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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17048-2018

Date of Decision:13.03.2024

KULDEEP KAUR

..... Petitioner

Versus

UNION OF INDIA AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Gurpreet Singh, Advocate
for the petitioner.

Mr. Sunil Kumar Sharma, Sr. Panel Counsel
for the respondents-UOI.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to respondents to grant her Extra Ordinary Family Pension/Liberalized Family Pension under the CCS (Extra Ordinary Pension) Rules, 1939.
2. The husband of the petitioner (Mohan Singh) on 11.10.1983 joined General Reserve Engineering Force (for short ‘GREF’). He was promoted to the post of Overseer. On 10.07.2000, the husband of the petitioner was posted in Arunachal Pradesh and while performing his official duty, he was standing very close to edge of the road formation towards valley side. He was supervising the dozar operation at a location having treacherous and rocky mass with large height of cut. He noticed that a big boulder from hilltop is rolling down alongwith huge debris towards the dozer and compressor deployed at work. He raised an alarm

and instructed the dozer and compressor operators to move out to a safer place. He without caring of his life started assisting others to move out and while doing so, he was swept away by the impact of boulder and fell down 70 meter deep valley. Due to supreme sacrifice and exemplary courage shown by him, he was awarded 'Shaurya Chakra' by Government of India.

3. The petitioner made a representation dated 20.12.2005 to respondents seeking Extra Ordinary Pension in terms of CCS (Extra Ordinary Pension) Rules, 1939. The respondent vide communication dated 15.01.2006 rejected representation of the petitioner on the ground that she has already received compensation under Workmen's Compensation Act, 1923. The petitioner again filed application dated 09.12.2010 (Annexure P-7) seeking Special Family Pension/Liberalized Family Pension. On the same ground, the said representation was rejected vide order dated 06.01.2011.

4. Mr. Gurpreet Singh, Advocate, submits that the petitioner is getting Family Pension @ 30% of last drawn salary of her husband. As per instructions issued by Government, the case of the petitioner falls under Category-C, thus, she is entitled to Pension @ 60% of last drawn salary of her husband. The respondent has wrongly rejected claim of the petitioner on the ground that she had received compensation under Workmen's Compensation Act. The husband of the petitioner had died while on active duty and her case is squarely covered by the scheme introduced by respondent. The husband of the petitioner being part of GREF was governed by Army Act, 1950 and he was part of Indian Army.

The petitioner is entitled to all benefits which are available to dependents

of Army Personnel. In alternative, he submits that even if husband of the petitioner is considered as 'defence civilian' still she is entitled to higher amount of Family Pension because her case falls under Category C.

In support of his contention, he relies upon judgment of Supreme Court in '***R. Viswan and others Vs. Union of India and others***' **1983 (3) SCC 401**. The Supreme Court after considering nature of work, duties of members of GREF and applicability of Army Act, 1950 for disciplinary action, has held that members of GREF are part of Army. The relevant extracts of the judgment read as:

“9. The history, composition, administration, organisation and role of GREF which we have described above while narrating the facts clearly show that GREF is an integral part of the Armed Forces. It is undoubtedly a departmental construction agency as contended on behalf of the petitioners but it is distinct from other construction agencies such as Central Public Works Department etc. in that it is a Force intended primarily to support the Army in its operational requirement. It is significant to note that the Border Roads organisation, which is in overall control of GREF was originally created as part of Army Headquarters and it was only later, for reasons of high policy, that it was separated from Army Headquarters and placed under the Border Roads Development Board. Though the budget of the Border Roads Organisation forms part of the budget of Ministry of Shipping and Transport, the financial control is vested in the Ministry of Finance (Defence). The entire infrastructure of GREF is modelled on the pattern of the Army and it is organised into units and sub-units with command and control system similar to that in the Army. The personnel of GREF right from Class IV to Class I have to be in uniform with distinctive badges of rank and they have a rank structure equivalent to that of the Army. GREF is

