

(2020) 09 PAT CK 0146

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 2925 Of 2020

Shobha Devi

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

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**Date of Decision:** Sept. 9, 2020**Acts Referred:**

- Central Civil Services (Pension) Rules, 1972 - Rule 38

**Hon'ble Judges:** Ashwani Kumar Singh, J**Bench:** Single Bench**Advocate:** A. N. Tripathi, Najmul Hodda, Ram Anurag Singh**Final Decision:** Dismissed

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**Judgement**

1. Heard Mr. A. N. Tripathi, learned senior advocate for the petitioner and Mr. Ram Anurag Singh, learned advocate for the respondent-Union of India.

2. The petitioner has moved this Court for the following reliefs:-

â€œ(i) Issuance of appropriate writ in the nature of certiorari for quashing the order dated 29.11.2019 (Annexure-5) rejecting the petitionerâ€™s

claim of full salary and/or full pension and invalid pension, as well as reimbursement of medical expenses and compassionate appointment and exemplary damages.

(ii) Issuance of declaration that so called order of proposed voluntary retirement of petitionerâ€™s husband by letter dated 11.10.1994 seeking to

retire petitioner w.e.f. 10.11.2994 mentioned in pension book by letter dated 29.10.1994 w.e.f. 10.11.1994 is void and illegal being in teeth of and

contrary to earlier order dated 10.10.1994 declaring petitioner's husband by medical board as medically unfit due to "PARANOID

SCHIZOPHRENIA" which is a mental infirmity which permanently incapacitated him from the service in terms of Rule 38 of C.C.S. Pension Rule

1972.

(iii) Issuance of Mandamus commanding respondents to full salary and other benefits w.e.f. 10.11.1994 the illegal voluntary retirement date upto

schedule date of retirement including salary and benefit of promotional post of Hawaldar which was illegally not given and/or to pay full pension and

full invalid pension.

(iv) Issuance of Mandamus commanding respondents to reimbursed medical expenses @ 25000/- per month w.e.f. 10.10.1994 onward till date and in

future also.

(v) Issuance of mandamus to respondents to consider giving compassionate appointment to elder son Manish Kumar Singh.

(vi) Issuance of Mandamus to pay exemplary damages and compensation to save the life and living of family of petitioner which is at starvation stage.

(vii) Any other relief or reliefs or which the petitioner may be deemed entitled under the law in the facts and circumstances of the case."

3. Mr. Tripathi, learned senior advocate appearing for the petitioner submitted that the order dated 29.11.2019 rejecting the claim of the

petitioner's husband for full salary and/or full pension and invalidation pension as well as reimbursement of medical expense and compassionate

appointment to the elder son of the petitioner Mr. Manish Kumar Singh is bad in law as also on facts. He contended that the husband of the petitioner

Naik (NK) Tej Bahadur while serving in GC, Bhubaneswar had been declared medical "Unfit" for further service in CRPF by a Board of

Medical Officer, GC, Hospital CRPF, Bhubaneswar in consequence of "PARANOID SCHIZOPHRENIA" vide Medical Board proceeding in

Form No.23 dated 10.10.1994. Under such circumstances, decision of the respondents to retire her husband voluntarily with effect from 11.10.1994 is

bad in law and is fit to be set aside.

4. On the other hand, Mr. Ram Anurag Singh, learned advocate appearing for the Union of India submitted that Naik (NK) Tej Bahadur was enlisted

