

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on : May 21, 2015*
Judgment Delivered on : May 27, 2015

+ **W.P.(C) 3527/2013**

RAM DEVI Petitioner
Represented by: Ms.Anu Mehta, Advocate with
Mr.Rubinder Ghumman, Advocate

versus

DIRECTOR GENERAL, BSF & ORS Respondents
Represented by: Mr.Anurag Ahluwalia, CGSC

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Late Yatinder Singh was enrolled as a Constable with Border Security Force on June 30, 1989 and earned a promotion to the rank of Head Constable.
2. Posted with the 67th Bn. BSF, Late Sh.Yatinder Singh had to discharge duties at the Indo-Pak Line of Control in Kutch Area in the State of Gujarat because the 67th Bn. was deployed at said place. The Border Outpost 966 at Jagmal was the area to be patrolled by the Coy of the Battalion of which Late Yatinder Singh was a member of.
3. On December 16, 2010 Late Yatinder Singh was detailed to perform Ambush-cum-Patrolling Duty at the Border Outpost Jagmal from 00:30 hours to 06:30 hours and completing the duty he returned to the barrack at around 06:45 hours and was found unconscious by Ct.S.K.Alamgir, who rushed him to the mini medical inspection room

from where he was immediately rushed to the nearest civil hospital at Radhanpur where he was declared brought dead. Postmortem on the dead body of Yatinder Singh was conducted on December 17, 2010 and as per the postmortem report the cause of death was 'cardio respiratory arrest' due to multi-organ diseases and in particular liver cirrhosis.

4. The petitioner claims that since her late husband died while on active duty he would be entitled to an ex-gratia compensation as per the Office Memorandum dated September 02, 2008. The respondents deny entitlement, and thus the only issue which arises for adjudication is : whether the petitioner is entitled to an ex-gratia compensation as per the OM dated September 02, 2008.

5. The case of the petitioner is that clause (a) of sub-Section 1 of Section 2 of the BSF Act, 1968 defines 'active duty' by a member of the Force as not only when engaged in operation against an enemy but includes patrolling duty or guard duty along the borders of the country. As per the petitioner the ex-gratia lump sum compensation is to be paid to the families of Government employees who die in the performance of their bona-fide official duty in situations covered by the Office Memorandum.

6. The case of the respondents is that the ex-gratia compensation payable under the Office Memorandum is under the four conditions contemplated by the Office Memorandum and that neither of them would attract the applicability of the Office Memorandum to the death of the late husband of the petitioner who, as per the respondents, died after completing the patrolling duty and when he was in his barrack.

7. Clause (a) of sub-Section 1 of Section 2 of the BSF Act, 1968 defines 'Active Duty' as under:-

“(a) ‘Active Duty’ in relation to a person subject to this Act, means any duty as a member of the Force during the period in which such person is attached to, or forms part of a unit of the Force –

(i) which is engaged in operations against an enemy, or

(ii) which is operating, at a picket or engaged on patrol or other guard duty along the borders of India,

and includes duty by such person during any period declared by the Central Government by notification in the Official Gazette as a period of active duty with reference to any area in which any person or class of persons subject to this Act may be serving;”

8. Relevant portions of the Office Memorandum dated September 02, 2008 on which the petitioner rests her case read as under:-

“OFFICE MEMORANDUM

Sub: Implementation of government’s decision on the recommendation of the Sixth Central Pay Commission – revision of provisions regulating pension/gratuity/commutation of pension/family pension/disability pension/ex-gratia lump-sum, compensation

1. The undersigned is directed to state that in pursuance of Government’s decision on the recommendation of the Sixth Central Pay Commission the President is pleased to introduce the following modifications in the rules regulating pension/retirement/death/Service Gratuity/Family pension/disability pension and ex-gratia lump-sum compensation under the CCS (Pension) Rules, 1972 (hereafter referred to as pension Rules) and Commutation of Pension Rules, 1981, CCS (Extraordinary Pension) Rules, 1939 etc.

2. These orders apply to Central Government Employees governed by the CCS (Pension) Rules, 1972 separate orders will be issued by the Ministry of Defence, Ministry of Railways and the AIS Division of the DOPT in respect of Armed Forces Personnel Railway Employees and the officers of all India services respectively on the basis of these orders.

