
(1998) 05 DEL CK 0110
In the Delhi High Court
Case No : CW.No. 2478 of 1996

Rajni Vohra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-05-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 6 AD 9 : (1998) 73 DLT 562 : (1998) 45 DRJ 676

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. N.L. Bareja, for the Appellant; Mr. Rakesh Tikku and Mr. V.K. Sharma, for the Respondent

Judgement

K. Ramamoorthy, J.—The petitioner, the widow of Late Lt.Col. N.K.Vohra, has challenged the order dated 27.3.1991 and the order dated 18.11.1991 rejecting her claim for the grant of special family pension.

2. The facts necessary for the purpose of disposal of the case can be noticed thus:

3. The petitioner's husband had undergone pre-commission training and was absolutely fit and suitable to hold permanent commission in the Army and he was taken in on the 30th of June, 1963. In 1976, he was admitted in the hospital and it was diagnosed by the doctors that he was suffering from the disease of inferior infarction and was placed in low medical category and it was opined that he was not to be employed in high altitude and in extreme cold climate areas. Before this, the deceased was employed in high altitude in J & K areas till the year 1975.

3A. According to the petitioner, her husband suffered the above disability on account of his service with active unit in the field areas, in high altitude in Jammu and Kashmir.

4. It is stated in paragraph 9 of the petition:

"That after having been placed in low medical category S1H1P3E1, in July 1976, the petitioner's husband kept on serving the nation in general and the organisation in particular for about 14 years and moved on posting to places, be it be hard areas or any inhospitable terrain as and when ordered without any hesitation what so ever and without caring for the fact that he was a low medical category. Further it may also be worthy mentioning here that the petitioner's husband took very active part in exercise 'BRASS- TACKS' and op-trident sometimes during end 1986/early 1987 while he was posted in the Armed Div., wherein both India & Pakistan had concentrated the forces all along the border and there was a virtual war like situation and the environments were quite tense and that there was a possibility of the out-break of the hostilities culminating into a war, which were subsequently diffused through bilateral talks between the two countries and the forces were ordered to withdraw to their permanent location. The above facts go to prove the aspect that the petitioner's husband continued performing his duties very satisfactorily and efficiently throughout his service career till he laid down his life on duty while on an important exercise and that to away from his place of posting."

5. It is further stated that since May, 1989, her family was staying in Government accommodation in Jam Nagar and the deceased was directed to attend important training exercise and he left Jam Nagar on the 25th of August, 1990. During the exercise, the petitioner's husband developed heart problem and ultimately he died on the 28th of August, 1990. The cause of death was duly signed and certified by Brigadier S.L.Dhiman be attributable him to service and the same was approved by DDMS Headquarters. On these facts, the petitioner had claimed special pension.

6. In the counter-affidavit, it is stated in paragraph 7:

"That the averments as made in para 7 are a matter of record. However, it is submitted that from ANNEXURE P-3 of the writ petition it is apparent that late IC-14496 Lt.Col.(TS) NK Vohra had served in Field Areas only up to 29.2.1974 in five different spells. After 28.3.1974 till he expired on 28.8.1990 during a period of more than 16 years, he was not posted in a Field Area. It is also mentioned that though the petitioner is claiming that her husband had taken active part in 1963 war, it is seen from the record of his war service at ANNEXURE P-3 of WP that he did not render any way service in the year 1965."

7. It is further stated in paragraphs 8 & 9:-

"That in reply to contents of paras 8 & 9 it is submitted that the onset of inferior infarction of late officer was on 21.7.1976 while he was serving in peace area (Madras). His last field service has been till December, 1974. Investigations revealed evidence of stabilised inferior wall infection and fresh ante repeal infarction. He was treated in MH Madras and after sick leave placed in low medical category. As no unusual physical or mental strain could be brought out, the initial onset was labelled as not attributable to service factors. After the onset

of the disease in July, 1976, the late officer was placed in low medical category. Thereafter, he was given sheltered appointments and was given sedentary duties."

8. In paragraphs 10 & 11, it is explained by the respondents:-

"That in reply to paras 10 & 11 it is stated that on 28.8.1990 the late officer was admitted to MH Jodhpur with breathlessness and angina pain. Despite prompt treatment, he went into Cardio Respiratory arrest next day and could not be revived. There was no evidence of exceptional stress or strain due to service prior to the fatal record episode on 28.8.1990. It is mentioned here that the opinion of the doctors treating the patient on attributability of the disease/death to service factors of the patient is advisory in nature. For determining whether the onset of disease/death is related to service facts, the doctor must have the full knowledge of nature of duties performed by the deceased more particularly nature of duty performed immediately preceding the death. This vital information was not known to the Doctors of MH Jodhpur and Therefore, the certificate of attributability given by them lacks credibility. The competent authority to adjudicate attributability of the death of army officer is the Ministry of defense who takes all the relevant reports/information and recommendations of various medical authorities into consideration. The Ministry of defense did not accept the death of the late Lt.Col. NK Vohra as attributable to his military service. His widow was, Therefore, not entitled to grant of special family pension.

