

GAHC010176382019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5742/2019

ASHA RANI
(GS- 188066L) 1644 PIONEER COY (GREF), C/O 99 APO, LANKESHWAR,
JHALUKBARI (WEST), GUWAHATI-781014.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY, MINISTRY OF DEFENCE, NEW DELHI- 110001.

2:THE DIRECTOR GENERAL
BORDER ROADS ORGANISATION (BRO)
SEEMA SADAK BHAWAN
RING ROAD RING ROAD
DELHI CANTT.
NEW DELHI- 110010.

3:THE CHIEF ENGINEER
HQ CE (P) DEEPAK
C/O 56 APO.

4:THE COMMANDER
HQ 759 BRTF
C/O 56 APO.

5:THE OFFICER COMMANDING
108 RCC (GREF)
C/O 56 APO

Advocate for the Petitioner : MR. N U K NAIR

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

10-04-2023

Heard Shri M. P. Sarma, learned counsel for the petitioner. Also heard Shri K. K. Parasar, learned CGC for all the respondents.

Considering the nature of the case and as agreed to by the parties, this writ petition is taken up for disposal at the admission stage. This Court has also taken note of the fact that the contesting respondents have filed an affidavit-in-opposition on 14.02.2020.

The projected case is that the husband of the petitioner, Shri Raman Kumar was appointed in the General Reserve Engineer Force (GREF) as Operator of Excavator, such appointment was in May, 1999. On 28.12.2002, after rejoining his duty, the husband of the petitioner was proceeding to his unit of posting, namely, 112 RCC in the departmental vehicle and on the way there was a massive landslide. The husband was instrumental in operating the excavator in duty and had helped in clearing the landslide and immediately thereafter on the same date, he met with an accident and passed away. The petitioner's case is that there is an Office Memorandum (OM) dated 11.09.1998 by which *ex-gratia* lump sum amount is payable in such case and accordingly the petitioner filed an application for such release of *ex-gratia* payment. However, her case was rejected vide a communication dated 29.01.2016 by which the petitioner is aggrieved and has approached this Court for a direction to release the *ex-gratia* payment in terms of the OM dated 29.06.2016.

Shri Sarma, the learned counsel for the petitioner has submitted that a hyper-technical approach has been taken by the authorities in denying the entitlement which is against the aims and object of the Scheme. He submits that there is no dispute to the fact that the husband of the petitioner had expired while he was approaching to his unit in a departmental vehicle and has also rendered his services in clearing the

landslide which had occurred on the way.

Shri Parasar, the learned CGC has submitted that the stand of the respondents have been put in the affidavit-in-opposition filed on 14.02.2020. By referring to the communication dated 29.01.2016, the learned CGC submits that as per the Clause of the Office Memorandum, the death has to occur due to accident in the course of performance of duties and in this case, the accident had occurred while the husband of the petitioner was not essentially performing his duties.

The rival submissions of the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

The OM in question is on the subject of payment of *ex-gratia* lump sum compensation to the families of Central Government civilian employees who die-in-harness and includes the recommendation of the 5th Central Pay Commission. The rejection of the prayer of the petitioner is on the ground that the death has not occurred while the deceased was performing his duties. However, the aim of the Scheme appears to give certain benefits to the bereaved family of a Central Government Civilian employee, who die-in-harness. In the instant case, admittedly the death had occurred when the husband of the petitioner was proceeding to his unit of posting in a departmental vehicle and on the way has also rendered his service by operating the excavator and assisted the operator of the same in removing the landslide. Only thereafter, the accident had occurred causing his death. Under such circumstances, denying the *ex-gratia* by taking a hyper-technical objection does not appear to be in consonance with the Office Memorandum holding the field.

In that view of the matter, this Court is of the opinion that the benefit of the OM for payment of *ex-gratia* cannot be denied to the petitioner who is admittedly the widow of a Central Government Civilian employee.

As per paragraph-5 of the OM in question, the amount specified in case of death is Rs. 5 lakhs (Rupees Five Lakh).

In that view of the matter, this writ petition stands allowed by directing release of

the aforesaid amount to the petitioner in terms of the OM expeditiously and preferably within an outer limit of 2 (two) months from today.

Writ petition stands disposed of.

JUDGE

Comparing Assistant