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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C)No.3946/2010

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Date of decision: 19th July, 2012

PHOOLWATI DEVI Petitioner
Through : Col. (Retd.) S.R. Kalkal, Adv.

versus

UOI AND ORS Respondents
Through : Mr. Jagjit Singh, Adv.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The instant writ petition has been filed by the widow of Late Head Constable Devender Kumar praying for grant of extraordinary pension for the reason that her husband died in extraordinary circumstances in circumstances directly attributable to his service.

2. The brief facts giving rise to instant petition are in narrow compass and are undisputed.

3. Late Head Constable Devender Kumar was enrolled in the BSF on 10th July, 1974 after careful medical examination by the recruiting medical authorities which found him free from any kind of disease. He was promoted up to the rank of Head Constable. It is an admitted position that even up to the time of his death, he was in Shape-I (fit in all respects) so far as his

medical status and fitness is concerned.

4. Unfortunately on 16th June, 2000, a party of 122 Battalion, BSF consisting of one Sub-Inspector and 16 other ranks including Head Constable Devender Kumar were required to proceed from the Battalion Headquarter Tagorevillla to Tactical Headquarter (THQ), Training Centre and School (TC&S) to Hazaribagh. This party of jawans had got down from Doon Express at Railway Station, Koderma and was proceeding towards Tactical Headquarter, Hazaribagh by a government 5 ton vehicle. The Second-in-Command of this unit was also proceeding from the Tactical Headquarters in a Gypsy along with 5 ton vehicle in which the jawans were proceeding. When the party was about 7 kms short of Hazaribagh, Head Constable Devender Kumar who was occupying the co-driver seat became unconscious and was not responding to any command. The matter was informed to the Second-in-Command in the Gypsy. There was no hospital in the near vicinity and consequently he had to be evacuated to the Civil Hospital at Hazaribagh Town. The respondents have stated that no doctor was available in the Civil Hospital and consequently he had to be shifted to the BSF Hospital at Training Centre and School (TC&S), Hazaribagh. On examination, the Medical Officer declared the patient as

having been brought dead. So far as cause of death is concerned, it was identified as 'Cardiac Arrest' owing to the massive heart attack. The petitioner has claimed that the death of her husband was attributable to the exigencies of service and that she is entitled to grant of extraordinary family pension as per the CCS (Extraordinary Pension) Rules, 1972.

5. It is admitted by the respondents that the next of kin of Head Constable Devender Kumar were paid enhanced family pension of Rs.2,152/- per month w.e.f. 18th June, 2000 for a period up to 18th June, 2007 in compliance with Sub-Rule 3 of Rule 54 of CCS (Pension Rules), 1972.

6. The respondents dispute the entitlement of the petitioner to extraordinary pension on the ground that the rules in question do not permit grant of extraordinary pension for the reason that the deceased had expired due to cardiac arrest even though he was on government duty. It is urged that the extraordinary pension would be admissible only for such deaths which occur due to disease contracted due to continued exposure to hostile work environment or subject to extreme weather conditions or occupational hazards and accidents while travelling in government vehicles on government bonafide duty. But in the present case, cause of death is cardiac arrest due to massive heart attack. Hence the present

case is not covered under Extraordinary Family Pension Rules.

7. The defence set-up before us is unfortunately devoid of merit. Late Head Constable Devender Kumar was in Shape-I and was fit in all respects when he expired. He suffered heart attack while on duty and unfortunately there was no hospital in the vicinity. Even the hospital to which he was evacuated had no doctor.

8. There is no absolute proposition of attributability to service of a disease as being relateable only to the difficulty of the terrain or the nature of the duty which is being performed. The evaluation of attributability has to take place on a case to case basis.

9. It is well settled that a person moving from one place to another has been held to be as being on duty. This position is not disputed in the instant case.

10. In support of the contention that the heart attack suffered by Head Constable Devender Kumar was directly attributable to the service, reliance has also been placed before us on the pronouncement of this court reported at **2005 (3) SCT 458 Mrs. Manju Tewari vs. UOI & Ors.** wherein the court was concerned with grant of liberalized family pension in respect of the death of an army jawan in similar circumstances. Reliance has also been placed on the Division

Bench pronouncement reported at **2006 (92) DRJ 390 (DB)** ***Samaj Kaur vs. UOI & Ors.*** wherein this court was concerned with grant of special family pension to the petitioner whose husband had died while in service with the defence secretary corps in the army within duty hours on account of his suffering a heart attack. It may be noted that in this case, even the medical experts had ruled in favour of the disease being attributed to military service.

11. To further press the submission, our attention is drawn to orders dated 22nd November, 2001 passed in favour of one Smt. Kamla Devi, widow of late Head Constable GD Mukhtiar Singh of the ITBP, which is also a para military force. It is pointed out that GD Mukhtiar Singh had died on 15th June, 1999 due to cardio-respiratory arrest. The Chief Medical Officer has accepted the entitlement of the widow to extraordinary pension under the provisions of the CCS(EOP) Rules. The ITBP had consequently issued the orders dated 22nd November, 2001 in this behalf. It is contended that late Smt. Dhanpati Devi was similarly placed.

12. For the reason noticed hereinabove, it is held that the cause of the death of Head Constable Devender Kumar was in circumstances which have direct relationship to his employment and the duties which he was performing at the

time of his death. The petitioner, therefore, is entitled to grant of extraordinary family pension w.e.f. 17th June, 2000. Needless to say, the respondent would be entitled to adjust the amount which was paid to the petitioner as enhanced family pension.

13. In view of the above, we direct as follows:-

- (i) The respondent shall calculate the amount payable to the petitioner towards extraordinary family pension.
- (ii) The respondent shall also calculate the amount which has been paid as an enhanced component towards the family pension. Such calculation shall be done within eight weeks and shall be communicated to the petitioner immediately thereupon.
- (iii) The respondent shall be entitled to adjust the amount which was paid towards the enhanced component of the family pension out of the enhanced extraordinary pension which they calculate as admissible to the petitioner. The balance amount after adjustment of the enhanced family pension component shall be paid to the petitioner within a period of twelve weeks from today.

(iv) The petitioner shall be entitled to interest at the rate of 7.5% per annum w.e.f. 17th June, 2000 till the date of payment.

This writ petition is allowed in the above terms.

Dasti to both the parties.

GITA MITTAL, J

J.R. MIDHA, J

JULY 19, 2012

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