primarily intended to carry out defence and other works projected by the General Staff, Army Headquarters and it is only where spare capacity is available that GREF undertakes works of other ministries or departments on agency basis and there also, preference is given to strategic and other roads in sensitive areas. The funds which are provided to the Border Roads Organisation are meant exclusively for carrying out the works entrusted by the General Staff, Army Headquarters and so far as the works carried out for other ministries or departments on agency basis are concerned, the funds of the Border Roads Organisation are not permitted to be used for carrying out those works and they are paid for by the respective ministries or departments and where applicable, agency charges for executing the works are also collected. The statistics given in the earlier part of the judgment show that the major portion of the work executed by GREF units consists of tasks entrusted by the General Staff, Army Headquarters and only a small percentage of the work is being done on behalf of other ministries or departments. GREF units carry out essentially those tasks which are otherwise carried out by Army Engineering Regiments and they provide engineering support to the Army both during peace time as also during hostilities. It was found necessary as a result of a major review carried out by Army Headquarters after 1971 that a minimum of 17 Border Roads Task Forces and 34 Pioneer Companies would be permanently required for providing engineering support to the Army and accordingly 17 Border Roads Task Forces and 34 Pioneer Companies have been made permanent and their composition has been reorganised in accordance with the recommendations of the Army Headquarters. These 17 Border Roads Task Forces and 34 Pioneer Companies are being maintained as essential units of GREF for meeting the operational requirements of the Army, even if sufficient work

is not available for them at any given point of time. The operational planning of the Army is in fact based on availability of these 17 Border Roads Task Forces and 34 Pioneer Companies and during operations, they have to carry out tasks which would otherwise have been done by equal number of Army Engineering Regiments. It may be pointed out that these 17 Border Roads Task Forces and 34 Pioneer Companies have replaced corresponding number of Army Engineering Regiments and Pioneer Companies in the Army. The tasks required to be carried out by the Border Roads Task Forces have already been described in some detail in the opening part of the judgment while narrating the facts and we need not repeat the same over again. Suffice it to state that these tasks are required to be carried out by the Border Roads Task Forces during operations with a view to providing engineering support to the Army in its operational plans. The Border Roads Task Forces have to perform these tasks and provide engineering support to the Army not only up to the border but even beyond up to the extent of advance into enemy territories. Even in peace time, the Border Roads Task Forces have to undertake works projected by General Staff, Army Headquarters to meet their operational requirements and these works include construction and maintenance of roads, operational tracks, ditch-cum-bund (water obstacles on the border), field fortifications like bunkers, fire trenches and pill boxes, helipads and airfields. It is also significant to note that the Border Roads Task Forces and Pioneer Companies attached to them are included in the Order of Battle of the Army which implies that support of these units to the Army is guaranteed and can be requisitioned at any time. The Border Roads Task Forces are also sub-allotted to lower Army formations and they appear on the Order of Battle of these formations. GREF units consisting of these Border Roads Task Forces and Pioneer Companies are placed under the

direct control of the Army during emergencies when the entire control of this Force is entrusted to the Chief of the Army Staff. Even during peace time, the Chief of the Army Staff exercises control over the discipline of the members of GREF units through the applicability of the provisions of the Army Act, 1950. The Director General, Border Roads who is in overall control of GREF units is always an Army officer of the rank of Major General and his confidential reports are written by the Chief of the Army Staff. The signal communication of GREF is also integrated with the Army communication set up not only during operations but also in normal peace time. It is also a factor of vital significance which emphasises the special character of GREF as a force intended to provide support to the Army in its operational plans and requirements that Army personnel are posted in GREF units according to a carefully planned manning policy so that GREF units can in times of war or hostilities be able to provide effective support to the Army. The tenure of office of Army personnel in GREF units is regarded as normal regimental duty and is equated with similar appointments in the Army for the purpose of promotion, career planning etc. Even the directly recruited personnel of GREF are given training at the GREF Centre before they are posted and the training given is in three military disciplines which we have described in detail in the opening part of the judgment. The training includes not only drill, marching and saluting but also combat training including physical training such as standing exercises, beam exercises, rope work, route marches etc. and combat engineering training including field engineering, handling of service explosives, camouflage, combat equipment, bridging, field fortifications, wire obstacles etc. Moreover, the directly recruited personnel are taken up only after they voluntarily accept the terms and conditions of employment which include inter alia Conditions 5(iv), 5(v), 5(vi) and 5(xi) which have been

