
(1999) 11 DEL CK 0078
In the Delhi High Court
Case No : L.P.A. No. 287 1998

Rajni Vohra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-11-1999

Acts Referred:

Citation : (2000) 1 AD 963 : (2000) 83 DLT 428 : (2000) 52 DRJ 448

Hon'ble Judges : Usha Mehra, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Mr. N.L. Bareja, for the Appellant; Mr. Rakesh Tikku Advocate, for the Respondent

Judgement

Usha Mehra, J.—Appellant Smt. Rajni Vohra, is the widow of late Lt. Col. N.K. Vohra. Late Lt. Col. N.K. Vohra was commissioned in the Indian Army in Gorkha regiment on 30th June, 1963. He served the Indian Army in High altitude areas in North East Frontier Area (in short NEFA), field areas and in the State of Jammu & Kashmir between the period from 1963 to 1974. He took active part in 1971 war with Pakistan. From 1974 onwards he was posted at Madras. In July, 1976 after about 3 weeks of strenuous exercise late Lt. Col. Vohra suffered heart problem. He was admitted in Military Hospital where it was diagnosed to be case of inferior infraction. Because of that heard ailment he was placed in Low Medical Category. His case was reviewed as per Army Medical Regulation periodically. In the year 1986-87 husband of the appellant was posted in the State of Punjab and Nabha. He attended exercise Brass-Tacks and Op-Trident during the end of 1986 beginning of 1987. In "986-87 situation in Punjab was tense because of militancy. The army officers posted in Punjab during that time were under stress and strain because of the tense situation prevailing in the State, In May, 1989 late Lt. Col. N.K. Vohra was posted in Jam Nagar for ground liaison duties with the Air Force Station Jam Nagar involving planning and execution of Air Force Sorties for ground attack. In August, 1990 late Lt. Col. Vohra was asked to attend important training exercise involving planning and execution of

operational plans in actuals involving mental stress and strains. It is the case of the appellant that on account of mental stress and strain the heart ailment with which late husband of the appellant was suffering got aggravated. He developed problems as a result of which he was evacuated to Military Hospital, Jodhpur where Lt. Col. Vohra dies on 28.8.1990. The doctors at Military Hospital Jodhpur certified the cause of death to be the disease which aggravated due to stress and strains of Military Service. The Commanding Officer of the Unit also opined and endorsed the view of the doctors of the Military Hospital, Jodhpur that the cause of death was that disease got aggravated due to stress and strains. The endorsement by the Commanding Officer of the Unit is dated 24.9.90.

2. According to the appellant since her husband dies on account of the disease having been aggravated due to the Military Service, Therefore, was entitled to special family pension and special children allowance in terms of Regulation 85 of the Pension Regulations for the Army, 1961 Part-I (in short PRA). respondent however, sanctioned ordinary Family Pension in her favor in November, 1990 which stood reduced to half w.e.f. 30.8.1997. The claim of special family pension and special children allowance made by the appellant herein was rejected by the respondent on the plea that the death of her husband late Vohra was neither attributable to military service nor aggravated due to military service. Appeal filed by the appellant was also rejected.

3. It is in these circumstances she approached this Court by way of writ petition. BY the impugned order the learned Single Judge dismissed her writ petition primarily on the ground that the "Competent Authority" rejected her claim and that the appellant had failed to establish that the disease from which her husband suffered was due to the service condition and circumstances of the duty attributed.

4. The appellant has assailed the impugned order inter alia, on the grounds that in view of the report of three doctors who attended upon her late husband at Jodhpur as well as the endorsement of the Officer commanding fully establish that the cause of his death was aggravation of the disease by military service and due to stress and strain of military service. The "Competent Authority" could not ignore this material evidence. Moreover, no material has been placed on record by the respondent to show as to under what circumstances and on what grounds the "Competent Authority" came to the conclusion that the cause of death was not due to stress and strain or that the disease from which the deceased suffered in July, 1976 could not get aggravated by military service. Mr. Rakesh Tikku appearing for the respondent was directed by this Court to produce the medical record and all other records pertaining to late Lt. Col. N.K. Vohra. For this purpose opportunities were offered to Mr. Tikku to produce records on 13.9.1999, 11.10.1999 and again on 26.10.1999 and also file affidavit. Neither the record was produced nor the affidavit as ordered had been filed. Therefore, we had to hear the arguments in the absence of record and the affidavit as ordered.

5. Pension Regulation for the Army. 1961 Part-I, deals with the commissioned officers, pension. Regulation 85 deals with the special pension awards when admissible. Since it is relevant for our purpose relevant extracts of Regulation 85 are reproduced as under :-

Special family pensionary awards when admissible.

