

(2010) 02 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 393 of 2006

Preeti Sidhu

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-02-2010

Acts Referred:

Citation : (2010) 2 JKJ 879

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Hali, J.—Petitioner is wife of one Lt. Col. A.S. Sidhu, who is stated to have died on 05.10.2002. It is stated that deceased was

deputed to ""Operation Parakaram"" which was associated with Kargil War. The operation was to flush out the militants as also the regular Pakistan

Army who had intruded into the part of the Indian territory. In the said operation about 600 army officers and jawans lost their lives. The husband

of the Petitioner, who was already having heart ailment, was deputed to the operation, as a result of which his ailment aggravated and resultantly he

died thereafter. On his death the Petitioner was entitled to receive the benefits including pension, however, instead of granting her higher pension

she was granted only family pension though she was entitled to get Liberalised Family Pension.

2. It is contended by the Respondents that Petitioner was granted special pension in terms of Government of India, Ministry of Defence letter No.

1(2)/97/D (Pen-C) dated 31.01.2001.

It is contended that the scheme of the act reveals that the death has been

caused which is attributable to or aggravated by military service, as determined by the competent medical authorities. It further reveals that disease was aggravated because of continued exposure to hostile work environment subject to extreme weather conditions which resulted in the death of the officer. Reliance has also been placed on Clause 4.1 of the Government decision on Liberalised family pensions. It is contended that Operation Parakaram was notified by the government and the husband of the Petitioner was deputed in such operation who died on account of exposure to hostile work environment and extreme weather conditions. In nutshell the case of the Petitioner is that she is entitled for receiving Liberalised Family Pension on account of the following facts:

- (a) That husband of the Petitioner was deputed to Operation Parakaram, which was specifically notified by the government; and
- (b) That as a result of deputation of the husband of the Petitioner, his ailment aggravated due to exposure to hostile work environment and extreme weather conditions, as a result of which he died, as such, the Petitioner is entitled to receive the Liberalised Family Pension;

3. I have heard the learned Counsel for the parties.

It is not in dispute that Petitioner's husband was deputed to Operation Parakaram which was notified by the Government. The medical certificate issued by the Respondents indicates that the death was attributable to the military service, The contention of the Respondents is that Operation Parakaram was not a war like situation as the persons deputed therein were not restricted to move out of the area which was notified, as such, Special Family Pension was paid to the Petitioner.

4. The facts are not in dispute. Husband of the Petitioner, admittedly, was deputed to an operation which was notified by the government and his death was attributable to the military service.

5. In order to be entitled to receive the Liberalised Family Pension only two conditions are required to be satisfied, which the Petitioner has clearly established. The contention of the Respondents that it was not a war like situation is absolutely fallacious. As already stated, more than 600 officers and soldiers died in the operation and it was a war like situation. Husband of the Petitioner was deputed to the operation despite the fact that he was suffering from heart ailment. As a result of officer's deputation to an area

because of exposure to hostile work environment and extreme weather conditions his ailment aggravated resulting in his death.

6. For the reasons, I allow the writ petition and direct the Respondents to grant Liberalised Family Pension to the Petitioner from the date her

husband has died, within a period of three months from the date a copy of this order is supplied to them. In case the needful is not done within the

period of three months, Respondents will pay interest at the rate of 9% on the withheld pension amount.