in CRPF on 03.05.1973. After completion of 20 years of qualifying service, he had referred a notice dated 29.10.1994 along with undertaking certificate for voluntary retirement from service. Accordingly, his voluntary retirement notice was accepted by the competent authority with effect from 01.11.1994 vide office order dated 29.10.1994. He contended that after his voluntary retirement from service with effect from 01.11.1994, he was allotted pension payment order and his pension was revised from time to time as per 6th and 7th CPC. After a lapse of about 25 years from the date of retirement, he submitted an application dated 21.10.2019 to the IGP, Odisha Sector, CRPF in connection with sanction of invalidation pension as well as for compassionate appointment of his son. In turn, GC, Bhunaneswar, Odisha Sector, CRPF vide letter dated 25.11.2019 intimated that he is not entitled for invalidation pension as he proceeded on voluntary retirement with effect from 01.11.1994. He further contended that as per instruction contained in CRPF Standing Order No. 05/2001 for appointment on compassionate ground, widow, son or daughter including adopted son/daughter of the government servant, who dies in harness including death by suicide, missing and medically invalidated personnel are eligible. Further, real brother or sister, where the deceased was not married and the parents were dependent upon him having no other means of livelihood, are also eligible. Since, it was not a case of a government servant, who died in harness including death by suicide, missing and medically invalidated personnel, the son of the petitioner was not eligible for compassionate appointment. He contended that the application lacks merit and is fit to be dismissed. He also contended that since Naik (NK) Tej Bahadur had proceeded on voluntary retirement, he is not entitled for invalidation pension.

5. A counter-affidavit has also been filed on behalf of the respondent.

6. Having heard the parties and perused the materials on record, I find that there is no dispute to the following facts:-

(a) No.731140193 Naik (NK) Tej Bahadur was enlisted in CRPF on 03.05.1973.

(b) While serving in GC, Bhubaneswar, he had been declared medical "Unfit" for further service in CRPF by a Board of Medical Officer, GC,

Hospital, CRPF Bhubaneswar in consequence of "PARANOID SCHIZOPHERNIA" vide Medical Board Proceedings in Form No.23 dated

10.10.1994. Accordingly, GC, Bhubaneswar vide Memorandum dated 11.1.1994 gave one month notice to him with following conditions:-

I. He desired to retire earlier, or

II. He wants to avail leave as due and admissible to him, or

III. He wants to prefer an appeal against the findings of the medical board.

(c) He was given an opportunity of making representation within a period of one month on the action proposed.

(d) In turn, he served a notice on 29.10.1994 along with an undertaking certificate for voluntary retirement from service.

(e) His notice was accepted by the respondents-competent authority with effect from 01.11.1994 vide office order dated 29.10.1994.

7. In view of the aforesaid admitted facts, no illegality can be found with the action of the respondents whereby the request made by the petitioner

vide notice dated 29.10.1994 to allow him to proceed on voluntary retirement was accepted by the competent authority. Since Naik (NK) Tej Bahadur

had proceeded on voluntary retirement from service with effect from 01.11.1994, he is not entitled for invalidation pension. As far as reimbursement

of medical expense is concerned, he is entitled to medical expense allowance as per options exercised by him as admissible to him.

8. So far as the compassionate appointment of son of Naik (NK) Tej Bahadur is concerned, the same is also not admissible in view of CRPF Standing

Order No.5 of 2001 which provides that only widow, son or daughter including adopted son/daughter of the government servant, who dies in harness

including death by suicide, missing and medically invalidated personnel is eligible for compassionate appointment.

9. In the instant case, it is not the case of the petitioner that her husband died in harness including death by suicide or missing. It is also not a case of

an invalidated personnel.

10. In that view of the matter, even compassionate appointment cannot be made to the son of the petitioner.

11. The writ petition filed after 25 years of voluntary retirement, lacks merit. It is dismissed, accordingly.

12. Since the court proceedings are being conducted through virtual mode and normal court functioning has not been restored till date, it is considered

appropriate to adopt the following procedure for communication of the present order:-

(i) The judgment, which has been dictated during the course of proceeding of the virtual court, shall be communicated to me on my email by the Sr.

Secretary.

(ii) The corrected copy of the judgment shall be transmitted by me from my email id to the Sr. Secretary, which shall be treated to be an authentic

copy of the order passed by this Court in the present proceeding.

(iii) Hard copy of the judgment duly signed by me shall be preserved in my residential office for documentation and future use, if any.

(iv) Let a copy of the judgment be sent to Md. Najmul Hodda, learned counsel for the petitioner also on his email.

(v) Let steps be taken by the Sr. Secretary/registry for up-loading of the present order without compromising with the norms of social distancing.