85. A special family pension to the widow of an officer and special children's allowance to his legitimate children under 18 years of age or dependents pension to his/her parents or brothers/sisters may be granted if his/her death was due to or hastened by either a wound, injury or disease which was attributable to military service of aggravation by military service of a wound, injury or disease when existed before or arose during military service provided that:

(a) in the event of death after retirement, the officer did not retire voluntarily;

and provided further that;

(b) in the case of pension for a widow and allowance for a child-

(i) the officer married before joining the service or while on the active list and before he received the wound or injury or before he was removed from duty on account of the disease;

(ii) when death is due to disease, the officer survived his marriage by at least a year, unless it can be shown that he was manifestly in good health at the time of his marriage; and

(iii) subject to any exception which the President may approve in a particular case under regulation 90, the widow was not separated from her husband at the time of his death.

6. Perusal of this Regulation show that to be entitled for the Special Family Pension the widow has to prove firstly that the death of her husband was caused due to or hastened because of military service or aggravated by military service. Secondly, that she was his wife even at the time of his death and not separated from her husband at the time of his death and that he was healthy at the time of his marriage. So far as last two elements are concerned, these are not in dispute that the appellant was the legally wedded wife of late Lt. Col. Vohra and that she had not separated from him and that he was having good health at the time of his marriage. Therefore, the only point which is left for consideration is whether the disease from which her late husband suffered i.e. heart ailment got aggravated due to military service. Dr. S. L. Dhiman Brig. Commandant, Military Hospital, Jodhpur, who attended upon the deceased when he was admitted in Military Hospital Jodhpur for treatment, attended upon late Lt. Col. Vohra. He issued a certificate dated 30th November, 1990, which reads as under:-

CERTIFICATE OF ATTRIBUTABILITY ALL RANKS

Certified that (name) N.K. Vohra Service No. IC 14496 Rank Lt. Col. Unit. 107 GL

Sec. died in Hospital on 28.8.90 at 1615 hrs. due to Acute Myocardial infarction - 410.

The cause of the death is aggravated by Military Service for the following reasons:-

Aggravated due to stress and strain of Military Service.

Sd/-

(S.L. Dhiman)

Brig. Commandant

MH Jodhpur

MH Jodhpur

Dated 30th Nov. 1990

This certificate was endorsed by another doctor, namely, Dr. A. Chaturvedi, Lt. Col. DDMS 12 Corps in the following words:-

Remarks of DDMS HQ 12 Corps

I agree with the above.

SD/-

(A. Chaturvedi)

Lt. Col. DDMS

12 Corps

Station: C/o 56 APO

Dated 7th Dec., 1990

This was concurred by the Medical Authority, Southern Command vide endorsement dated 24th December, 1990 which reads as under :

REMARKS OF DDMS HQ SOUTHERN COMMAND

I agree with the above.

Sd/-

(H.K. SOMANIA)

Brig. ADMS

Station: HQ Southern Command, Pune

Dated 24th Dec. 1990.

The certificate of Attributability issued by the Brig. ADMS is fortified from the

extracts of A.F.M.S.F.-81 (Revised) which are relevant for our purpose and reproduced as under:-

TRUE EXTRACT OF A.F.M.S.F.-81 (REVISED)

REPORT GN CASES (OTHER THAN THOSE DUE TO INJURIES) WHICH HAVE ENDED FATALLY OR ARE PROPOSED FOR INVALIDING.

PART-A (to be filled by the MO) Name : N.K. Vohra Service No. IC 14496-L Rank- Lt. Col. Unit ship: 107 G.L.SEC. C/O 99 APO Service : 27 years Army/Corps Army/Navy/Air Force Army Branch/Trade INF/OFFR Disability-Acute Myocardial Infarction Outcome of the case (i.e. died, or to be invalided). Unit/Hospital MH Jodhpur Station Jodhpur Date: 13.9.90 Sd/- M. S. BENIWAL Lt. Col. AMC Medical Officer PART-B (To be answered by of Unit/Ship) IRCUMSTANCES OF THE CASE 1. Date he joined your Unit - 31 May, 89. 2. Was he in medical category (SHAPE-I-AYE) (or corresponding category in Navy/Air Force) - NO. 3. Was he in medical category lower than SHAPE-I AYE (or corresponding category in Navy/Air Force)-Yes. (a) What was/were the disability/disabilities - IHD (inferior Infraction (Old)- 67 (b) What was his medical category and since when? (Last categorisation Medical Board-S1 1A1P2E1 08 Aug. 89. (c) How long has he been in lower medical category - Since July 76 4. Was he excused any duties - Fit for duty not requiring severe stress. Not to be employed in high altitude (above 2700 Mtrs.) at Hilly terrain and extreme cold climatic area. 5. Nature of duties - Sedentary Duties in (Give details) the unit 6. Did the duties involve severe/exceptional stress and strain? (Give details): (a) In daily routine - NO (b) On special day/occasion - NO 7. Was he living with his family? If so (a) Since when- Since 31 May 89. (b) In Government accn. - Yes. In Govt. accn. or under own arrangement 8. Was he living in unit lines - Yes, in unit line, Officer Md. accn. (Air Force Station Jamnagar). 9. Dates of last leave, and where spent (Village/Town/State) - 40 days part of annual leave from 29 May 90 to 7 Jul. 90 Leave Spent at 5A/159 WEA, Karol Bagh, New Delhi. 10. If disability is due to infection- (a) any other case in unit) (b) is the disease endemic) in the town/surrounding) Not applicable area) (c) preventive measure taken) 11. In case of Venereal disease - a) when and where was) Not applicable it contacted? b) Name of hospital/VDTC - where treated. c) was surveillance & follow) up treatment completed?) Not applicable. (If so, give date of FTC)) d) If surveillance and follow) up treatment not completed) state service factors) responsible. 12. Do you consider the - Yes the officer disability/death is was in low med. cat. attributable since Jul., 1976 and to service? continued performing (Give reason) duties within the restriction laid down till he died on 29 Aug., 1990 while on temp. duty at Jodhpur. 13. Do you consider the - Yes, as para disability/death aggravated 12 above. by service (Give reasons). Unit/Ship 107 GL Sec. Type "B" Station C/o 56 APO Date 24 Sep. 90 Sd/- Officer Commanding