reproduced in full while narrating the facts. These conditions make it clear that the directly recruited personnel may be required to serve anywhere in India and outside India and when directed, they would have to proceed on field service and if required, they would also be liable to serve in any Defence Service or post connected with the defence of India. It is also stipulated in these conditions that on their appointment, the directly recruited personnel would have to wear the prescribed uniform while on duty and that they would be subject to the provisions of the Army Act, 1950 and the Army Rules, 1954 as laid down in SROs Nos. 329 and 330 for purposes of discipline. It is abundantly clear from these facts and circumstances that GREF is an integral part of the Armed Forces and the members of GREF can legitimately be said to be members of the Armed Forces within the meaning of Article 33.

10. The petitioners however tried to combat this conclusion by pointing out that the services constituted under Border Roads Engineering Service Group A Rules, 1977 and the Border Roads Engineering Service Group B Rules, 1977 both of which were made by the President in exercise of the powers conferred under Article 309 and brought into force with effect from September 20, 1977, were expressly designated as Central Civil Services and that in reply to Unstarred Question 1100, the Minister for Defence stated on June 18, 1980 that “GREF as at present organised is a civilian construction force” and similarly in reply to Unstarred Question 6002, the Minister for Defence observed on April 1, 1981 that “the civilian employees serving with the Border Roads Organisation and GREF are not under administrative control of Ministry of Defence but are under the administrative control of the Border Roads Development Board” and so also Minister for Defence stated on February 25, 1983 in answer to Unstarred Question 938 that “the members of the General Reserve Engineering Force of the

Border Roads Organisation are civilian employees of the Central Government". The petitioners contended on the basis of these statements that GREF was not an Armed Force but was a civilian construction agency and the members of GREF could not possibly be regarded as members of the Armed Forces so as to fall within the scope and ambit of Article 33. This contention, though it may appear at first blush attractive, is in our opinion not well founded and must be rejected. It is undoubtedly true that as stated by the Minister for Defence, GREF is a civilian construction force and the members of GREF are civilian employees under the administrative control of the Border Roads Development Board and that the engineer officers amongst them constitute what may be designed as "Central Civil Services" within GREF, but that does not mean that they cannot at the same time form an integral part of the Armed Forces. The fact that they are described as civilian employees and they have their own special rules of recruitment and are governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 is not determinative of the question whether they are members of the Armed Forces. It may be noted that even the members of the Civil General Transport Companies constituted under Government of India, War Department, Notification 1584 dated June 29, 1946 as also the members of the Independent Transport Platoons have been treated as members of the Armed Forces for the purpose of application of the provisions of the Army Act, 1950 by SRO No. 122 dated July 22, 1960 and SRO No. 282 dated August 17, 1960. So also when personnel of Military Engineering Service have to function in operational areas under the Army, they too are brought under the provisions of the Army Act, 1950 for the purpose of discipline. The question whether the members of GREF can be said to be members of the Armed Forces for the purpose of attracting the applicability of Article 33 must

