

ITEM NO.103

COURT NO.2

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 7459-7460/2010

KANCHAN DUA

Appellant(s)

VERSUS

UNION OF INDIA & ANR.

Respondent(s)

Date : 21/03/2017 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

Ms. V. Mohana, Sr. Adv. (AC)

For Appellant(s) Mr. Brijender Kaushik, Adv.
Mr. Devesh Kumar Tripathi, AOR

For Respondent(s) Mr. Rana Mukherjee, Sr. Adv.
Ms. Kiran Bhardwaj, Adv.
Ms. Sunita Gautam, Adv,
Mr. Mukesh Kumar Maroria, Adv.
Mrs. Anil Katiyar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Heard Ms. V. Mohana, learned Amicus Curiae for the appellant and Mr. Rana Mukherjee, learned senior counsel along with Ms. Kiran Bhardwaj, learned counsel for the respondent.

The appellant is grieved by the judgment and order passed by the Armed Forces Tribunal declining the benefit of the liberalized family pension.

At the outset, we are obligated to say, there has been no discussion for such refusal by the Tribunal. Be that as it may, we

are not inclined to remit the matter as the matter has been pending for long. It is submitted by learned senior counsel appearing for the appellant that her case is covered by the notification dated 31.1.2001 issued by the Ministry of Defence. She has drawn our attention to paragraph 4.1 which covers certain categories who are entitled to receive liberalized pensions. She has emphasized on category E (i) which reads as follows :-

"(i) Operations specially notified by the Government from time to time."

Our attention has also been drawn to paragraph 6.1 of the same notification. It reads as follows :-

"6.1 In case of death an Armed Forces Personnel under the circumstances mentioned in category 'D' and 'E' of Para 4.1 above, the eligible member of the family shall be entitled to Liberalized Family Pension equal to reckonable emoluments last drawn as defined in para 3.1 above, both for officers and PBOR, Liberalized Family Pension at this rate shall be admissible to the widow in the case of officers and to the nominated heir in the case of PBOR until death or disqualification."

According to the learned senior counsel appearing for the appellant, if paragraph 6.1 is read in conjunction with paragraph 4.1(e)(i) she would be entitled to liberalized family pension as per the notification dated 7.5.1990. The said notification relates 'Operation Rakshak Concessions Armed Forces Officers and Personnel Below Officer Rank'. It is urged by her that there is no dispute that her husband was in operation 'Rakshak'. Learned senior counsel would submit that his service book reflects that the death is attributable to *bona fide* military service in the field covered under operation 'Rakshak'. Be it noted, on 19.2.1992, there was a recommendation for grant of liberalized pension via letter dated 20.5.1992. The relevant part of the said recommendation reads as follows :-

"Keeping this in view, Smt. Kanchan Dua W/o Late

Col. Jarnail Singh Dua is entitled to Liberalized Special family pension and not ordinary family pension granted to her. You are therefore, requested to immediately look into the matter and grant entitled pension to Smt. Kanchan Dua W/o IC 28004 Late Col. Jarnail Singh Dua under intimation to all concerned."

Mr. Rana Mukherjee, learned senior counsel would submit that the appellant is not entitled to get the liberalized family pension because she has been given special family pension and the death was not due to military action. According to the learned senior counsel for the respondent, the appellant will be entitled to the pensionary benefits under category (b) of the notification dated 31.1.2001. The learned senior counsel has also drawn our attention to clause (c) of Notification dated 6.5.1990 which is to the following effect :-

"c) Liberalized pensionary awards subject to the conditions laid down in para 1 of this Ministry's letter No.200847/Pen-C/71 dated 24.2.72 as amended from time to time and Govt. of India Ministry of Defence letter No.1(5)87/D (Pen/Sers) dated 30.10.87."

Regard being had to the aforesaid, we direct the respondents to file the letter dated 24.2.1972 as amended from time to time.

Let the matter be listed for further hearing on 12.4.2017 along with SLP (C) No.26105 of 2015 and other connected matters.

Learned counsel for the parties are at liberty to file additional documents and the convenience volume.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master