



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal Nos.7459-7460 of 2010

KANCHAN DUA

.... Appellant(s)

Versus

UNION OF INDIA & ANR.

.... Respondent (s)

J U D G M E N T

L. NAGESWARA RAO, J.

1. Sanction was accorded by the President of India for the modifications to the Rules/Regulations concerning pensionary benefits to the Armed Forces personnel on 31.01.2001. Pensionary benefits upon the death or disability in attributable/aggravated cases is dealt with in Part II thereof. Category 'E' of Part II is as follows:

Category 'E'

Death or disability arising as a result of: -

- a) Enemy action in international war.*
- b) Action during deployment with a peace keeping mission abroad.*
- c) Border skirmishes.*
- d) During laying or clearance of mines including enemy mines as also minesweeping Operations.*

- e) *On account of accidental explosions of mines while laying Operationally oriented mine-field or lifting or negotiating mine-field laid by the enemy or own forces in Operational areas near international borders or the line of control.*
- f) *War like situations, including cases which are attributable to/aggravated by: -*
 - i. *Extremist acts, exploding mines etc. while on way to an Operational area.*
 - ii. *Battle inoculation training exercises or demonstration with live ammunition.*
 - iii. *Kidnapping by extremists while on Operational duty.*
- g) *An act of violence/attack by extremists, anti-social elements etc. while on Operational duty.*
- h) *Action against extremists, anti-social elements, etc. death/disability while employed in the aid of civil power in quelling agitation, riots or revolt by demonstrators will be covered under this category.*
- i) *Operations specially notified by the Government from time to time.*

2. The eligible members of the family of Armed Forces personnel mentioned in Category 'E' shall be entitled to Liberalised Family Pension in case of his death. The scope of the above provision falls for our consideration in these appeals.

3. The husband of the Appellant was commissioned in the Army in October, 1968. In 1990, he was promoted as a Colonel. When he was posted as the Commandant of 890

Animal Transport Battalion in Nowshera, Jammu and Kashmir, he was moved to Rajouri for Operational requirement in Operation Ran Vijay at the location of HQ 25 Infantry Division. In the morning of 25.01.1992, he was found dead in his room. The cause of death was found to be sudden cardiac failure due to high stress and strain. The Appellant was initially granted ordinary family pension and, later special family pension. She made a representation for grant of Liberalised Family Pension. The Appellant complained that the entry in the service record of her husband was wrongfully altered from "Physical casualty under Operation Rakshak" to "Physical casualty". As there was no response, she filed a Writ Petition in the High Court of Punjab and Haryana at Chandigarh seeking alteration of the entry in the service record of her husband from "Physical casualty" to "Physical casualty under Operation Rakshak". The High Court allowed the Writ Petition and directed the alteration of the service record of the Appellant's husband to "physical casualty under Operation Rakshak". Reliance was placed by the High Court on the findings recorded in the Court of Inquiry that the death of the Appellant's husband was attributable to bona fide military service in the field covered under Operation Rakshak. The High Court further directed the

Respondents to consider grant of Liberalised Family Pension to the Appellant.

4. After altering the entry in the service record of the Appellant's husband from "physical casualty" to "physical casualty under Operation Rakshak", the Respondents found that the Appellant was not entitled for Liberalised Family Pension. Aggrieved by the rejection of the request for payment of Liberalised Family Pension, the Appellant approached the High Court of Punjab and Haryana by filing a Writ Petition. The said Writ Petition was transferred to the Armed Forces Tribunal, Regional Bench, Chandigarh. Being of the opinion that cardiac failure does not fall under Category 'E' of Part II of the Instructions issued by the Government of India on 31.01.2001, the Tribunal dismissed the Transferred Application of the Appellant. The legality of the judgment of the Tribunal is assailed in these appeals.

5. It will be relevant to refer to the relevant Instructions to understand the scope of the modifications made to the pension Rules/Regulations governing the Armed Forces personnel from time to time. By a letter dated 24.02.1972, the Chiefs of the Army, Navy and the Air Staff were informed about modifications to the then existing Rules and orders relating to the grant of special family pensionary awards and disability

pension. Liberalised Family Pension was announced in favour of the families of the Armed Forces personnel killed in action or to those who have been disabled on account of injuries sustained in the operations against Pakistan, commencing from 03.12.1971. The awards sanctioned therein were also made applicable to personnel who were killed in action or were disabled on account of injuries sustained in the international wars of 1965 (including Kutch and Kargil Operations), 1962 and 1947-1948 (Kashmir Operations), as well as the Goa and Hyderabad Operations. The Liberalised Family Pension was further extended to personnel who died or were disabled as a result of fighting in war-like Operations or border skirmishes either with Pakistan on the ceasefire line or any other country and those who fought against armed hostiles like Nagas and Mizos and during fighting in service with peace keeping missions abroad on or after 15th August, 1947. A decision was taken pursuant to the recommendations of the 4th Central Pay Commission regarding pensionary benefits to the Armed Forces personnel on 30.10.1987. Part IV of the letter dated 30th October, 1987 deals with Liberalized Pensionary Awards (battle casualty and such other cases as may be specially notified by the Government). The Government of India issued Instructions on 31.01.2001 for implementation of the recommendations of