depend essentially on the character of GREF, its organisational set up, its functions, the role it is called upon to play in relation to the Armed Forces and the depth and intimacy of its connection and the extent of its integration with the Armed Forces and if judged by this criterion, they are found to be members of the Armed Forces, the mere fact that they are non-combatant civilians governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965, cannot make any difference. This view which we are taking on principle finds ample support from the decision of this court in Ous Kutilingal Achudan Nair v. Union of India [(1976) 2 SCC 780 : AIR 1976 SC 1179 : (1976) 2 SCR 769 : 1976 Lab IC 780] where the question was whether certain employees in the Defence Establishment such as cooks, chowkidars, laskars, barbers, carpenters, mechanics, boot-makers, tailors etc. who were non-combatant civilians governed by the Civil Service Regulations for purposes of discipline, leave, pay etc. and were eligible to serve up to the age of 60 years unlike the members of the Armed Forces, could be validly called “members of the Armed Forces” covered by Article 33, because it was only if they were members of the Armed Forces within the meaning of that Article that the restrictions imposed upon their right to form association could be sustained. This court speaking through Sarkaria, J. held that the employees in question were members of the Armed Forces and gave the following reasons in support of its view : (SCC p. 782, para 12)

“The members of the unions represented by the appellants obviously fall within this category. It is their duty to follow or accompany the armed personnel on active service or in camp or on the march. Although they are non-combatants and are in some matters governed by the Civil Service Regulations, yet they are integral to the armed forces.

They answer the description of the ‘members of the armed forces’ within the contemplation of Article 33.”

Here also it is indisputable on the facts and circumstances mentioned above that the functions and duties of GREF are integrally connected with the operational plans and requirements of the Armed Forces and the members of GREF are, to use the words of Sarkaria, J. “integral to the Armed Forces”. There can be no doubt that without the efficient and disciplined operational role of GREF the military operations in border areas during peace as also in times of war will be seriously hampered and a highly disciplined and efficient GREF is absolutely essential for supporting the operational plans and meeting the operational requirements of the Armed Forces. It must therefore be held that the members of GREF answer the description of “members of the Armed Forces” within the meaning of Article 33 and consequently the application of Section 21 of the Army Act, 1950 to the members of GREF must be held to be protected by that Article and the Fundamental Rights of the members of GREF must be held to be validly restricted by Section 21 read with Rules 19 to 21 of the Army Rules, 1954. If that be so, the petitioners were liable to be charged under Section 63 of the Army Act, 1950, for the alleged violations of Rules 19 to 21 and their convictions by Court Martial as also subsequent dismissals must be held to be valid.

14. We may make it clear that it is only in regard to the members of GREF that we have taken the view that they are members of the Armed Forces within the meaning of Article 33. So far as casual labour employed by GREF is concerned, we do not wish to express any opinion on this question whether they too are members of the Armed Forces or not, since that is not a question which arises for consideration before us. The writ petitions are accordingly dismissed with no order as to costs. The special leave petitions will also

stand rejected.”

[Emphasis supplied]

5. Per contra, Mr. Sunil Kumar Sharma, Sr. Panel Counsel submits that petitioner had received compensation under Workmen's Compensation Act, thus, she is not entitled to Extra Ordinary Pension. Rule 2 of CCS (Extra Ordinary Pension) Rules specifically provides that these rules shall not apply to those to whom Workmen's Compensation Act applies. The husband of the petitioner was governed by Workmen's Compensation Act which is evident from the fact that petitioner had received compensation under the said Act. As the petitioner had received compensation under Workmen's Compensation Act, she is not entitled to Extra Ordinary Pension.

In support of his contention that husband of the petitioner was not part of Army and he was not governed by Army Act, he relies upon Paragraph 30 of judgment of Supreme Court in '**Mohammed Ansari Vs. Union of India and others 2017 (3) SCC 740**'. The relevant extracts of the judgment read as:

“31. In view of the statutory framework, it is demonstrable that the 1950 Act and the Army Rules, 1954 have been applied to civilian personnel of GREF only for the purpose of discipline. The reasons are obvious. GREF is a Force raised and maintained under the authority of the Central Government, its units are set up on the lines of the Indian Army, it works with and under close coordination with regular Army in border areas, facilitates the Indian Army to carry out its operational role, etc. Hence, it has been felt appropriate that the 1950 Act should be made applicable to a force raised and maintained by the Central Government as considered necessary in the interest of discipline. The issue can be perceived from a different perspective. GREF personnel are subjected by legislative scheme to dual

disciplinary control, and such an arrangement is permissible as has been held in R. Viswan [R. Viswan v. Union of India, (1983) 3 SCC 401 : 1983 SCC (L&S) 405 : AIR 1983 SC 658] . When the offence is such that the provisions of the 1950 Act, as extended to GREF, apply for the purpose of discipline, it will be open to the competent disciplinary authority under the 1950 Act, to proceed against the delinquent under its provisions, and if found guilty, award appropriate punishment. In this context, we may give an example. If an offence is committed in relation to an enemy, offences on active service, mutiny, desertion, disobedience, etc., considering the nature and gravity of the offence, it may warrant severe action against the delinquent by way of trial by a Court Martial. In other disciplinary cases, the competent authority may decide to proceed under the CCS (CCA) Rules, 1965 in which the maximum permissible punishment is only “dismissal from service”.

32. In this backdrop, jurisdiction of the Tribunal has to be determined. As is seen, the 2007 Act has been made applicable to persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950, the retired personnel subject to these Acts including their dependants, heirs and successors insofar as it relates to their service matters. The Tribunal constituted in terms of Sections 4 and 5 thereof, is vested with twin jurisdiction viz. jurisdiction, powers and authority in service matters as provided in Section 14 and the jurisdiction in matter of appeal against courts martial under Section 15 of the Act.

33. The situation insofar as jurisdiction of the Armed Forces Tribunal (AFT) to hear the appeals arising out of court martial verdicts qua GREF personnel, however, appears to stand on a different footing. It is because the provisions of Chapter VI i.e. offences, Chapter VII i.e. punishment, Chapter X i.e. “courts martial”, etc. apply with full force, subject to minor exceptions and modifications here and

there, as applied to GREF. Therefore, the provisions of the 1950 Act dealing with various punishments inflicted by way of courts martial qua GREF personnel as applied can be agitated before AFT and AFT shall have jurisdiction to hear appeals arising out of courts martial verdicts. There can be no doubt that in respect of said matters AFT shall have jurisdiction. Denial of jurisdiction to the said Tribunal would be contrary to the 1950 Act and the provisions engrafted under the 2007 Act. To elaborate, right to approach AFT by the personnel of GREF who are tried by a court martial held under the very same Act has to be recognised. At the same time, if the punishment is imposed on GREF personnel by way of departmental proceedings held under the CCS (CCA) Rules, 1965 then obviously the same cannot be agitated before AFT since the penalty in such cases will not be one under the 1950 Act but will be under the CCS (CCA) Rules, 1965. The distinction, as the law exists in the present, has to be done.”

6. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

7. The conceded position emerging from record is that the husband of the petitioner joined GREF on 11.10.1983 and he was promoted to the post of Overseer. On 10.07.2000, he was posted in Arunachal Pradesh and while performing his official duty, he noticed that a big boulder from hilltop is rolling down alongwith huge debris towards the dozer and compressor deployed at work. He raised an alarm and instructed the dozer and compressor operators to move out to a safer place. He without caring of his life started assisting others to move out and while doing so, he was swept away by the impact of boulder and fell down 70 meter deep valley. He was awarded ‘Shaurya Chakra’ by Government of India. The petitioner was paid a sum of Rs.5 lakh as ex-

gratia and she was further paid compensation under Workmen's Compensation Act, 1923. The petitioner filed representation dated 20.12.2005 seeking Extra Ordinary Pension in terms of CCS (EOP) Rules which was rejected vide communication dated 15.01.2006 on the sole ground that she had received compensation under Workmen's Compensation Act, 1923. She further filed application dated 09.12.2010 (Annexure P-7) seeking Special Family Pension/Liberalized Family Pension. The said representation was also rejected vide order dated 06.01.2011 on the ground that she had received compensation under Workmen's Compensation Act, 1923.

