

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

17.

O. A. No. 217 of 2010

Smt. Raj Shekhawat

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. S. R. Kalkal, Advocate.

For respondents: Sh. R. Balasubramanian, Advocate.

CORAM:

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

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER
25.3.2011

1. The petitioner, by this petition has prayed that the respondents may be directed to grant liberalized family pension and ex-gratia benefits of 50% in favour of the petitioner and allow all other financial benefits in favour of the petitioner.

2. The petitioner is the mother of deceased Joginder Shekhawat and he was the only son of the petitioner. He was granted commission in the Army on 8.3.2003 in the rank of Lieutenant. He got married to Niharika on 27.11.2008. Soon after the marriage, she started showing her true colours and started misbehaving with the members of the family. Major Joginder Shekhawat died on 20.3.2010 in Jammu & Kashmir during terrorist attacks and his widow, namely, Niharika was granted liberalized

family pension. He met with battle casualty and it was certified by the authorities that his death was due to battle casualty and his case for grant of liberalized family pension to his dependants was moved but no actual family liberalized family pension has been released to the petitioner or to the widow of the deceased i. e respondent no. 6 Niharika because the disputes arose between the mother-in-law and the daughter-in-law. The mother-in-law claims that she is entitled to all the benefits on account of the premature death of her son. Therefore, this petition was filed by the mother of the deceased Major Shekhawat Smt. Raj Dulari Shekhawat, claiming that pensionary and other benefits of his son should be given to her or may be divided 50-50.

3. A reply has been filed by the respondents and the respondents contested the petition. Similarly, a reply has also been filed by respondent no. 6 who claims that she is the lawful married wife and the next of kin of Major Joginder Shekhawat, therefore, she is exclusively entitled to liberalized family pension to the exclusion of the mother-in-law. Therefore, the question that arises for consideration is that to what extent mother of the deceased is entitled to the benefits which is likely to accrue in favour of the family of deceased Major Joginder Shekhawat. It is alleged that Major Joginder Shekhawat, before his death, had already executed a will and nomination in favour of his mother. It is pointed out that before Major Joginder Shekhawat died, the nomination made by him was not changed in the name of his wife but in Part II order she has been recognized as married wife of the deceased Major Shekhawat and the marriage has also been notified i. e on 20.11.2008. It is also stated that she has child also. The petitioner in this petition has sought that whatever amounts are due on account of death of deceased

Major Joginder Shekhawat may be released and may be apportioned between the petitioner and respondent no. 6 Niharika. She also claims that the benefit of death cum retirement gratuity amount may be given to her as the deceased Major Joginder Shekhawat has nominated her for the same. It is also claimed that ex-gratia amount be paid to her.

4. We are not concerned with the insurance as it is not the subject matter of the petition before us. Therefore, the only three items need to be decided; one that widow or the mother is entitled to the entire amount of liberalized family pension, death cum retirement gratuity and ex-gratia payment which is normally given in such circumstances.

5. Coming to the first question with regard to the payment of pension, the pension is covered by Chapter II of Pension Regulations of Army, 1961 Part I & Regulation 146 Chapter 6 shall apply to all Commissioned Officers of the Army including military service. Section 4 of this Chapter deals with the family pensionary awards with regard to various nature of pension which has been granted like family pension, special pension and liberalized family pension. In this connection, an Army Order has been issued on 31.1.2001. On the recommendations of the 5th Pay Commission, certain guidelines have been issued by the government of India that how family pensions will be dealt with and we are concerned with the liberalized family pension which is covered in para 6 of this Order. Para 6(i) says that the liberalized family pension at this rate

shall be admissible to the widow in the case of an officer or PBOR of Armed Forces Personnel and equal to reckonable emoluments last drawn.

Para 6.2 says that in case the army personnel is not survived by widow but is survived by child/children only, all children together shall be eligible for liberalized family pension at the rate equal to 60% reckonable emoluments and the widow is also eligible for liberalized family pension at the rate of 60% of reckonable emoluments as defined in para 5.2.

Para 6.4 says that dependent family pension (liberalized) in respect of the commissioned officers that in case where an officer dies as a Bachelor or as a widower without children under the circumstances mentioned in para 4.1 'D' and 'E', the dependent family pension (liberalized) shall be admissible to parents without reference to their pecuniary circumstances at the rate of 75% of liberalized family pension for both parents and at the rate of 60% of liberalized family pension for single parent. Therefore, in view of the recommendations made by 5th Pay Commission so far as the liberalized family pension is concerned, the widow is alone entitled equal to reckonable emoluments last drawn. Therefore, so far as the liberalized family pension is concerned, the widow is the first to be entitled to this amount and nobody else can share. So far as the liberalized family pension is concerned, there is no question of nomination involving the mother. It is only the widow and the widow alone has been made eligible for grant of liberalized family pension. Though learned counsel for the petitioner tried to submit that a distinction has been made with regard to officers and PBOR. In case of PBOR, nomination is permitted but in case of officer, no such nomination is made permissible. This is the scheme of the rule to which there is no

challenge before us. Thus, so far as grant of liberalized family pension is concerned it is the widow and the widow alone is entitled, if she is surviving but if she is not surviving this right has been given to children and thereafter it has been given to the parents. Therefore, in this situation, so far as liberalized family pension is concerned, the petitioner, who is the mother of the deceased Major Joginder Shekhawat is not entitled to any share in the liberalized family pension. Therefore, the entire liberalized family pension shall be released to respondent no. 6 Niharika.