3 to 10. x x x

EX-GRATIA LUMP SUM COMPENSATION

11. In terms of Department of Pension & PW O.M.No.45/55/97-P&PW (C) dated 11.09.1998 an ex-gratia lump sum compensation is available to the families of Central Government Civilian employees, who die in the performance of their bona fide official duties under various circumstances. The amount of this ex-gratia lump sum compensation shall be revised as under:-

- (a) Death occurring due to ₹10.00 lakh accidents in the course of performance of duties.*
- (b) Death occurring in the course ₹10.00 lakh of performance of duties attributable to acts of violence by terrorists anti-social elements etc.*
- (c) Death occurring (a) enemy ₹15.00 lakh action in international war or border skirmishes and (b) action against militants, terrorists weather conditions.*
- (d) Death occurring while on duty ₹15.00 lakhs in the specified high altitude, inaccessible border posts etc on account of natural disasters extreme weather conditions*

The department of Pension & PW O.M.No.45/55/97-P&PW (C) dated 11.09.1998 shall stand modified to this extent.”

9. The Office Memorandum dated September 11, 1998 to which a reference is made in para 11 of the Office Memorandum dated September 02, 2008 would also need to be noted, but not in full. Only the relevant part thereof. It reads as under:-

“OFFICE MEMORANDUM

Subject : Special Benefits in cases of Death and Disability in Service-Payment of Ex-gratia Lumpsum compensation to families of Central Government Civilian Employees who die in harness. Recommendations of the Fifth Central Pay Commission.

1 to 4. x x x

5. *In supersession of all earlier orders issued by Government as well as by individual ministries and departments in so far as these relate to payment to an ex-gratia lumpsum compensation in certain specified circumstances the President is pleased to decide that families of Central Government Civilian employees who die in harness in the performance of their bonafide official duties under various circumstances shall be paid the following ex-gratia lumpsum compensation.*

<i>(a) Death occurring due to accidents in the course of performances of duties</i>	<i>₹5.00 lakhs</i>
<i>(b) Death occurring in the course of performance of duties attributable to acts of violence by terrorists, anti-social elements etc.</i>	<i>₹5.00 lakhs</i>
<i>(c) Death occurring during (a) enemy action in international war or border skirmishes and (b) action against militants, terrorists, extremists, etc.</i>	<i>₹7.50 lakhs</i>

10. The caption of the Office Memorandum dated September 11, 1998 shows that it is applicable to the civilian employees of the Central Government. A perusal of the Office Memorandum dated September 02, 2008 shows that it too is applicable to the civilian employees of the Central Government. Para 2 of the Office Memorandum dated September 02, 2008 shows that separate orders will be issued by the Ministry of Defence in respect of Armed Forces Personnel.

11. Learned counsel for the parties were in agreement that the writ petition may be decided on the basis that a pari-materia office order has

been issued by the Ministry of Defence in respect of Armed Forces personnel, and the reason thereof was that a case of a widow of a deceased Head Constable was being considered and rather than being technical, requiring the respondents to produce the Office Memorandum issued by the Ministry of Defence, which as was conceded was pari-materia with the Office Memorandum dated September 02, 2008.

12. Thus, for the purposes of our opinion we would treat that the Office Memorandum dated September 02, 2008 would be applicable to Armed Forces Personnel as well. We will also treat that the Office Memorandum dated September 11, 1998 would be applicable to Armed Forces Personnel for the reason it was conceded that a pari-materia Office Memorandum was issued.

13. Under the memorandum dated September 11, 1998 the ex-gratia compensation payable was on death occurring in three circumstances : (a) due to accidents in the course of performance of duties, (b) while performing duties due to acts of violence by terrorists and anti-social elements, and (c) due to enemy action in international war or border skirmishes including actions of militants, terrorists and extremist. Under the memorandum dated September 02, 2008, while enhancing the ex-gratia amounts where death occurred in the said three circumstances contemplated by the Office Memorandum dated September 11, 1998, a fourth circumstance was added, being death occurring while on duty in specified high altitude, inaccessible border posts etc. on account of natural disasters or extreme weather conditions.

