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SMT. CHARANJIT KAUR

v.

UNION OF INDIA AND ORS.

JANUARY 21, 1994

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[P.B. SAWANT AND N.P. SINGH, JJ.]

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Constitution of India : Articles 21 and 32—Compensation—Death of Army Officer in mysterious circumstances—Finding of enquiry that death not attributable to military service, but report withheld from petitioner-wife as being highly confidential—Claim for Special Family Pension and Children Allowance rejected by authorities as petitioner could not make out that death was on account of or during, military service—Held, the officer died while in service, in mysterious circumstances—His death attributable to, and aggravated by, military service—Petitioner, entitled to Special Family Pension and Children Allowance—Rs.6 lakhs to be paid as compensation—Casual manner of preparing affidavit criticised—Investigation to be made at the highest level—Chief of Army Staff to look into the matter.

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The petitioner's husband, a Major in the Army died in mysterious circumstances. The petitioner-wife was given a post- mortem report which attributed the death to extensive burns.

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After over 7 years, and several letters, she was informed that the enquiry held had found that the death of her husband was not attributable to military service. Her claim for Special Family Pension and Children Allowance was rejected in July 1985 with the intimation that she could appeal within 6 months if she was dissatisfied with the order. She was refused a copy of the enquiry report as being a highly confidential document.

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The petitioner-wife approached this Court claiming Special Family Pension and Children Allowance. She also claimed damages of Rs.7,50,000.

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The authorities *inter alia* contended that they had not denied the pension and allowance to the petitioner but that she had failed to file a review with them. They also admitted that the Court of Inquiry could not conclusively prove whether the officer's death was one of murder or of suicide.

Allowing the petition, this Court

HELD : 1. The conduct of the authorities has, right from the inception, been utterly irresponsible. There is a good deal of substance in the allegation that the death of the petitioner's husband was in mysterious circumstances. Further, no enquiry whatsoever seems to have been made and if made, its results were kept a secret. That such an incident should have occurred in the presence of the responsible Army officers and should go uninvestigated and in fact completely ignored is all the more baffling. There is a good deal in this case for which the authorities have to answer. This is apart from the fact that till this day, the case has been handled with culpable negligence and cynical indifference. This is a matter which requires investigation at the highest level. The matter should be personally looked into by the Chief of the Army Staff. [208-C-F]

2. In the facts of the case, the conclusion is inescapable that the officer died while in service in mysterious circumstances and his death is attributable and aggravated by the military service. The responsibility of his death is *prima facie* traceable to the act of criminal omissions and commissions on the part of the concerned authorities. [208-G]

3. The petitioner is entitled to the Special Family Pension and Children Allowance, according to the relevant Rules, w.e.f. 23 June 1978, that is the date of the death of her husband with interest at 12% p.a.

[208-G]

Compensation quantified at Rs.6,00,000 is granted. [208-H]

4. The affidavit of the authorities has been prepared in the most casual manner as is apparent even from the kind of language and the grammatical as well as factual mistakes which have been committed in it, and is replete with unspecific and omnibus statements. [206-H, 207-A]

ORIGINAL JURISDICTION : Writ Petition (C) No. 45 of 1989.

(Under Article 32 of the Constitution of India)

M.C. Dhingra for the Petitioner.

V.V. Vaze, A.S. Bhasme and Ms. A. Subhashini for the Respondents.

A The Judgment of the Court was delivered by

B SAWANT, J. 1. This case is a glaring example of gross negligence and callousness on the part of the authorities and the consequent indescribable mental torment and physical and financial hardship caused to the widow and two minor children of an Army officer. The apathy and the extremely casual attitude adopted by the concerned officers travelled even to the proceedings in this Court and are writ large on the affidavit-in-reply which they have filed in response to the petition.

