Government service, or existed before or arose during Government service and has been and remains aggravated thereby. Therefore, the entitlement to receive the benefit of Extraordinary (Special) Family Pension is when the disablement shall be acceptable as due to Government Service or when it is attributable to Government service. In the case of death, provision for which is made in Rule 3-A (1)(b), it is provided that death shall be accepted as due to Government service provided it is certified that it was due to or hastened by a wound, injury or disease which was attributable to Government service . In the present case Rule 3A (1)(b) is attracted as it is a case of death and not a case of (a) thereof.

6.In view of the aforesaid clear provision in the Rules a person could claim the benefit of payment of Extraordinary (Special)Family Pension when the conditions of either (a) or (b) is satisfied. However, the disablement or death shall be due to and attributable to Government service as also death. When death is caused due

to Government service it must be certified that it was due to or hastened by a wound, injury or disease which was attributable to Government service. It is also provided in sub-clause (2) thereof that there should be a causal connection between disablement and Government service; and death and Government service for attributability or aggravation to be conceded. Guidelines in this regard have been given in the Appendix which have been treated as part and parcel of the aforesaid Rules. Counsel appearing for the petitioner has placed strong reliance on the clarification given thereto. However, in our considered opinion, the said clarification is not applicable to the facts and circumstances of the present case. The son of the petitioner was treated for diarrhoea and dehydration in the Medical College & Hospital, Rohtak and prescription thereto has been placed on record as Annexure P-2, which is dated 4th August, 1994.

7. Although counsel appearing for the petitioner sought to submit that the death of the son of the petitioner was attributable to the Government service yet no factual foundation has been placed on record in order to justify or prove the aforesaid claim. The petitioner has also failed to prove and establish that there existed any nexus and causal connection between the death of the son of the petitioner and the Government service, which was required to be established by the petitioner by laying factual foundation for such claim. Sub-clause (3) of the Rule 3-A of the CCS (Extraordinary Pension) Rules provides that the degree of default or contributory negligence on the part of a Government servant could also be taken into consideration in making an award under these rules in favor of such Government servant, but, shall not be taken into account where such award is made in favor of the family of such Government servant. In order to bring the case of the petitioner within the four-corners of the aforesaid clause also, there is no averment made in the petition that the aforesaid clause could be applicable to the facts and circumstances of the present case.

8. The Government of India has taken a decision which is also part of Appendix-3 wherein ailments have been categorised. Category-A mentions death or disability due to natural causes, which are not attributable to Government service include chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty etc. The Category-B provides for the provision for death or disability due to causes which are accepted as attributable to or aggravated by Government service. It further provides that diseases contracted because of continued exposure to a hostile work environment, subjected to extreme weather conditions or occupational hazards resulting in death or disability would be examples. Counsel appearing for the petitioner has placed strong reliance on the aforesaid provision and has submitted before us that the disease from which the son of the petitioner suffered from and died would fall within the aforesaid Category-B.

We are, however, unable to accept the aforesaid contention of the counsel appearing for the petitioner for the simple reason that the petitioner has not made even a whisper in the petition that the son of the petitioner was working in

a hostile work environment or was subjected to extreme weather conditions or occupational hazards resulting in his contracting the disease resulting in the death of the son of the petitioner.

9. Having considered the entire matter we are of the considered opinion that since the son of the petitioner died due to diarrhoea and dehydration, his death was due to natural cause and, Therefore, a natural death and was not due to or attributable to Government service. As such the petitioner is disentitled to receive Extraordinary (Special) Family Pension. Accordingly, this petition has no merit and is dismissed.