the 5th Central Pay Commission regarding Liberalised Family Pension for the Armed Forces personnel retiring, invaliding or dying in harness on or after 01.01.1996. There was a broad division of cases arising out of attributable/aggravated causes into five categories. Operations specially notified by the Government from time to time were included in Category 'E'. The eligible member of the family of the Armed Forces personnel falling in Category 'E' was entitled to Liberalised Family Pension in case of his death or disability. As the contention of the Appellant is that her husband was part of Operation Rakshak which was notified by the Government of India, it is necessary to refer to the notification dated 07.05.1990 for assessing her eligibility to Liberalised Family Pension. Certain concessions were made to the Armed Forces personnel who were deployed in Operation Rakshak by the said notification. Apart from others, Liberalized Pensionary Awards, subject to the conditions laid down in para I of the letter dated 24.02.1972 were made applicable to personnel in Operation Rakshak. It is important to note that troops who were engaged in active operations against militants were held to be entitled to the field service concessions which were applicable to the location. In addition, those troops which were engaged in active operation against militants were held to be entitled to

Liberalized Pensionary Awards, subject to the conditions laid down in the letter dated 24.02.1972.

6. Mrs. V. Mohana, learned Senior Counsel was appointed as Amicus Curiae to appear for the Appellant. She submitted that all the Army personnel working in the State of Jammu and Kashmir were declared to be on active service as per the notification dated 05.09.1977. She relied upon Section 3 and 9 of the Army Act, 1950 to submit that the Appellant's husband was in active service at the time of his death. Though the Appellant's husband was working as Commandant of the Animal Transport Battalion, his death due to sudden cardiac failure took place when he was in active service. She emphasized that the Appellant's husband died during his service in Operation Rakshak which was a notified Operation mentioned in Category 'E' of para 4.1 of the Instructions dated 30.01.2001. She submitted that according to the Instructions that were issued on 31.01.2001, the Appellant is entitled to Liberalised Family Pension as per para 6 therein. She relied upon judgments of the High Court of Delhi, High Court of Jammu and Kashmir and the High Court of Punjab and Haryana in support of her submission that the family members of the Armed Forces personnel who died during their service in the notified Operations are entitled to Liberalised Family Pension.

7. Ms. Madhavi Divan, learned Additional Solicitor General contended that Liberalised Family Pension is associated exclusively with pension granted in respect of death or injury caused in live action. Placing reliance on a judgment of this Court in ***Brij Mohan Lal v. Union of India***¹, she submitted that grant of Liberalised Family Pension for death by natural causes would diminish the sheen of sacrifice of the servicemen who were killed in live action. The death of the Appellant's husband due to sudden cardiac failure would fall under Category 'B' of the Instructions issued on 31.01.2001 and the applicable Special Family Pension was rightly granted to the Appellant. The very genesis of the Liberalised Family Pension highlighted by the learned Additional Solicitor General was through a communication dated 24.02.1972 which was issued for the purpose of acknowledging the sacrifice of persons who were killed in live action.

8. The basis of the claim of the Appellant for Liberalised Family Pension flows from the Instructions dated 31.01.2001. There is no doubt that Operation Rakshak is a notified Operation falling under Clause 9 of Category 'E' thereof. There is also no dispute that those covered in Category 'E' are entitled for Liberalised Family Pension. However, the notification issued by the Government extending concessions

¹ 2012 (6) SCC 502

to the Armed Forces personnel deployed in Operation Rakshak provides that Liberalized Pensionary Awards are extended only to those troops in active Operations against militants in terms of para I of the letter dated 24.02.1972. A bare perusal of para I of letter dated 24.02.1972 would make it clear that only personnel killed or disabled on account of injuries in action are eligible for Liberalized Pensionary Awards. Therefore, we are in agreement with the Respondent that the Appellant is not entitled for Liberalised Family Pension.

9. We have examined the judgments of the High Courts cited by Mrs. V. Mohana, learned Amicus Curiae in ***Manju Tewari v. Union of India***², ***Preeti Sidhu v. Union of India***³, ***K.J.S. Buttar v. Union of India***⁴, ***Major Arvind Kumar Suhag v. Union of India***⁵, ***J. P Bhardwaj v. Union of India***⁶, ***Radhika Devi v. Union of India***⁷ and ***Pushpa Devi v. State of Haryana***⁸. Though relief of Liberalised Family Pension was granted by the High Courts in those judgments, the High Courts have not examined the letter dated 24.02.1972 and the notification dated 07.05.1990. Therefore, no relief can be given to the appellant on the basis of the said

² 2005 (3) SCT 458

³ 2010 (28) SCT 400

⁴ 2011 (11) SCC 429

⁵ 2013 (15) SCT 543

⁶ WP (C) No.348 of 2012 Delhi HC (DB)

⁷ 2014 (10) RCR (C) 3136 (DB)

⁸ 2015(2) SCT 170

judgments. The judgments relied upon by Mrs. V. Mohana, learned Amicus Curiae have to be considered to have been determined on the particular facts of those cases.