C 2. The petitioner's husband, Mukhbain Singh was commissioned as a Lieutenant in the Indian Army on or about 13.10.1963 according to the petitioner and on 1.6.1968 according to the respondent-authorities, and was promoted to the rank of Major on 24.5.1978. On promotion, he was posted at Kargil on 10.6.1978. According to the petitioner, he complained of chest
D pain on 12.6.1978 and was removed to Leh on 16.6.1978. The diagnosis made was of Ischaemic heart disease. The petitioner who was married to Mukhbain Singh in 1971 was living in Meerut at the relevant time with her two children - a daughter born in 1972 and a son born in 1975. On receiving information of the illness of her husband, she rushed with her children to
E Leh on 16.6.1978. After a great deal of persuasion, the petitioner and her children were allowed to meet Mukhbain Singh who was then lying in a make-shift hospital which was devoid of life saving treatment at the relevant time. She found her husband in a precarious condition. He was unable to move on his own. Both the petitioner and her husband requested the
F authorities to air-lift him to Ambala or Srinagar Military Hospital for proper treatment. This request was turned down. Upon this the petitioner and her husband requested the authorities to discharge him so that he might move to Srinagar at his own risk. That request was also not acceded to. On the other hand, he was threatened with Court Martial. After a great deal of persuasion and pleading, on 19.6.1978 one Dr. Major Boffalo
G agreed to shift Mukhbain Singh from Leh to Ambala and told the petitioner that her husband would be airlifted to Ambala on 21.6.1978. The petitioner and her husband pleaded with the authorities that she and her children be allowed to accompany him but that request was also not acceded to. She was asked to move with her children independently from
H Leh, and reach Ambala to receive her husband there.

3. The petitioner was not satisfied with the assurance given by the authorities and insisted that she would stay on till her husband was actually airlifted on 21.6.1978. On 21.6.1978, Mukhbain Singh was not airlifted. On enquiry, it was revealed that the Commanding Officer had not passed the necessary orders for his evacuation to Ambala Army Hospital. However, the authorities persuaded the petitioner to move to Ambala with an assurance that her husband would be airlifted to that place on 23.6.1978. Hence, on 22.6.1978 the petitioner with her children reached Srinagar and from there, reached Udampur on 23.6.1978. On that day at the Udampur check post, she was informed that her husband was not "well" and she should return to Leh. The petitioner rushed back to Leh the next day, i.e., on 24.6.1978. There she was to receive a rude shock when she was shown the burnt body of her husband. The authorities did not disclose to her the circumstances under which her husband had received the burns. Later on, she was only given a report of the postmortem examination conducted by the Army Medical Authorities at Leh which attributed the death to "extensive burns".

4. According to the authorities, after Mukhbain Singh complained of chest pain at Kargil he was evacuated to Leh on 16.6.1978. He was advised transfer to Ambala on 22 Jan 1978. The transfer according to the authorities, "was not an emergency one". It is also the case of the authorities that it is Mukhbain Singh who did not board the plane on 23.6.1978. According to them, on that day he had gone to attend to some private business in the cook house and later his charred body was found with 98 per cent burns due to kerosene oil leading to irreversible shock. This was at 0803 hours on that day.

5. According to the petitioner, her husband's death took place in mysterious circumstances, particularly because when she saw her husband, he was unable to move around. It was, therefore, ununderstandable as to how he could, on his own, move around to receive the said burns. He was in fact brought to the air-base at Leh from the Army Hospital in the custody of the Army specialists according to the authorities, and was supposed to be in their custody till he was to board the plane. Hence she protested to the authorities at Leh, upon which she was told that the matter would be investigated and it is only after the investigation that she would be informed about the circumstances leading to her husband's death.

A Thereafter, she wrote several letters to the authorities for communicating to her the result of the enquiry; but only a few of the letters were answered intimating her that she would be informed in the matter when the report would become available. After more than seven years, the finding of the enquiry was that the death of her husband was not attributable to military service. She applied for a copy of the enquiry report so that she could challenge the same in appeal and claim Special Family Pension and Children Allowance. The authorities, however, refused to give her a copy of the report stating that it was a highly confidential document.

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6. The petitioner has, therefore, approached this Court under Article 32 of the Constitution claiming both Special Family Pension and Children Allowance as well as damages of Rs.7,50,000.

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7. According to the authorities, the case for granting Special Family Pension to the petitioner was initiated on 14.7.1978 but due to incomplete documents, a final decision could be taken only in July 1985. The petitioner was informed of the decision of the Government rejecting her case for the grant of the Special Family Pension vide letter dated 15th July, 1985 with the intimation that she could appeal against the decision within a period of six months in case she was dissatisfied with the same. According to the authorities, the petitioner did not appeal and preferred to go to the Court.

