

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A.80 of 2010

Smt. Pushpa Devi

.....Applicant

Versus

Union of India

.....Respondents

For Applicant : Co. (Retd.) S.R. Kalkal, Advocate

For Respondents: Sh. Mohan Kumar, Advocate

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. M.L.NAIDU, MEMBER (A)

ORDER

1. The applicant by this application has prayed to set aside the respondent's order dated 10.2.2009 and directions to respondent to release liberalised family pension and Rs.7.5 lakhs as ex-gratia payment.
2. Brief facts which are necessary for disposal of this petition are that the husband of the petitioner was enrolled in the Army on 12.1.1985 as combatant soldier and was posted to 3 Kumaon Regt. Later he was selected for performing the

duties in the Commando Platoon of 13 Rahstriya Rifles and was posted at Line of control at Baramula Sector of Jammu & Kashmir.

3. The petitioner's husband died due to Gun shot wound while on duty on 22.5.2002. The Court of Inquiry was held to investigate the cause of the death of the late husband of the petitioner and Court of Inquiry held that the cause of death of the applicant is suicide and not attributable to military service. The Commanding Officer 13 Rashtriya Rifles sent a condolence message to the petitioner's widow and expressed his condolence.
4. The petitioner asked for the benefit of pension and ex-gratia benefit which was declined. Hence, petitioner filed a Writ Petition No.6658/2008 in the Delhi High Court challenging the Court of Inquiry and findings during thereon. The Hon'ble Delhi High Court set aside the findings of the Court of Inquiry and remitted the case back to the respondent with the following directions:
 - (i) The impugned order holding that the husband of the petitioner committed suicide is set aside;

- (ii) The convening order should read as a direction for the Court of Inquiry to find out the cause of death of the deceased-husband of the petitioner;
- (iii) The Forces Commander of the battalion of the petitioner will apply his mind afresh to the evidence already recorded to come to the conclusion about the cause of death of the deceased – husband of the petitioner.

5. In pursuance of this, again Court of Inquiry was convened and the Court of Inquiry after reviewing the evidence again held that petitioner committed a suicide. Since petitioner committed a suicide, this finding was given by the Court of Inquiry by the order dated -10.2.2009 and declined to grant any liberalised family pension or ex-gratia payment. Therefore, the petitioner has challenged this order by filing the present petition before this Tribunal.

6. A reply was filed by the respondent and respondent has taken the position that the Court of Inquiry was reconvened and on the basis of evidence which was recorded in the first Court of Inquiry, the Court of Inquiry gave a finding that petitioner has committed a suicide and it is not attributable to military service.

7. We heard learned counsel for the parties and perused the record. Learned Counsel for the petitioner submitted that infact the direction given by the High Court has not been properly complied with. Learned counsel submitted that as per direction given by Hon'ble Delhi High Court, authorities should have decided that whether it was a case of suicide or accidental fire and not to investigate the cause of death and they further directed Forces Commander of Battalion to apply his mind afresh to the evidence already recorded to come to its conclusion.
8. We have bestowed our best of consideration to the submission made by the learned counsel for the petitioner. It appears that fresh convening order as it is understood by the army was to mean that the authorities are required to consider the question that whether it was a case of suicide or it was case of accidental firing. The Hon'ble Delhi High Court has already observed that since in the convening order they have said it that cause leading to the suicide presupposes that it was a case of suicide, whereas they should decide the fact that whether it is a suicide or accidental fire. Therefore, the

Ho'nble Delhi high Court directed Forces Commander of the Battalion to appreciate the same evidence and come to its finding. In the scheme of things, when Court of Inquiry is convened, the Court of Inquiry has to give a finding. The Forces Commander of the Battalion here could mean only Colonel of the Battalion. Therefore, the authorities bonafidely understood and reconvened the Court of Inquiry and the Court of Inquiry after reconvening, examined the matter in the light of directions given by the Delhi High Court and came to the conclusion that it was a case of suicide.

9. Petitioner has sent a note in his own handwriting that he is committing suicide after disgust in his life. We perused that note also that clearly indicates that it was a suicide and not a case of accidental fire. Therefore, the finding given by a Court of Inquiry on the basis of evidence already recorded that it was a case of suicide and not accidental fire. Since it was not a case of accidental firing therefore, petitioner (widow of deceased soldier) is not entitled to liberalised family pension.
10. Learned counsel for the petitioner next submitted that the widow of soldier is entitled to atleast ex-gratia payment of

sum of Rs.5 lakhs as per the notification dated 22.9.1998.

In this three categories have been mentioned as under:

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| (a) | Death occurring due to accidents
in the course of performance of duties | Rs.5.00 lakhs |
| (b) | Death occurring in the course of
performance of duties attributable to acts of
violence by terrorists, anti-social elements, etc. | Rs.5.00 lakhs |
| (c) | Death occurring during (i) enemy action in
international war or Border skirmishes;
and (ii) action against militants, terrorists,
Extremists, etc. | Rs.7.50 lakhs |

11. Learned Counsel has emphasised that (clause-a) given above will apply in the present case and applicant will be entitled to a sum of Rs.5 lakhs. The respondent has also admitted that he was on bonafide military duty. But the question is that whether the death has occurred to the petitioner during the course of performance of duty or not. In the present case, it is a fact that incumbent was in a bunker and out of disgust he has committed suicide. Therefore, it cannot be said that in the case of performance of duty he has met with an accident. It was a case of suicide and not accident, therefore, the incumbent is not entitled to ex-gratia payment of sum of Rs.5 lakhs

12. Hence as a result of above discussion, we are of the opinion that petitioner's husband has committed a suicide and he did not ^emet_L with an accident in course of performance of his duty. As such petitioner (widow of the deceased) is neither entitled to liberalised family pension nor the ex-gratia payment. However, looking to the harsh condition in which the petitioner and her children are left behind, we think it just & proper that petitioner should be compensated in some way and we direct respondent should pay them an ex-gratia payment of Rs.1 lakh.
13. The petition is disposed of with above observations. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. ML Naidu]
Member (A)

New Delhi
23 November, 2010