

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

C.W.P. No.7527 of 2015

Date of Decision : 23.04.2015

Saroj

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. H.C. Arora, Advocate
for the petitioner.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This petition has been filed for quashing the provisions contained in Clause 11(a) of Circular (Annexure P-6) dated 02.09.2008 issued by the respondent No.1 envisaging the grant of ex-gratia lump-sum compensation of Rs.10 lakhs only in cases of those employees, whose death occurs due to accident in the course of performance of duties and for granting to the petitioner the benefit of Rs.10 lakhs as ex-gratia lump-sum compensation.

The husband of the petitioner was a member of the Sashaster Seema Bal and, while on duty at Guwahati, complained of severe stomach pain, was admitted to the Down Town Hospital, Guwahati and died there.

The petitioner claimed that under the Circulars (Annexures P-5 and P-6) she was entitled to ex-gratia compensation. Part of Circular (Annexure P-5) deals with the ex-gratia compensation and is to the following effect:-

- (a) *Death occurring due to accidents in the course of performance of duties* - Rs. 5.00 lakhs

Subsequently by Annexure P-6 the ex-gratia lump-sum compensation was increased to Rs.10 lakhs but the other conditions remained the same. The claim of the petitioner was declined by order dated 12.05.2014 (Annexure P-4) on the ground that the petitioner's husband had died due to chronic liver disease and Type-II DM.

The first argument of learned counsel is that the case of the petitioner is covered by the decision of this Court in the matter of ***Smt. Santosh vs. Union of India and others***, reported as ***2010(1) SCT 518***. A perusal of that judgment reveals that in that case the petitioner therein was claiming the benefit under the Government Instructions dated 30.09.1999 issued by the Government of Haryana, the relevant portion of which was as follows:-

“....Haryana Govt. has decided that with effect from 1.4.1999 the Exgratia grant/compensation to the families of the Defence Services Personnel and of Para Military Forces who die in harness in the performance of their bona fide official duties while serving in operations like Kargil and other sectors shall be Rs.10 lacs for all categories namely Officers, Junior Commissioned Officers and other ranks and to the disabled as explained under for all categories depending upon the percentage of disability as assessed by concerned authorities irrespective of the fact whether they are retained as welfare measure or boarded out.....”(emphasis supplied)

In paragraph 5 of that judgment His Lordship has referred to the Circular dated 29.09.1998 (which is similar to Annexure P-5 in the present case) and noticed as follows:-

“Similar instruction have been issued by the Government of India vide its letter dated 22.9.1998 wherein a different kind of compensation has been provided under following categories:-

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

Thereafter in paragraph No.6 of that judgment it was held as follows:-

“6.....His case is, however, not covered by the Government instructions, issued by the Ministry of Defence (Annexure P-5) whereby the ex-gratia is attributable to acts of violence by the terrorists and anti-national elements and during enemy action in international war or border skirmishes and action against militants/terrorists/extremists. The case of the husband of the petitioner also does not fall under the Government instructions dated 15.06.2001. However, the Government instructions dated 30.09.1999 provides for ex-gratia compensation to the families of defence personnel who died in harness in the performance of their bona fide official duties while serving in operation like Operation Karma and was posted at the Line of Control in a Morcha.....”

In my opinion, this judgment does not help the petitioner in the

present case because the Ld. Judge has himself distinguished between the Govt. Instructions dated 30.09.1999 and the Circular which is relied upon by the petitioner.

The second argument of learned counsel is that the benefit of lumpsum compensation in the case of an accident during the course of performance of duties should be extended to the case of the petitioner also because the petitioner fell ill while he was on duty. I am afraid this would be too extended an interpretation of the expression 'accident'. Any ex-gratia policy is not a matter of right and by definition is a matter of policy. Once the competent authority has restricted it to accidents only, it would not be possible for this Court to extend the meaning of the word 'accident' to a person who died from a chronic disease.

The third argument of the learned counsel is that by restricting the benefit only to those who died in accident would be unconstitutional because a person who died in harness whether on the basis of accident or illness has to be treated alike. I regret my inability to agree with this argument also. The case of a person who died due to chronic disease is definitely different from the case of a person who died due to accident.

Resultantly, the petition is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

April 23, 2015

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**(AJAY TEWARI)
JUDGE**