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8. The respondent-authorities have further stated that the reasons which led to the death of Mukhbain Singh could not be disclosed to her, the same being confidential in nature. It is not disputed that her success in the appeal was dependent upon the case she had to make out, viz., that her husband had died on account of or during military service. For this the enquiry report was very much necessary. Instead, in paragraph 8 of their affidavit-in-reply, they have stated that "the special family pension and children allowance has not been denied to the petitioner. She did not appeal to the Government for a review of their decision in this regard". The case made out in the said paragraph is, therefore, that since she had not appealed to the Government for a review of their decision, it should be held that she had not been denied the pension and the allowance. It appears that the authorities do not recognise any limit to perversity in reasoning. However, immediately in paragraph 9 thereafter, they contradict themselves and state that "It is humbly submitted that all families of Army officers are not granted special family pension. Special family pension is

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granted only when death is considered attributable to or aggravated by him military service as defined under Govt. of India letter No.1(1)/81/Pen-C dated 22 March 1983". The statement in paragraph 8 of the affidavit can, therefore, only be termed as adding insult to the injury. It is then the case of the respondent-authorities that they had set up a Court of Inquiry on 14.7.1978. The recommendations of the GOC- in-C were recorded on 25.7.1978 with a suggestion that the case be handed over for investigation by CBI to probe the "alleged/suspected murder" of the officer. The civil investigation was carried out by the District Police, Leh in December 1984 at the behest of 1051 FD Wksp (GREF). They regretted their inability to carry out the detailed investigation at that late stage, due to the following reasons :

- "(a) No factual evidence available in the ground.
- (b) Witnesses are not available.
- (c) No ground study can be made out.
- (d) Officers/staff services of your HQ at that time has either proceeded in parts or relieved.
- (e) At this stage, it is not possible to trace out any circumstantial evidence if any and thereby obtain the expert views. The Government of India is not study (sic) bound to disclose its findings specially if they are confidential in nature".

9. In reply to the averments of the petitioner in her petition that her husband was not airlifted on 21.6.1978 because the Commanding Officer had not passed the necessary orders for his evacuation to Ambala military hospital, till that day the respondent-authorities in paragraph 13 of their affidavit state that "as the transfer was concurred by OC MH Ambala on 22 January 1978, the officer was sent to the airfield on 23 January 1978. The transfer was not an emergency transfer but a routine one for detailed investigations and further management at MH Ambala. It is submitted that the decision regarding opportune time for transfer of patient with reference to his medical condition is part of the medical management and is the prerogative of the treating specialist. Some delay in evacuation resulted from unwillingness of the officer. The officer was under care of a medical specialist w.e.f. 16 January 1978 onwards".

A 10. It is then stated in paragraph 14 of their affidavit that "the transfer of the officer to MH Ambala for detailed investigation and further management was concurred in by officer commanding MH/Ambala on 22 January 1978 and the officer was sent to the airfield on 23 January 1978. *The officer did not board the plane. He had gone to attend some private business in the cook house and later his charred body was found with 98% burns in the serious as contended by the plaint. As such there was no cause for apprehension*". In reply to the petitioner's grievance that she and her children were not permitted to accompany her husband, it is stated that "travel of NOK in the service aircraft evacuating a patient is not permitted under the Army rules". According to the respondent-authorities, further, the final report from the Civil District Police was received in December 1984 and the Ministry of Defence which is the competent authority in deciding attributability aspect for grant of special Family Pension rejected the case on the basis of inconclusive evidence to show whether the death was "suicide murder". The petitioner was informed of the authorities' decision by their letter of 15 July 1985 to appeal against their decision. The respondent-authorities have admitted that the petitioner had sought the Court of Inquiry report vide her letter dated 1 February 1986 as also the medical record which was refused by them by their letter of 24 June 1986 on the ground that the documents were confidential. The respondent-authorities have also admitted that the Court of Inquiry could not conclusively prove whether the officer's death was one of murder or of suicide. According to them, every effort was made to ascertain the facts, but final conclusion could not be arrived at. In the end, the respondent-authorities claim that in the circumstances, the writ petition be dismissed.

F 11. In the first instance, this affidavit-in-reply has been filed by one Smt. Lina Mukherjee who is working as "DAAG/PS-4 in the office of the Army Headquarters, Sena Bhavan" as has been stated in the affidavit. She has stated that she is conversant with the facts of the case. It is not known nor is it stated there, as to how she had become conversant with the facts of the case so as to swear the affidavit. The fact that affidavit had been prepared for anybody to come and swear it is apparent firstly from the fact that blanks were left in the typed affidavit for the name and designation of the deponent and they were later filled in in hand. Secondly, although the deponent is a lady [We presume to be so from her name], paragraph 4 of the affidavit begins with the words "the respondent humbly submits that *he* may be allowed to submit.....". The affidavit is also prepared in the most