8. The respondent has issued instructions in the form of a manual with respect to pensionary benefits available to defence personnel as well as civilians working with defence forces. Chapter-V of the said manual deals with Liberalized/Special Family Pension/Pensionary/Awards and Disability/War Injury Pension. Under heading ‘Defence Civilians’ Family Pension as per CCS (EOP) Rules, 1939 has been discussed. The relevant extracts of the scheme read as:

DEFENCE CIVILIANS

DISABILITY PENSION/SPECIAL FAMILY PENSION

UNDER CCS (EOP) RULES/LIBERALIZED PENSION

RULES.

Under the provisions of Rule 38 CCS (Pen) Rules, Invalid pension is granted to a Govt. servant who retires from the service on account of any bodily or infirmity, which permanently incapacitates him from service. This is granted on the basis of medical certificates given by a medical board or civil surgeon as the case may be.

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*(III) CONDITION FOR GRANT OF FAMILY PENSION
UNDER CCS (EOP) RULES- RATES AND CALCULATION*

Family pension under CCS (EOP) rules will be granted under following conditions:-

(a) He should not have been governed by workmen's compensation Act-1923.

(b) Death shall be accepted as due to Government service provided it is certified that it was due to or hastened by.

(i) A wound injury or disease, which was attributable to Government service

or

(ii) The aggravation by Government service of a wound, injury or disease, which existed before or arouse during Government service.

(c) There should be a causal connection between death and Government service. -

It is essential for the administrative officer as well as Audit Officer (PAO) to satisfy themselves that the death is in fact attributable to or aggravated by Government service and certify the nexus and casual connection between death and government service.

(d) No award shall be made in respect of death, which occurred more than 7 years.

(i) After the injury due to violence or accident was sustained, or

(ii) After the Government servant was medically reported as unfit for duty on account of the disease of which he died.

(e) Where an individual is in receipt of disability pension dies at home, and it cannot, from a strictly medical point of view, be definitely established that the death was solely due to the disablement in respect of which the disability pension was granted.

(i) The benefit of doubt in determining attributably, should go to the family deceased, if death occurs

within 7 years from the date his invalidment from service, unless there are other factors adversely affecting the claim; and

- (ii) If death takes place more than 7 years after the date of the man's invalidment from service, the benefit of doubt will go to the state.*
- (iii) In case where an individual outlives a normal span of life. i.e. where death takes place at the age of 60 or above, the death should be held to be due to normal causes and not to government service.*
- (iv) Death of a disability pensioner, whose disablement has been accepted on the basis of aggravation, may also be accepted as due to Government service if the last assessment of disablement was 50% or above. If the last accepted assessment of disablement was less than 50% death should not be regarded as due to service.*

CATEGORIZATION OF DIFFERENT CIRCUMSTANCES UNDER WHICH FAMILY PENSION UNDER CCS (EOP) RULES IS PAYABLE.

Different circumstances under which family pension under CCS (EOP) rules is payable have been categorized as under.

Category - A

Death due to normal causes not attributable to Government service. Examples would be chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty.

Category - B

Death due to causes which are accepted as attributable to or aggravated by Government service. Disease contracted because of continued exposure to a hostile work environment, subjected to extreme weather conditions or occupational hazards resulting in death would be examples.

Category -C

Death due to accidents in the performance of duties. Some examples are accidents while traveling on duty in Government Vehicles or public transport, a journey on duty is performed by service aircraft, mishaps at sea electrocution while on duty etc.

CONDITIONS FOR GRANT OF FAMILY PENSION UNDER LIBERALIZED PENSION RULES, RATE OF FAMILY PENSION AND CALCULATION OF FAMILY PENSION.