14. The argument of the respondents is thus plain and simple. There must be a causal connection between the death and the performance of duties, which as per the respondents must be while actually on the job i.e. at the work place. Further, the death has to be accidental, attributable to

violence by terrorists and anti-social elements, during a border skirmish or directly attributable to a natural disaster or an extreme weather condition at specified high altitude areas or inaccessible border posts.

15. The argument of the petitioner is also plain and simple. That active duty as defined by clause (a) of sub-Section 1 of Section 2 of the BSF Act, 1968 makes it clear that when a member of a Force is attached to or forms part of a Unit of the Force which is operating at a picket or engaged on patrol or guard duty along the borders of India he would be treated as on active duty. It is not the sine qua non of being on active duty that the person should be actually working as a figure of speech. The Office Memorandums dated September 11, 1998 and September 02, 2008 provide for payment of ex-gratia compensation if a person dies on active duty.

16. The Office Memorandum dated September 11, 1998 as amended by the Office Memorandum dated September 02, 2008 entitles the family members of deceased Government servants to the special privileges of an ex-gratia lump sum payment, apart from the usual statutory benefits in case where the death of the Government servant occurs in circumstances enumerated in the two Office Memorandums. Whereas the Office Memorandum dated September 11, 1998 requires ex-gratia compensation to be paid if death of the Government servant occurs in the three circumstances noted by us in paragraph 13 above, the memorandum dated September 02, 2008, while enhancing the ex-gratia amounts where death occurred in the three circumstances contemplated by the Office Memorandum dated September 11, 1998, added a fourth circumstance; being death occurring while on duty in specified high altitude, inaccessible border posts on account of natural disasters or extreme weather conditions.

17. A perusal of the two Office Memorandums would show that bravery is not the value recognized by the two Office Memorandums. It is the value of sacrifice which is recognized by the two Office Memorandums.

18. Psychological injuries can be as debilitating as physical ones. Trauma stress disorders are not intentionally caused by enemy action, but where a person is deployed for patrolling duty at a border and especially where the relations with the neighbouring country are not very cordial (and we take judicial notice of the fact that though sporadic but tension flares up in the Indo-Pak Line of Control 15 to 20 times each year) the person would be under psychological stress while on actual patrol duty and adrenaline levels would be bound to be high. Stress, be it mental or physical, affects the body metabolism and puts a strain on the heart. A human body is not a switch. And unlike a switch which at a mere press stops the onward flow of current, the human body takes time to switch over when a circumstance changes. Thus, a person on active duty, when returns to the barrack after patrolling along the Line of Control would continue to be stressed for sometime before the adrenaline levels fall and the body is at even metabolism.

19. The two Office Memorandums are the beneficial face of the executive policy and therefore must receive a liberal interpretation.

20. Blending the statutory definition of active duty in the portion of the two Office Memorandums, in harmony with the rule of interpretation of beneficial legislation, it can be said that the death of a force personnel due to heart attack suffered just after performing actual duty would be a case of an accidental death in the course of performance of duties. An accident would be an unfortunate incident that happens unexpectedly and unfortunately; an event that happens by chance or that is without apparent

or deliberate cause; a circumstance or attribute that is not essential to the nature of something; a misfortune.

21. The late husband of the petitioner died on September 16, 2010 within 15 minutes of completing ambush-cum-patrolling duty at the Border Outpost Jagmal at the Line of Control in Kutch. He may have had a liver problem which may have contributed to the heart attack suffered by him but no less could be the contribution of the stress occasioned while performing ambush-cum-patrolling duty. The late husband of the petitioner was on active duty and the concept of accident envisaged by the two Office Memorandums dated September 11, 1998 and September 02, 2008 has to be given a liberal interpretation keeping in view that the two Office Memorandums embody a beneficial executive policy. The liberal interpretation of accident would be as per para 20 above. Thus we hold that the petitioner would be entitled to the ex-gratia lump sum compensation payable under the Office Memorandum dated September 11, 1998 as modified by the Office Memorandum dated September 02, 2008. The compensation payable would be ₹10,00,000/- (Rupees Ten Lacs only) which we direct to be paid to the petitioner within 8 weeks from today failing which the amount shall be paid with simple interest @ 8% per annum reckoned 8 weeks from the date of this decision.

22. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MAY 27, 2015
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