casual manner as is apparent even from the kind of language and the grammatical as well as factual mistakes which have been committed in it. Although the petitioner has specifically stated in the petition that her husband became unwell on 12.6.1978, all that the deponent has stated in the affidavit in reply is that Major Mukhbain Singh went on temporary duty to Kargil on 10 June 1978; he complained of chest pain and was evacuated to Leh on 16 June 1978. No date on which he complained of chest pain is mentioned, and the statement of the petitioner that her husband fell ill on 12 June 1978, is not controverted. If the illness was of chest pain and it was suffered on 12 June 1978, it is not known why he was moved to the hospital at Leh only on 16 June 1978. There is further no denial of the petitioner's averment in the petition that on hearing of the illness of her husband, she had rushed with her children from Meerut to Leh on 16 June 1978 and it was only after great deal of persuasion that she and her children were allowed to meet her husband. There is also no denial of the petitioner's averment that the hospital was a make-shift one devoid of life saving treatment. There is also no denial of the following averments, viz., that (a) the officer was in a precarious condition and unable to move on his own; (b) both the petitioner and her husband had requested the authorities to airlift him to Ambala or Srinagar Military Hospital for proper treatment which request was declined; (c) thereafter the petitioner and her husband had requested the authorities to discharge him so that he might move to Srinagar at his own risk which request was also declined; (d) in fact the officer was threatened with Court Martial; (e) it was only after a great deal of persuasion and pleading that Dr. Major Boffalo on 19 June 1978 agreed for shifting him from Leh to Ambala and the petitioner was told that her husband would be airlifted on 21 June 1978; (f) the officer was not airlifted on 21 June 1978 because till that day the Commanding Officer had not passed order for his evacuation to Ambala; (g) the petitioner was assured that the officer would be airlifted on 23 June 1978 and it was only at Udampur on 23 June 1978 that she was asked to return to Leh as her husband was not well; (h) the authorities did not disclose to her any reason as to how and why the body of her husband was partially burnt when she reached Leh on 24 June 1978. An omnibus statement in the affidavit-in-reply like "any submission made herein inconsistent with the facts of the case and not specifically admitted is hereby denied" only rubs salt into the wound.

12. The manner in which the authorities have dealt with the episode

A of the alleged burning is all the more reprehensible. All that is stated in the affidavit-in-reply is that when the officer was sent to the airfield on 23 January 1978, "the officer did not board the plane. He had gone to attend some private business in the cook house and later his charred body was found with 98% in the serious as contended by the plaint (sic). As such there was no cause for apprehension".

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13. We are pained at the utterly irresponsible conduct of the authorities in the present case right from the inception. We see a good deal of substance in the allegation of the petitioner that her husband met with his death in mysterious circumstances. It is surprising that when the officer was not in a condition to move on account of his ailment, and when on C 16.6.1978 his condition was considered so delicate that even his wife and children were permitted to see him only after a great deal of persuasion, and when he was all the while accompanied by the specialist doctor, he was allowed to move on his own and go for his private business to the cook house, if the version of the respondent-authorities is to be believed. It is D also difficult to believe that when he was being airlifted at his own request, he had refused to board the plane and instead had left for his said alleged private business. All that thereafter was found was his charred body with 98% burns. No enquiry whatsoever seems to have been made and if made, its results are kept a secret. That such an incident should have occurred in E the presence of the responsible Army officers and should go uninvestigated and in fact completely ignored is all the more baffling. There is a good deal in this case for which the authorities have to answer. This is apart from the fact that till this day, the case has been handled with culpable negligence and cynical indifference. This is a matter which requires investigation at F the highest level. We, therefore, desire that this matter be personally looked into by the Chief of the Army Staff.

14. In the aforesaid facts, the conclusion is, therefore, inescapable that the officer died while in service in mysterious circumstances and his death is attributable to and aggravated by the military service. The responsibility of his death is *prima facie* traceable to the act of criminal omissions and commissions on the part of the concerned authorities. The petitioner is, therefore, entitled to suitable compensation as well as to the Special Family Pension and the Children Allowance according to the relevant Rules. w.e.f. 23.6.1978, i.e., the date of the death of her husband. We award H her compensation in the amount of Rs.6,00,000 (Rupees six lakhs) and

direct that the said amount be paid to her within six weeks from today. We A
further direct that the arrears of the Special Family Pension and the
Children Allowance be paid to her within eight weeks from today with
interest at 12% per annum. Rule issued is made absolute accordingly. The
1st respondent will pay the costs of the writ petition which are fixed at
Rs.6,000.

U.R.

Petition allowed.