Family pension under liberalized pension rules is also admissible to those civilian Government servants who are governed by workman's compensation Act – 1923

Different circumstances under which it is admissible have been categorized as under: -

CATEGORY -D

Death attributable to acts of violence by terrorist, anti-social elements, etc. whether in their performances of duties or otherwise. Apart from cases of death of personnel of the Central Police organizations while employed in aid of the civil administration in quelling agitation, riots or revolts by demonstrators, other public servants including police personal etc. bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc, would be covered under this category.

CATEGORY – E

Death arising as a result of

(a) Attack by or during action against extremists, anti-social elements etc. and

(b) Enemy action in international war or border skirmished and war like situation including cases, which are attributable to

(i)Extremist acts, exploding mines etc while on way to an operational area

(ii) Kidnapping by extremists and

(iii) Battle inoculation as part of training exercises

with live ammunition.”

As per above referred scheme, family of a deceased employee is entitled to Extra Ordinary Pension if he dies in any of situation/condition as contemplated by Category A to E. Categories of A, B, C are further classified in one class whereas Categories D and E are classified in another class. If a civilian while working with defence forces dies and his case falls under Category A, B or C, his family is not entitled to Family Pension, if he is governed by Workmen’s Compensation Act, 1923. If an officer dies while on duty and his case falls under Category D or E, the family of the deceased officer is entitled to Liberalized Pension irrespective of compensation under Workmen’s Compensation Act, 1923.

9. The case of the petitioner primarily falls under Category C because her husband had died due to rolling down of a boulder which is nothing more than an accident. The petitioner is claiming that case of her husband also falls under Category E because exploding of mines was in place while her husband was on duty and process of construction of road was going on. The respondents are admitting that husband of the petitioner had performed an act of bravery and he was awarded ‘Shaurya Chakra’ on account of his sacrifice. The respondent is further admitting that case of the petitioner’s husband falls under Category C, however, she is not entitled to Extraordinary Pension because her husband was governed by Workmen’s Compensation Act, 1923.

10. Workmen’s Compensation Act, 1923 is applicable to a Workman and the said expression has been defined under Section 2 (n) of the Act. Section 2 (n) is reproduced as below:

“(n) “workman” means any person who is—

(i) a railway servant as defined in clause (34) of Section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(i-a)(a) a master, seaman or other member of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company,

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.

[Emphasis supplied]

From the perusal of above quoted section, it is evident that 1923 Act, is not applicable to a person who is working in the capacity of a member of Armed Forces of the Union. As per petitioner, her husband

was member of Armed Forces of the Union. Supreme Court in ***R. Viswan and others (Supra)*** while noting nature of duties and responsibilities of members of GREF has held that they are members of Armed Forces of the Union.

11. This Court vide order dated 24.04.2009 passed in CWP No.5655 of 2007 after noticing Section 2 (n) of 1923 Act held that members of GREF are part of Armed Forces and they are not governed by 1923 Act. The respondent assailed aforesaid judgment before Division Bench of this Court which vide order dated 13.05.2014 dismissed LPA No.1000 of 2009 of the respondents. The relevant extracts of judgment dated 13.05.2014 are reproduce as below:

“We have heard counsel for the parties and have gone through the contents of the judgment passed in the case of R. Viswan's case (supra) and also Sukhdev Singh Gill's case (supra).

In the case of R. Viswan's case (supra), the question was whether member of the GREF was integral part of armed forces or not. It was observed that " it is abundantly clear from these facts and circumstances that GREF is an integral part of the Armed Forces and member of the GREF can legitimately be said to be the Members of the Armed Forces within the meaning of Article 33". That finding holds till today.

In case of Sukhdev Singh Gill's case (supra), question was altogether different. The Hon'ble Supreme Court considered the claim of the petitioner therein to know whether he is entitled to get benefit of the provisions of Punjab Government National Emergency (Concession) Rules, 1965 or not.

