

(2006) 08 DEL CK 0024
In the Delhi High Court
Case No : WP (C) . No. 6988 of 2005

Smt. Samaj Kaur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Pension Regulations for Army, 1961 — Regulation 2, 213

Citation : (2006) 134 DLT 165 : (2006) 92 DRJ 390

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : S.R. Katkal, for the Appellant; Manisha Dhir, for the Respondent

Final Decision : Allowed

Judgement

G.S. Sistani, J

1. In this petition under Article 226 of the Constitution of India, the petitioner has prayed that this Hon''ble Court be graciously pleased to:

(a) Issue a writ in the nature of certiorari by quashing the order dated 29.12.1998:

(b) Issue a writ in the nature of mandamus directing the respondent to release special family pension in favor of the petitioner w.e.f. the date of death of her late husband along with the arrears and pay 9% interest thereupon.

2. Brief facts of the case are that the husband of the petitioner was enrolled in the Indian Army on 8.1.1966 and after rendering service of around 15 years and 4 months, he retired from the Army on 7.5.1981 on completion of the terms of engagement. Thereafter on 1.5.1984 he was re-enrolled in the Army in defense Security Corps. As per Army procedure, husband of the petitioner was again examined by the medical authorities before his re-enrolment in the Army and was found to be medically and physically fit in all respects. The duty of the

husband of the petitioner was of such a nature which involved long and continuous hours of duty, as a result of which he started having health problems for which he was admitted and treated as a case of hypertension and was placed in low medical category. On 8.6.1998, while he was on duty, he suffered from a heart attack and was admitted in military hospital. On 14.6.1998 while he was at the military hospital, he died. That since husband of the petitioner died while performing his duty and attributable to military service, the petitioner is entitled for grant of special family pension, as per Regulation 213 of Pension Regulations for the Army, 1961 Part I. The claim for special family pension in respect of the petitioner was submitted duly sanctioned to the Chief Controller of defense Accounts (Pension), Allahabad (hereinafter referred to as "CCDA(P)"), vide letter dated 25.9.1998. But the case of the petitioner for special family pension was rejected by CCDA(P) in an arbitrary and illegal manner and only ordinary family pension was granted to her vide letter dated 29.12.1998. The petitioner preferred an appeal against the decision of the CCDA(P) on 5.5.1999 but of no avail. Petitioner issued a notice dated 27.1.2005 through her advocate to the respondents. The respondents vide their letter dated 5.5.2005 have again intimated to the petitioner that her claim of special family pension was rejected by the CCDA (P). Aggrieved by the action of the respondents, petitioner ultimately filed the present petition.

3. It is submitted by the learned Counsel for the petitioner that the petitioner is entitled to the special family pension in terms of Regulation. 213 of Pension Regulation for the Army 1961 part-I. The late husband of petitioner was suffering from Primary Hypertension and Cervical Spondylosis. It is further submitted that the death of late husband of the petitioner was due to Ischahanic Heart disease (unstable Angina). The diseases from which petitioner's husband was suffering are classified diseases and are attributable to military service as per Pension Regulation and Guide to Medical Officer (Military Pension). It is submitted that the petitioner's husband had no disease at the time of his re-enrolment in defense Security Corps on 01 May 1984.

4. It is further submitted that the CCDA(P) has acted in a most arbitrary and illegal manner by rejecting the special family pension to the petitioner. As per Regulation 2 of Pension Regulation for the Army 1961 Part-I, CCDA(P) is only an accounts office, which cannot over rule the findings of the Medical Officer and the Post Mortem report in addition to the opinion of the Commandant of the hospital on fatal case documents which are approved by next higher medical authority who is holding the rank of Major General.

5. The CCDA(P) vide his cyclostyled letter where the particular of the petitioner is filled up with pen, communicated the same to the petitioner without any application of mind and the CCDA(P) acted in arbitrary and illegal manner by overruling the recommendation of the medical authority.

6. It is further added that CCDA(P) is not the final authority to sanction the Special Family Pension. The CCDA(P) could not over rule the finding and

recommendation of medical authority which subsequently declared that the death of the petitioner is attributable to service due to nature of performance of duties.

7. The learned Counsel for the respondent has submitted that as per Rule 213 of Pension Regulations for the Army Part I (1961), a special family pension may be granted to the family of an individual if his death was due to or hastened by a wound, injury or disease which was attributable to Military service or a wound, injury or disease which existed before or arose during Military service. It is further submitted that special family pension claim in favor of the petitioner was submitted to Competent Pension sanctioning Authority, i.e., Chief Controller (now Principal Controller) of defense Accounts (Pensions) Allahabad vide defense Security Corps Records letter No. Pen/FP-2/2656102/79 (DS)/68 dated 25 September 1998 for consideration as usual as in all cases of such nature, with a copy to the petitioner for information. The special family pension claim was rejected by Competent Pension sanctioning Authority, i.e., CCDA(P), Allahabad, vide their letter No. F4/10/98/7134/VI/113 dated 09 September 1998 stating that the death of husband of the petitioner was due to a wound/injury of disease which is neither attributable to nor aggravated by military service.