6. The next question comes with regard to the death cum retirement gratuity concerned, in that context, learned counsel for the petitioner has produced before us a nomination which has been made by deceased Major Shekhawat and in that nomination dated 9.4.2010 issued by the Additional Director General of Man Power Policy, it has been clearly mentioned in para 4 that nomination for death cum retirement gratuity dated 8.3.2003 in favour of Smt. Raj Dulari (mother) and no revised nomination after marriage has been received from the department. Therefore, so far as nomination in favour of the petitioner is concerned it still survives. Learned counsel appearing for the respondent no. 6 submitted that in Part II of the order it has been recorded that Niharika, D/o K. S. Rathore has been married to deceased Major Joginder Shekhawat and she is the next of kin of deceased Major Joginder Shekhawat. Thus, Part II order does not show that the deceased Major Joginder Shekhawat, before he met with death, has changed his nomination in favour of his widow Niharika Respondent No. 6. This Part II of the order only shows that Major Joginder Shekhawat was married to Niharika. Learned counsel for the respondents has also invited our attention to Army Instructions

8/S/70 dated 26.12.1970 and has drawn our attention to provisos a(i) and a(ii) to para 4. It clearly shows that if at the time of making the nomination, if the individual has a family, the nomination would not be in favour of a person or persons other than members of his family. Clause a(ii) says that if the individual has no family, the nomination can be made in favour of a person or persons other than the family. Therefore, para 4 a(ii) clearly contemplates that whenever there is a family, the nomination that is made is of a member and not of anybody else. It is only in the event that there is no family then a(i) contemplates that somebody else can be nominated. It further says that if there is more than one person involved, he will specify the amount of share which each will get. Para 5 shows that the individual may provide in the nomination, in respect of any specified nominee, who predeceases him or who dies after his death but before receiving payment of gratuity, the right conferred on that nominee shall pass to such other person as may be specified in the nomination. We are not concerned with para 5(a) but para 5(b) is relevant for all purposes and which says that the nomination made by the individual who has no family at the time of making it, or the provision, made in the nomination under the second proviso in clause (a) (i) shall become invalid in the event of his subsequently acquiring a family or an additional member in the family. That shows that if at the time of making nomination if the individual had no members of the family, then he can nominate anybody but thereafter if he gets his own family then in that case, nomination in favour of persons other than member of the family will stand invalidated out. Though clause a(i) has been mentioned in para 5(b) but which here means clause a(ii) of para 4 that will make a harmonious reading in the matter. Learned counsel for the respondents tried to persuade us that

once he has made the nomination in favour of members of his family i. e. his mother Raj Dulari then as per para 4(a) is invalidated the moment he got married with Niharika. Submission of learned counsel for the respondents cannot be accepted. First, the mother has been mentioned in the extended definition of the family as defined in this very instruction para 6. Therefore, at the time when Joginder Shekhawat made a nomination, he had a family i. e. his parents were alive and he nominated his mother and after the marriage, he could have nominated his wife as member of the family. Unfortunately, that was not done. Therefore, with reference to Part II of the order or reference to clause 5, we cannot construe that respondent Niharika has been substituted in place of Raj Dulari, mother of the deceased. Her nomination stands as it is and it cannot be revoked after the marriage. Revocation has to be by a specific request that has not been made. Therefore, she remains as a nominee of the deceased Major Joginder Shekhawat for the benefit of death cum retirement gratuity. Therefore, the petitioner is entitled to the entire amount of death cum retirement gratuity of Major Joginder Shekhawat.

7. The next question is with regard to the question of ex-gratia payment. The ex-gratia payment is granted by the Government of India vide notification dated 22.9.1998 and it says that the President has been pleased to decide that the families of Defence Service personnel who die in harness in the performance of their bona fide official duties shall be paid the following ex-gratia lump sum and compensation. So far as ex-gratia compensation is concerned, a guideline has been provided in the order dated 22.9.1998 by annexing directions. Para 2 of the Annexure shows that the power has

been delegated to Ministry of Defence to sanction ex-gratia and it would be their responsibility as well as that of the financial Advisor to satisfy themselves that the death of the government servant to be compensated by the payment of lump sum ex-gratia to the family in fact occurred in the actual performance of bona fide official duties and to establish its casual connection and nexus with government service. Therefore, this amount has to be decided by the Ministry of Defence in consultation with the Financial Adviser of the Defence Services. However, so far as the apportionment is concerned, there is no guideline provided in this. Therefore, so far as this part is concerned, we leave it to the Ministry of Defence to decide whether the entire amount of ex-gratia payment should be given to the widow of deceased Major Joginder Shekhawar or it has to be apportioned between the mother-in-law and the daughter-in-law. This part may be decided by the Ministry of Defence.

8. Consequent to the above discussion, we hold that so far as liberalized family pension is concerned, it is the respondent no. 6 Smt. Niharika who is exclusively entitled for the same to the exclusion of the petitioner. So far as the amount death cum retirement gratuity is concerned, the petitioner is entitled to the whole of the amount. So far as the amount of ex-gratia payment is concerned, this has to be decided by the Ministry of Defence that the amount is to be apportioned or is not to be apportioned. The respondents are directed to release all the amounts due to the petitioner and the respondent no. 6 and the same may be released forthwith within a period of four weeks. The petition is allowed in part. No order as to costs.

9. Stay order is vacated.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
March 25, 2011