10. Mrs. Mohana relied upon the recommendations of a Committee of Experts, appointed by the Ministry of Defence, Government of India to review matters pertaining to service and pension. Certain recommendations made in the said report are in favour of the Appellant. It was observed in the said report that persons disabled or dying in an Operational area due to illnesses induced by harsh climatic conditions of such an area or due to an accident while patrolling in such an area is no less important a sacrifice than another dying by a bullet in the same locale. After obtaining Instructions, the learned Additional Solicitor General submitted a note according to which the said recommendation of the Committee was not accepted by the Government. Hence, we cannot rule in favour of the Appellant on the basis of the recommendations of the Committee of Experts.

11. Before parting, we appreciate the valuable assistance rendered to us by Mrs. V. Mohana, learned Amicus Curiae.

12. For the aforementioned reasons, the appeals are dismissed.

.....J
[L. NAGESWARA RAO]

.....J
[HEMANT GUPTA]

**New Delhi,
September 23, 2019.**

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal Nos. 7525-7526 of 2019
(Arising out of SLP (C) Nos.8588-8589 of 2014)

SMT. RADHIKA DEVI

.... Appellant(s)

Versus

UNION OF INDIA & OTHERS.

.... Respondent (s)

W I T H

Civil Appeal No. 7527 of 2019
(Arising out of SLP (C) No.26105 of 2015)

J U D G M E N T

L. NAGESWARA RAO, J.

Leave granted.

- 1.** For the sake of convenience, the parties are referred to as they are arrayed in Civil Appeal Nos.7525-7526 of 2019 arising out of SLP (C) Nos.8588-8589 of 2014 filed by Smt. Radhika Devi.
- 2.** Naib Subedar Umed Singh was enrolled in the Army on 13.03.1976. On 19.12.2001, he was posted at the International Border in Operation Parakram. While taking part in the fire fighting drill activities at about 4.00 pm on 21.05.2002, he collapsed and was declared dead.

According to the death certificate, he died due to Ischemic heart disease leading to cardiac arrhythmia (ventricular fibrillation).

- 3.** The Respondents granted Special Family Pension to the Appellant. Unsatisfied with the grant of Special Family Pension instead of the Liberalised Family Pension, the Appellant filed O.A. No.167 of 2011 before the Armed Forces Tribunal, Principal Branch, New Delhi (for short “the Tribunal”). The Tribunal dismissed the O.A. on 23.11.2011, holding that the Appellant was not entitled to either Liberalised Family Pension or ex-gratia payment. Aggrieved by the order of the Tribunal, the Appellant filed a Writ Petition in the High Court of Delhi, which was allowed. The High Court found that the Appellant was entitled to Liberalised Family Pension and ex-gratia payment of Rs.5 lakhs. The Appellant challenged the judgment of the High Court to the extent that ex-gratia payment of Rs.7.5 lakhs was not awarded in her favour. The Respondent, Union of India has also filed an appeal questioning the judgment of the High Court in so far as it relates to the declaration that the Appellant is entitled to the Liberalised Family Pension and the award of Rs.5 lakhs as ex-gratia amount.

4. The claim of Liberalised Family Pension by the Appellant is on the basis of the Instructions issued by the Government of India on 31.01.2001. As per the said Instructions, a member of the family of a deceased Armed Forces Personnel whilst employed in an operation notified by the Government of India would be entitled to Liberalised Family Pension. In ***Kanchan Dua v. Union of India & Anr.***⁹, we have discussed in detail the modifications issued to the rules and regulations granting beneficiary awards to the family members of the Armed Forces Personnel who died in action by the letter dated 24.02.1972. We have also carefully examined the scope of the entitlement of Liberalised Family Pension in case of the death of persons employed in the operations notified by the Government of India. After a close scrutiny of the relevant circulars, we have held that Liberalised Family Pension in accordance with the Instructions issued by the Government of India is payable only to the family members of Armed Forces personnel who have died in action.
5. In view of the death of the Appellant due to cardiac failure, the Appellant is not entitled to Liberalised Family Pension. In so far as the payment of ex-gratia amount/

⁹ Civil Appeal Nos.7459-7460 of 2010

compensation is concerned, we are convinced that the Appellant is entitled to Rs.5 lakhs as ex-gratia compensation in accordance with the Instructions dated 22.09.1998. The special benefits that were granted by the Government of India for ex-gratia payment is payable in all cases of death and disability in service to the family members of the Armed Forces Personnel who died in harness. As the death of the Appellant's husband was not during enemy action in international war or border skirmishes and action against militants, terrorists, extremists etc., the Appellant is not entitled to Rs.7.5 Lakhs as claimed by her.

6. We set aside the judgment of the High Court declaring that the Appellant is entitled for Liberalised Family Pension. She is entitled only for the Special Family Pension. Further, we uphold the judgment of the High Court that the Appellant is entitled for ex-gratia payment of Rs.5 lakhs. With the above observations, the Appeals are disposed of, accordingly.

.....J.
[L. NAGESWARA RAO]

.....J.
[HEMANT GUPTA]

**New Delhi,
September 23, 2019.**