8. Learned Counsel for the petitioner has placed reliance on Regulation 213 of the Pension Regulations for the Army, 1961. It would be useful to reproduce the same, at this stage.

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 attributable to military service.

or

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

9. Learned Counsel appearing for the respondents has placed reliance on paras 4, 5 and 6 of the counter affidavit, which are reproduced below:

4. The husband of was posted to 281 DSC P 1 attached to CAFVD Kirkee with effect from 03 March, 1996. While he was serving there, he was granted 49 days Annual Leave with effect from 13 April, 1988 to 31 May, 1988. After rejoining from leave, he was admitted in Military Hospital Kirkee on 02 June, 1988. Further, he was transferred to Military Hospital (CTC), Pune on 08 June 1998 and died there on 14 June, 1988 at 2330 hrs. As per death certificate issued by the medical authorities i.e. Military Hospital (CTC), Pune the disease or condition directly leading to death is ISCHAEMIC HEART DISEASE (UNSTABLE ANGINA) 414.

5. AS per Rule 213 of Pension Regulations for the Army Part I (1961), a special family pension may be granted to the family of an individual if his death was due

to or hastened by a wound, injury or disease which was attributable to Military service or the aggravation by Military service of a wound, injury or disease which existed before or arose during Military service.

6. Special family pension claim in favor of the petitioner was submitted to Competent Pension sanctioning Authority, i.e., Chief Controller (now Principal Controller) of defense Accounts (Pensions) Allahabad vide defense Security Corps Records letter No. Pen/FP-2/2656102/79 (DS)/68 dated 25 September 1998 for consideration as usual as in all cases of such nature, with a copy to the petitioner for information. The special family pension claim was rejected by Competent Pension sanctioning Authority, i.e. Chief Controller of defense Accounts (Pensions) Allahabad, vide there letter No. G4/10/98/7134/VI/113 dated 09 December, 1998 stating that the death of husband of petitioner was due to a wound/injury of disease which is neither attributable to aggravated by his military service. Accordingly the petitioner was granted ordinary Family Pension @ Rs. 1275/- per month with dearness relief as admissible from time to time within the framework of rules vide Pension Payment Order No. F/NA/5456/1998. This fact was communicated to the vide defense Corps Records letter No. PEN/FP-5/2656102/174 dated 29 December, 1998 with an advice to appeal against the decision of CCDA (P) Allahabad, if she so desired, within six months from the date of issue of their letter ibid i.e., on or before 08 June, 1999. However, no appeal from the was received in defense Security Corps Records Office within the stipulated period or even thereafter and the case closed accordingly.

10. The counsel for the petitioner submitted that this case is squarely covered as per Regulation 213, as the husband of the petitioner had died due to unstable enigma. This disease, as per the petitioner is attributable to military service and thus the petitioner is entitled to special family pension w.e.f. the date of the death of her husband.

11. During the course of hearing we had directed the respondents to produce the original record. We have heard learned Counsel for the parties and perused the original record as well as photocopies of the relevant documents which were placed on the Court record, and have given our thoughtful consideration to the matter. It is not in dispute that the husband of the petitioner suffered a heart attack while performing his duty on 8.6.1998. The petitioner has filed a copy of the death certificate, as Annexure P-1, wherein reasons of death have been given as "UNSTABLE ANGINA, CORONARY ARTERY DISEASE AND ESSENTIAL HYPERTENSION". It is also not in dispute that the claim of the petitioner for grant of special family pension was submitted by Record Officer respondent No. 2 to the respondent No. 3 CCDA(P). The petitioner was informed by CCDA(P) vide letter dated 29.12.1998 that her claim for special family pension stood rejected, as the cause of death of her husband was neither attributable to nor aggravated by military service.

12. The petitioner thereafter submitted an appeal to the Secretary, Ministry of defense, wherein besides bringing the facts to the notice of the Secretary, the

petitioner requested that the case be considered sympathetically, as she had small children. The petitioner also issued a legal notice on 27.1.2005, in response thereto she was informed that her claim stood rejected on 9.12.1998, as the cause of death was not attributable to nor aggravated by military service.