9. It is asserted by the respondents in paragraphs 13 & 13A and 14:-

"That in reply to contents of para 13, 13A and 14, it is submitted that the attributability of the death of the late officer was examined by the competent authority viz. Ministry of defense. As already mentioned in para 11 above, Ministry of defense considered all aspects and circumstances of the case and recommendations of the medical authorities competent to examine such cases. The officer had died due to Acute Myocardial infarction which in this case was due to Arteriosclerosis. This has been confirmed by postmortem .Arteriosclerosis is an ageing process which is insidious in onset and slowly progressive. This is a constitutional disorder.....

"....The disease being constitutional in nature and no connection of attributability/aggravation to military service could be established, it was considered not related to service and special family pension was not recommended. As mentioned above, the death of the official was not considered attributable to or aggravated by military service by the competent authority."

10. It is further stated in paragraph 15 and 16:-

"In the instant case the circumstances and facts of the case were examined by the competent authority in determining the attributability and as mentioned earlier, it was found that no service facts contributed for either onset or precipitation of the fatal attack.

That in reply to contents of para 16, it is submitted that the petitioner is not entitled to grant of special family pension because the death of her husband was not attributable to his service."

11. Mr.Bareja, learned counsel for the petitioner, relied upon Regulation 423 which reads as under:-

"The cause of a disability or death resulting from a disease will be regarded as attributable to service when it is established that the disease arose during service and the conditions and circumstances of duty in the armed forces determined and contributed to the onset of the disease. Cases, in which it is established that service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the armed forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service."

12. Mr.Bareja referred to the certificate given by the doctor, which was approved by the DDMS. The same is as under:-

"Certified that (Name) N.K.Vohra Service No.IC 144496 L Rank Lt.Col.Unit.107GL Sec. died in hospital on 20.8.90 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

REMARKS OF DDMS HQ 12 CORPS

I agree with the above.

Sd/-

(A. CHATURVEDI)

Lt. Col.

DDMS

12 CORPS

Station: C/o 56 A.P.O.

Dated 7th Dec., 1990"

13. He also referred to the report given by the Medical Officer which states the deceased officer was in low medical category since July, 1976 and continued performing duties within the restrictions laid down till he died on the 29th of August, 1990 while at temporary duty at Jodhpur and according to the medical officer, the cause of the death was aggravated by the service.

14. The Medical Board consisting of Medical Officer had considered the entire circumstances and had come to the conclusion that no case had been made out for payment of special family pension. Mr.Bareja, the learned counsel for petitioner, would admit that the Board consisted of competent doctors. The Board had also considered the remarks made by the Medical Officer and had reached the conclusion that the death was not attributable to service.

15. Learned counsel, Mr.Bareja, relied upon number of authorities to show that Regulation 423 enjoins on the respondents to consider the case of the concerned officer at the time of the entry. According to Mr.Bareja, it was not established at the time of entry that the concerned officer was susceptible to same ailment. Any ailment suffered by the concerned officer while in service is attributable to military service. Mr.Bareja relied upon the Regulation 423 (c) which states that it must be established that the disease arose during service and the conditions and circumstances of the duty determined and contributed to the onset of the disease. The petitioner has not established, on the materials available on record, that it was caused owing to military service. The benefit of special family pension is intended only to cases where a person having good health had suffered an ailment. Mr.Bareja's contention is whenever a person dies while in Military service, the cause of death is attributable to the Military service. I am unable to accept this contention of the learned counsel for the petitioner. In the counter-affidavit the position of the deceased had been completely explained and the death of the petitioner's husband was in the course of some exercise and if he had died in the course of some exercise, it cannot be said that was due to hazardous military service. The precedents cannot be of any assistance unless the facts are proved clearly.

16. In this case I am satisfied that the husband of the petitioner was suffering from ailment in 1976 and the respondents had been giving him only such work which his health could permit and eventually he succumbed to the ailment because of the lack of resistance power in his body. It cannot be said that the death was attributable to the Military service within the meaning of the Regulations.

17. The petitioner has not made out any case for special family pension. Accordingly, the writ petition is dismissed.

18. There shall be no order as to costs.