

Serial No. 31
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 170 of 2021

Date of Decision: 16.03.2023

Smti Nanda Maya Gurung Vs. Union of India & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. Philemon Nongbri, Adv. with
Mr. E. Lalsangluaia, Adv.

For the Respondent(s) : Dr. N. Mozika, DSG with
Ms. S. Rumthao, Adv. (For R 1,3-6)
Ms. Z.E. Nongkynrih, GA (For R 2&7)

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER (ORAL)

1. The petitioner before this Court is stated to be the wife of the Head Constable, Jiwan Gurung of the 142 Bn. BSF, who was killed while on duty at Pulvama, Jammu & Kashmir. The respondent No. 6, thereafter granted cash equivalent to leave salary for 11 days unutilized earned leave to the petitioner and subsequently the petitioner also received an amount of Rs. 1,25,000/- (Rupees One Lakh Twenty Five

Thousand only) which was sanctioned by the Government of Jammu & Kashmir as ex-gratia relief. Another amount of Rs. 20,000/- (Rupees Twenty Thousand only) from the benevolent fund of the BSF was also sanctioned to the next of kin. The case of the writ petitioner is that apart from the payments that have been made, no other ex-gratia amount or any other entitlements were accorded to the petitioner in spite of the existence of the executive orders and policy decisions with regard to the Special Benefits extended in such cases. Hence the writ petition.

2. Mr. Philemon Nongbri, learned counsel for the petitioner submits that the Government of India in the Ministry of Personnel, Public Grievances & Pension, Department of Pension & Pensioner's Welfare had vide Office Memorandum dated 11.09.1998, extended the Special Benefits in cases of death and disability in service and provision for payment of ex-gratia lumpsum compensation, as per the recommendation of the Fifty Pay Central Pay Commission. The only prayer in the writ petition he submits, is that whatever entitlement the petitioner is eligible for, should be extended to her. He further submits that it was only after a representation in 2007, that the 'Normal Family Pension' was changed to 'Extraordinary Pension' and that too only in the year 2009, and Liberalized Pension was granted only after filing of the instant writ petition.

3. The learned counsel has then drawn the attention of this Court to the Office Memorandum dated 11.09.1998, which deals with the Special Benefits in cases of death and disability in service. It is further submitted that by way of the said Office Memorandum dated 11.09.1998, reference had been made to another Office Memorandum dated 25.05.1990, whereby the Scheme for ex-gratia lumpsum compensation to the families of Central Government employees killed in incidents of terrorist violence in Punjab, had been extended to Jammu & Kashmir. He therefore prays that as no steps were taken by the respondents, to accord the ex-gratia payment, this Court pass directions for compliance of the Office Memorandum dated 25.05.1990.

4. Dr. N. Mozika, learned DSG assisted by Ms. S. Rumthao, learned counsel for the respondent No. 1, 3 to 6 submits that the Office Memorandum dated 11.09.1998, will not be applicable to the case of the petitioner as the petitioner was killed in November, 1990, before the issuance of the said Office Memorandum. It is also submitted by the learned DSG that the applicability of the Office Memorandums, whether 11.09.1998 or 25.05.1990, is questionable as the same speaks about lumpsum compensation to the families of Central Government employees killed in incidents of terrorist violence, whereas the writ petitioner's husband was a Head Constable in the BSF. Referring to the affidavit filed on behalf of the respondent No. 1, 3 to 6, the learned DSG

submits that the Office Memorandum dated 25.05.1990, which is in continuation of the earlier Office Memorandum dated 24.11.1988, speaks of continuation of the existing procedures which are adopted by different Departments, which are on the case to case basis, and further that the families of the deceased Government employees be given a minimum of Rs. 50,000/- (Rupees Fifty Thousand only) as lumpsum payment.

5. I have heard the learned counsel for the parties.

6. Shorn of the other details, the only point to be decided is whether the petitioner herein has been accorded ex-gratia payment under any Scheme by the respondents due to the loss of her husband in a terrorist attack in Jammu & Kashmir. When the matter was initially brought before this Court and on examination of the Office Memorandum dated 11.09.1998, wherein reference had been made to the D.O. letter dated 25.05.1990, this Court was not in in position to discern or to examine the eligibility of the writ petitioner, inasmuch as, the said D.O. letter was not before this Court. The same has however, been brought on record by an additional affidavit filed by the respondents along with the other connected documents.

7. A perusal of the Office Memorandum dated 11.09.1998 reflects that there are specific instructions with regard the Special Benefits to be given to Central Government employees who have died in

various circumstances; and in cases of death occurring due to action against militants or extremists, the amount has been fixed at Rs. 7,50,000/- (Rupees Seven Lakhs Fifty Thousand only), However, as submitted by the learned DSG, the said Office Memorandum will have no application to the case of the petitioner, as the death had occurred much earlier before the issuance of the same. It is relevant therefore to examine the D.O. letter dated 25.05.1990 which has been referred in the Office Memorandum dated 24.11.1988, to ascertain as to what entitlements the petitioner is eligible for.

