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Smt. Kunta devi Vs Union of India (UOI) and Others

Civil Writ Petition No. 17135 of 2009

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 17, 2010

Acts Referred:
Central Civil Services (Extraordinary Pension) Rules, 1939 â€" Rule 3A#Constitution of India, 1950 â€" Article 226, 227

Citation: (2011) 161 PLR 668

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Judgement

Mahesh Grover, J.
This writ petition under Articles 226/227 of the Constitution of India, has been filed for the issuance of a writ in the

nature of certiorari quashing the impugned order Annexure P-11, vide which the Petitioner has been denied the extra-ordinary family pension.

2. The facts are not in dispute. The husband of the Petitioner, Subhash Chandra, was serving in 166 Battalion of the CRPF and was deployed on

active duty in the operational and disturbed area of the State of Jammu and Kashmir. On 12.5.2007, while on patrol duty, he died due to heart

attack. It is the case of the Petitioner that her husband was under continuous stress and prior to his death, he was on the roster for night duty from

8.5.2007 to 9.5.2007 and from 11.5.2007 to 12.7.2007.

3. The Respondents released the ordinary pension to the Petitioner and denied the extraordinary pension on the ground that the death of the

husband of the Petitioner due to heart attack could not be attributed to his duties and the same could be construed to be on account of natural

cause alone. To enhance their case, the Respondents relied upon the Government of India''s orders wherein it has been laid down that for

determining the compensation payable for death or disability under different circumstances, the case was to be categorized in five distinct

categories. For the purpose of the present controversy, the relevant category is category A, which reads thus:

Death or disability due to natural causes not attributable to Government Service. Examples would be chronic ailments like heart and renal diseases,

prolonged illness, accidents while not on duty, etc.

4. Counsel for the Petitioner, on the other hand, has referred to the rules called the Central Civil Services (Extraordinary Pension) Rules, with

specific reference to Rule 3-Al(b) and 3-Al(b)(ii) which are extracted hereunder:

(b) Death shall be accepted as due to Government Service provided it is certified that it was due to or hastened by,

(i) xxx xxxx xxxx xxxxx xxxxx xxx xxxx xxxx xxxxx xxxxx

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

5. It is, thus, the case of the counsel for the Petitioner that the death of the husband of the Petitioner was directly attributable to government service

and according to the guidelines, which have been issued and contained in the Appendix to the rules, injuries sustained when the man is on duty will

be deemed to have been received as result of incidences of government service, but in case of injuries suffered due to serious negligence or

misconduct, the question of reducing the disability pension could be considered.

6. To controvert the contention raised by the counsel for the Petitioner, Ms. Ranjana Shahi, learned Counsel appearing for the Union of India,

contends that by no stretch of imagination can the death of the husband of the Petitioner be attributed to government service and according to the

Government of India orders, which are contained in the rules itself, and as per Category A, the death or disability due to natural cause is not

attributable to government service, have been classified and which mean to be chronic ailments like heart and renal diseases, prolonged illness,

accident while not on duty. It is, thus, sought to be projected before this Court with reference to the aforesaid provision of the Government orders

and Category A that the terms ""natural cause not attributable to government service"" are specifically provided and cover the problem of heart as

well and that the term ""while not on duty"" in the said classification of Category A would merely pertain to accidents and not pertain to disease of

heart.

7. I have heard counsel for the Petitioners and have perused the impugned order as also the material on record,

8. There is no denial to the fact that the Petitioner was on duty at the time when he suffered heart attack and died. It is also not disputed that he

was serving in the disturbed area and was on night patrol duty. Therefore, the issue of his being on duty is not in dispute. The only question that has

to be determined is as to whether death, on account of heart attack, while on duty, could be attributable to natural causes or could it be attributed

to the government service. If the Government of India orders, category A, upon which reliance has been placed by the learned Counsel for the

Respondent, is to be perused, then it becomes manifestly clear that the rules contemplate the grant of extraordinary pension to an incumbent in the

event of death or disability not due to natural causes, and attributable to government service and denial thereof to causes that have been classified

as chronic ailments like ""heart and renal diseases, prolonged illness, accidents while not on duty"". Therefore, it becomes abundantly clear that if an

ailment like heart disease etc. are suffered by an incumbent of the services while not on duty, then he shall not be entitled to any extraordinary

pension, on account of any fall-out of such a disease. But if the person is on duty and in the process suffers a heart attack and such condition of

heart has not been traced to natural cause earlier, to mean a continuous neglective condition or a prior treated condition, then in such an

eventuality, the possibility of the personnel of the armed forces suffering such a problem, resulting in his death, cannot be stated to be not on

account of government service. It is not the case of the Respondents that the Petitioner was earlier suffering from such a condition and that such a

condition was detected or was being treated. Therefore, the possibility of the husband of the Petitioner suffering such a condition on account of

stressful conditions, created on account of his posting, cannot be ruled out. Even if there was a prior condition of heart and the same was

aggravated due to his being on duty, even then the incumbent would have been entitled to extraordinary pension.

9. The counsel for the Respondent has contended that a personnel of the armed forces is expected to be able to bear such stressful situations, with

which the Court is in absolute concurrence, but it would still depend upon individual to individual and his capability and capacity to withstand

stress, and even though, two persons are individually trained through the same process, they would not necessarily react in a similar fashion, when

under stress. Thus, the contention of learned Counsel for the Respondent necessarily has to be rejected. In any eventuality, the petition has to be

allowed and it is to be held that the Petitioner shall be entitled to the extraordinary pension as her husband died while on duty and which death can

be attributed to the government service, while on duty. The Petitioner shall be entitled to such a pension from the date of death of her husband.

Petition allowed.