7. The Officer Commanding in answer to the circumstances of the cause of death of Lt. Col. N.K. Vohra in reply to para 12 admitted that the death of Lt. Col.

Vohra was attributable to service. He gave reasons for the same that deceased was in low medical category since July, 1976 and performing temporary duties at Jodhpur where late Lt. Col. N.K. Vohra had gone for important exercise. In reply to para 13 the Officer Commanding admitted that the disease was aggravated by Military service.

8. It was never the case of the respondent that when the late husband of the appellant was commissioned in the Army on 30.6.1963 he suffered from any such ailment. No note by any Medical Officer was placed on his file indicating that the deceased suffered from any ailment. It is an admitted case of the parties that the Late Lt. Col. Vohra suffered heart ailment for the first time in July, 1976. The fact that he was having strenuous exercise and that up to 1974 he was posted in the field areas of Jammu & Kashmir and high altitude of NEFA has also not been denied by the respondent. That heart ailment which the deceased suffered in July, 1976 he attended important strenuous training exercise in Rajasthan in August, 1990. It was while attending the exercise which involved planning and execution of operational plans in actuals that he got the attack which lead to his death on 28.8.1990. Before his death he was admitted in the Hospital. The doctors who attended upon him, to our mind, were competent enough to assess the cause of death. The contention of Mr. Rakesh Tikku that it was only the autopsy which was done by those doctors, Therefore, reliance on their certificate could not be placed, cannot be appreciated because before his death on 28.8.1990 late Lt. Col. Vohra was evacuated and put in the Hospital where he was attended upon by the doctors. The doctors who attended upon him must have acquainted themselves about the medical history of the patient. It was only then they could issue the certificate, thereby certifying that the cause of death of aggravation of the disease due to military service and due to stress and strains. Therefore on the basis of medical history made available by the doctors at Military Hospital, Jodhpur particularly when we know that the doctor who attended upon the deceased was of the status of a Brigadier, he could not have issued a wrong certificate certifying the cause and reason leading to the cause of death. The doctors in no uncertain words have certified that disease of the deceased got aggravated due to stress and strain of military service. Admittedly, when in August, 1990 deceased got the attack he was on important exercise involving planning and execution of operational plans in actuals. This could have given cause of stress and strain to the deceased and hence his disease i.e. heart ailment got aggravated and lead to his death. That is why due to acute Myocardial Infarction which he suffered due to stress and strain, he died. Therefore, it would not be correct on the part of respondents now to contend that the disease from which late Lt. Col. suffered in July, 1976 did not aggravate nor could turn into acute Myocardial infarction due to stress and strain of the military service.

9. It is not the case of the appellant that the heart ailment from which deceased suffered in July, 1976 was caused due to the military service. She relied on the report of Dr. S.L. Dhiman, Brigadier Commandant to show that the cause of

death was due to stress and strain of military service and aggravation of disease due to military service. To our mind, she had placed sufficient material on record to the effect that her case was covered under Regulation No. 85. Rather the respondents have not been able to refute or rebut the said material. Even if it were same that in July 1976 the heart problem was not owing to military service, but it got aggravated because of military service and for that there is no rebuttal material produced by the respondent.

10. In view of the overwhelming material produced by the appellant there was no reason for the "Competent Authority" to reject her claim for the special family pension and for special children's allowance. Accordingly the impugned order is set aside. The appeal is allowed with costs through out.