By taking note of the language of the Rules under consideration, it was said that an employee who was

working in GREF was not entitled to get benefit of those Rules. However, in paragraph No.16 by making reference to the ratio of the judgment in the case of R. Viswan's case (supra), it was said that in view of the aforesaid judgment and subsequent notification dated 14.08.1985 issued by Government of India, the service of the appellant in GREF could be treated as service in the 'Armed Forces' for purpose of Article 33 of the Constitution of India.

Similarly in paragraph No.19, it was said that even though the appellant therein can be said to belong to the 'Armed Forces' for purposes of the Army Act and Article 33 of the Constitution of India, and even assuming that he was enrolled or commissioned in GREF, however, his service could not be treated as service rendered in the 'three principal wings' of the armed forces to get benefit under the above said Rules.

In Sukhdev Singh Gill's case (supra), the Hon'ble Supreme Court has not taken different view from that of R. Viswan's case (supra).

Under these circumstances, the impugned order under challenge passed by learned Single Judge, is perfectly justified.

No case is made out to cause interference by this Court in the present appeal.”

12. On being confronted with afore-cited judgment, learned counsel for the respondents conceded that Union has not further challenged decision of Division Bench of this Court, thus, it has attained finality, however, he pointed out a contrary view of Division Bench of Delhi High Court in ***Sunita Devi Vs. Union of India (W.P.(C) 1962/2017***).

This Court as per principle of judicial precedent is bound to follow judgment of Division Bench of this Court. Indubitably, a Division

Bench of this Court has clearly held that officers of GREF are part of Armed Forces and they are not governed by Workmen's Compensation Act, 1923, accordingly, there is no hesitation to hold that husband of petitioner was part of Armed Forces of Union and he was not governed by 1923 Act. The respondent had paid small amount under 1923 Act which petitioner is ready to refund alongwith interest @ 6% per annum.

13. The matter needs to be examined from another aspect. The respondents are conceding that if an employee is not governed by 1923 Act and despite being civilian, dies in the circumstances contemplated by Category A, B and C, is governed by CCS (EOP) Rules. It is also an undisputed fact that if a civilian despite being governed by 1923 Act dies in the circumstances enumerated in Category D and E, is governed by CCS (EOP) Rules. The respondents are denying Extraordinary Pension to the petitioner on the sole ground that her husband was governed by 1923 Act. There is no cavil that deceased employee died while performing duty. As per petitioner, case of her husband falls under Category E whereas as per respondents it falls under Category C. It is undisputed that husband of the petitioner was on duty and he passed away while performing his duties. He had acted bravely and saved life of others. The respondents are extending benefit of Extraordinary Pension if a civilian dies on account of extremists act, exploding mines while on a way to operational area or on account of enemy action in international war or border skirmishes or attack by or during action against extremists, anti-social elements or on account of bomb blast. All the situations contemplated by Category D & E are indicating that respondent is extending Extraordinary Pension to family of those officers who have

bravely faced action of enemies, terrorists or anti-social elements. The case of the deceased employee is not a simple accident. If it cannot be called as act of enemies, terrorists or anti-social elements, it can also not be called as simple accident. It would be unfair to treat it as accident governed by Category C and deny the petitioner benefit of Extraordinary Pension.

14. In the wake of above discussion and findings, this Court is of the considered opinion that present petition deserves to be allowed and accordingly allowed. The petitioner is hereby held entitled to Extraordinary Pension from the date of Writ Petition filed before this Court. The respondent shall calculate Extra Ordinary Pension, classifying case of petitioner under Category C contemplated by the scheme. The petitioner shall be entitled to arrears alongwith interest @ 6% per annum and she would return compensation received under Workmen’s Compensation Act, 1923 alongwith interest @ 6% per annum. The needful shall be done within 6 months from today.

(JAGMOHAN BANSAL)
JUDGE

13.03.2024
Ali

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>