8. However, before coming to the D.O. letter dated 25.05.1990 which only extends the instructions/policy of Punjab to Jammu & Kashmir, the D.O. letter dated 24.11.1988 which contains the policy is to be examined. The same for the sake of convenience is reproduced hereinbelow:-

“D.O. No. 46/1/88-P&PWF(F)

24.11.88

Dear

Subject: Compensation to the families of Central Govt. employees killed in incidents of terrorist violence in Punjab.

There is no provision at present for granting any lump sum compensation to the families of Central Govt. employees killed in incidents due to terrorist violence in Punjab. The question whether any provision in this behalf needs to be made on the lines or orders issued by the Govt. of Punjab was recently considered by the Committee of Secretaries. It was observed that various Departments are following different schemes for compensating their

employees. In some Departments compensation under the Workmens' Compensation Act is being paid. In other Departments also some ex-gratia grant is being made on a case by case basis. In the light of this it was decided by the Committee of Secretaries that there was no need for issue of any instructions to give ex-gratia grant to Central Govt. employees killed in terrorist violence on the pattern of the Punjab Government and that the existing procedure followed by different Department could be continued. The Committee, however, felt that the Departments could ensure that the amount paid to the families of deceased govt. servants may be a minimum of Rs.50,000/- in such cases. In computing this amount payments ordinarily made in case of death not attributable to service such as Death Gratuity under the Ordinary Pension Rules, CGEIS, Deposit Linked Insurance Scheme in G.P.F. etc., should not be taken into account but any other item which is payable in case of death attributable to service should be included as a part of the total amount of Rs.50,000/- to be paid to the families of the deceased govt. servants in such cases.

2. It is requested that each individual case for grant of compensation to families of Central Govt. employees killed in terrorist violence in Punjab arising in your Ministry and the offices thereunder may be processed in the light of the above mentioned decision of the Committee of Secretaries. It is also requested that all such cases may be referred to the Department of Pension and Pensioners' Welfare for prior clearance to ensure consistency in approach in deciding the quantum of compensation in such cases.

With regards,

*Yours sincerely,
Sd/-
(A.C. Tiwari)"*

9. A perusal of the above quoted D.O. letter shows that the respondents at that point of time, felt that there was no necessity for issuance of any instructions for grant of ex-gratia to the Central Government employees killed in terrorist violence, and that the existence

of the procedures followed by different Departments should be continued, and further that the Departments were to ensure that the amount was to be minimum of Rs. 50,000/- (Rupees Fifty Thousand only). The above D.O. letter was extended to the State of Jammu & Kashmir by the D.O. dated 25.05.1990 and reads as follows:-

**“GOVERNMENT OF INDIA
DEPARTMENT OF PENSION AND PENSIONERS’
MINISTRY OF PERSONNEL PUBLIC GRIEVANCES AND
PENSIONS, NEW DELHI**

**S.K. PARTHASARATHY
ADDL SECRETARY
WELFARE**

D.O. No. 46/1/88-P&PW(K)

25 MAY 1990

Kindly refer to Confidential D.O. letter No. 46/1/88-P7PW (F) dated 24th November, 1988 issued by my predecessor – Shri A.C. Tiwari (copy enclosed for ready reference) regarding ex-gratia grant to the families in respect of Central Government employees killed in incidence of terrorist violence in Punjab.

2. It has since been decided to extend the provisions of the above mentioned instructions to the families of Central Government employees killed in terrorist violence in Jammu & Kashmir. It is requested that each individual case for grant of compensation to the families in respect of Central Government employees killed in terrorist violence in Jammu & Kashmir arising in your Ministry and the offices there under may be processed accordingly and referred to the Department of Pension & Pensioners’ Welfare as per the present practice.

Yours Sincerely,

(S.K. PARTHASARATHY)”

10. On examination of the materials that have been placed before this Court, there is nothing to show that the respondents had taken

any steps in pursuance to the above D.O. letters to process payment of any ex-gratia grant to the deceased employee. The fact that the pension of the petitioner comes under the Department under the Ministry of Personnel, Public Grievances & Pension, Department of Pension & Pensioner's Welfare is not disputed. There are no reasons therefore, to justify as to why the case of the husband of the writ petitioner was never processed in accordance with the policy in place.

11. This Court is therefore of the considered view that the petitioner's case is to be looked at afresh, and though the benefit of the Office Memorandum dated 24.11.1988 may not be strictly applicable, as the case will be governed by the earlier Office Memorandum, the respondents are however directed to consider the case for payment of a reasonable amount as ex-gratia payment, taking into account the peculiar circumstances of the case, and the fact that the case was never referred, or any steps taken for grant of ex-gratia payment from the year 1990 itself. The entire exercise should be completed within a period of 4(four) months from the date of this order.

12. With the above directions, this writ petition stands closed and is accordingly disposed of.

JUDGE

Meghalaya
16.03.2023
"V. Lyndem-PS"