13. In recent judgments of this Court passed in WP(C) No. 3699/2004 Ex.Cfn. Sugna Ram Ranoliya v. Union of India and Ors. and WP(C) No. 13733/2005 Rajender Singh v. Union of India and Ors. various aspects dealing with disability pension have been considered by the Division Bench of this Court and the role of the CCDA(P) Allahabad. The role of the CCDA(P) Allahabad once the certificate of the Medical Board has been issued is no longer rest integra. The Division Bench has strongly reiterated that once a certificate has been issued by the Medical Board, entitling the member of the Force to disability pension this benefit cannot be withdrawn by the CCDA(P) on his own without holding an Appellate Medical Board in accordance with law. This view has been formulated on the simple logic as to how the accounts branch dealing with pension can sit over the judgment of medical experts who had the occasion to examine the records and the member of the Force. In the case of Rajender Singh (Supra) this Court had held as under:

This recommendation of the medical board and of the sanctioning authority which forwarded the papers in terms of the Rule to the PCDA(P) for disbursement of the amount and issuance of PP Order, was declined by the pension authorities on the ground that the same was not attributable. This action of the pension authorities is without jurisdiction and is arbitrary. This controversy need not detain us any further as this aspect of the case is no more rest integra and is covered by various judgments of this Court as well as different High Courts. Reference in this regard can be made to a recent Division Bench judgment of this Court in the case of JC 264149M Ex. Naib Sub Marut Sharan Tiwari v. Union of India and Ors. WP(C) 23320/2005, decided on 13th July, 2006, where the court held as under:

...The scope of power of PCDA(P) is a very limited and normally it would hardly have any jurisdiction to sit over the findings of the medical board. In a given case, it may refer the matter to a medical specialist, as envisaged under the army instructions but exceptions apart, as a matter of rule, the PCDA(P) would be bound by the findings of the medical board and would be obliged to carry out its responsibility in issuing the PPO and disbursement of pension to the concerned member of the force. The ambit and scope of its power has been subject matter of controversy for quite some time. However, this question is no more rest integra and is answered squarely by various pronouncements of different courts.

14. Another Division Bench of this Court in WP(C) No. 4924/2002 Nirmala Devi v. Union of India while granting special family pension had held as under:

We have, however, gone through the medical report, which is on record, namely, P-3, which indicates and establishes that the disability of the husband of the

petitioner was regarded as attributable to military services. The CCDA, however, differed from the aforesaid view and held that the death of the husband of the petitioner is not attributable to military service nor aggravated by any military service.

The aforesaid decision of the CCDA cannot be sustained in view of the ratio of the DB decisions of the Court in Ex-Signalman Shri Bhagwan Vs. Union of India (UOI), and Ex.Constable Jasbir Singh v. Union of India reported in 2003 (3) AD (Del) 15. We are in respectful agreement with the ratio of the decisions laid down in the aforesaid decisions. Accordingly, it is held that the petitioner shall be entitled to special family pension as the disability of the husband of the petitioner is held to be attributable to and aggravated by duties of military service by the medical board. The writ petition is allowed.

15. At the time of hearing the respondents have produced the original record and also placed a photo copy of the form AFMSF-81(Revised) i.e. report on cases (other than those due to injuries) which have ended fatally or are proposed for invaliding, dated 14.6.1998. In Part-B of the same under the heading CIRCUMSTANCES OF THE CASE, column No. 12 reads as under:

12. Do you consider the disability/ death is attributable to service? Give reasons). : Attributable to service due to nature of performance of duties.

16. The writ petition was filed in the year 2005. Counter affidavit was also filed in the same year. It is surprising that there is no mention of the record of AFMSF-81 nor the photo copy of the aforesaid form was filed. We find that there was no occasion for the respondents to have suppressed the aforesaid document. A member of the Force during service should always have a sense of security that if for any unfortunate circumstances he loses his life, his widow and children will not have to go from pillory to post for grant of their legitimate dues. Once the AFMSF-81 clearly mentioned that the death was attributable to service due to the nature and performance of duties coupled with the fact that the husband of the petitioner died at military hospital when he was in service, there was no occasion for CCDA(P) to reject the case of the petitioner and harass the widow who has been writing letters including letter dated 5.3.1999, wherein it was requested as under:

I have small children to be looked after and I humbly pray that my case for grant of special family pension be considered sympathetically.

17. Having gone through the record where it is being clearly mentioned the death is attributable to service due to nature of performance of duties we allow this writ petition and quash the order rejecting the claim of special family pension and direct the respondents to pay special family pension to the petitioner from 29.5.1998, the date when the petitioner was informed that in fact her claim for special family pension has been rejected. Petitioner may be given special family pension as expeditiously as possible and not later than 3 months of the date of pronouncement of this order.

18. For the aforesaid reasons the order dated 29.12.1998 is quashed. The writ petition is allowed with costs of Rs. 5000/- to be paid by the respondent to the petitioner.