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

+ **W.P.(C) 2463/2014**

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Date of Judgment : 08.12.2015

SONU GUPTA

..... Petitioner

Through : Ms. Jyoti Singh, Sr. Adv. with
Mr. Manjeet, Ms. Tinu Bajwa and
Mr. Sameer Sharma, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondent

Through : Mr. J. K. Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. With the consent of the parties, the writ petition is set down for final hearing.
2. The husband of the petitioner was employed by the Indian Railways since December, 1999. On 22.04.2004, the husband of the petitioner while performing his duty from 15:00 hours to 22:00 hours as Assistant Station Master at Parsa Khera Railway Station, was killed by some unknown anti social elements. A firearm was used and it is alleged that four persons had participated in the murder. On the same day, a criminal case was registered at P. S. GRP Junction, Bareilly against the father and brother of the petitioner with two other accused persons for the murder of the husband of the petitioner. A post-mortem was also conducted on the body of the deceased wherein it was found that at least two shots were fired on the deceased. On 04.12.2007, the accused persons were acquitted of the charges under

Section 302 read with Section 34 of the Indian Penal Code.

3. After the acquittal of her father and brother on 30.05.2008, the petitioner submitted a representation wherein she requested the respondents for grant of family pension to be calculated equally to the last pay drawn by her husband and in accordance with the instructions issued by Railway Board circular P.S.No.12001/2000 dated 13.04.2000. In response to the representation, a calculation sheet was issued wherein it was mentioned that the last pay of the petitioner's husband was Rs. 7,725/-. A copy of the Enquiry Report was also sent by the respondents wherein, inter alia, it was found that late Sh. Mukesh Gupta was killed while performing his duty from 20:00 hours as Assistant Station Manager at Parsa Khera Railway Station and he was killed by certain unknown persons. A sum of Rs. 4,30,560/- was sanctioned in favour of the petitioner on 03.03.2009. The petitioner again submitted a representation dated 22.01.2010 requesting the respondents for payment of lumpsum Ex-gratia compensation. The claim of the petitioner was rejected on 18.03.2011 which led to filing of the first OA being OA No. 2405/2011. The same was allowed on 10.02.2012 with a direction to the respondents to examine the claim of the petitioner which was rejected on 04.05.2012 which led to the filing of the second OA being OA No. 3606/2012 which was dismissed on 19.12.2013 and which has led to the filing of the present writ petition.
4. Ms. Jyoti Singh, learned Senior Counsel appearing for the petitioner submits that the Tribunal has failed to take into consideration the relevant Railway instructions and has only taken into account the FIR

which was lodged and the criminal proceedings which were initiated against the father and brother of the petitioner and presumed that the husband of the petitioner was murdered by her father and brother who were in fact acquitted.

5. It is also the contention of the learned Senior Counsel for the petitioner that the observations made in the impugned order would show that the Tribunal without applying the circulars of the Railway Board has returned a finding against the petitioner. It is further submitted that the respondents while relying on Clause (b) awarded Ex-gratia payment under provisions of Department of Pension & Pensioners' Welfare, O.M. No. 45/55/97-P&PW(C) dated 11.09.1998, however based on a somewhat identical O.M., the respondents declined the liberalised family pension to the petitioner.
6. Mr. J. K. Singh, learned counsel for the respondents submits that there is no infirmity in the order passed by the Central Administrative Tribunal as the petitioner was not entitled to a liberalised family pension as the petitioner was already drawing family pension. He further submits that the husband of the petitioner had not completed 7 years of service. He also submits that case of the petitioner would not be covered under Category 'D' of O.M. dated 03.02.2000 as he did not die on account of a terrorist attack and neither any anti social elements were nabbed nor there is any evidence to show that the murder was on account of acts of anti social elements.
7. We have heard the learned counsel for the parties, considered their rival submissions and also examined the judgment passed by the Central Administrative Tribunal.

8. The basic facts are not in dispute that the husband of the petitioner was employed with the Railways. It is also not in dispute that between 15:00 hours to 22:00 hours on 22.04.2004 while performing his duties as Assistant Station Master at Parsa Khera Railway Station, he was killed by some unknown persons and anti social elements. This fact is evident from the fact that an FIR was registered on the same day under Section 302/34 of the Indian Penal Code wherein the father and brother of the petitioner were named. This fact also stands established from the Enquiry Report (Page 109) as per which the husband of the petitioner was murdered by firing by some unknown persons. This fact is further established in view of the order passed on 31.07.2007 by the respondent by which Ex-gratia payment was awarded to the petitioner which reads as under :

“NORTHERN RAILWAY
PP 6

In connection with CPO's observations, instructions issued under PS No. 11945 has been placed on file. Conditions governing the payment of ex-gratia lumpsum compensation envisage that the death of the employee concerned should have occurred in the actual performance of bonafide official duties. In other words, a casual connection should be established between the occurrence of death and government service. In deciding the cases, all evidence (both direct and circumstantial) shall be taken into account and benefit of reasonable doubt given to the claimant. The benefit of reasonable doubt will be extended more liberally in field service cases.

Cases of death resulting from acts of violence or assault by terrorists, anti-social elements, etc. against a Government servant with the intention of deterring or preventing him from performing his duties; or because of any act done or attempted

to be done by such Government servant in the lawful discharge of his duties; or because of his official position will also be covered under clause (b), the compensation under clause (b) is also admissible in cases of death as a sequel to bomb blasts in public places or vehicles, indiscriminate shooting incidents in public etc. by terrorists, anti-social elements etc., provided the employees concerned were actually on duty at the relevant time;

Trial of criminal proceedings in the Court of Session Judge, Bareilly has established that murder of late Sh. Mukesh Kumar Gupta, ASM who was posted at Bhitara station of Moradabad Division had not been as result of family feud. Departmental fact finding has concluded that late Sh. Gupta was on duty when he was murdered on 22.04.2004 by unknown persons.

As discussed above, compensation has been allowed even in case of death as a result of indiscriminate shooting incidents, thus it is felt that case of Late Sh. Mukesh Kumar Gupta, ASM of MB division, who was murdered on 22.04.2004, while on duty, is covered under Clause (b) for payment of ex-gratia lumpsum compensation.

Submitted please.

Sd/ - Dy. CPO (Welfare)

CPO / IR

Sd / - (31.07.07)

Sd /- (21/6)''

9. We may note that an Ex-gratia payment is awarded on the basis of an O.M. dated 11.09.1998, para 5 (b) of which reads as under :

5 (b) Death occurring in the course of performance of duties attributable to acts of violence by terrorists, anti-social elements. - Rs. 5.00 lakhs

10. The petitioner claims liberalised family pension in terms of Category 'D' of the O.M. dated 03.02.2000 of DoPT which reads as under :

“Category ‘D’ - Death or disability attributable to acts of violence by terrorists, anti-social elements, etc. Whether in their performance of duties or otherwise. Apart from cases of death or injury sustained by personnel of the Central Police organizations while employed in aid of the civil administration in quelling agitation, riots or revolt by demonstrators, other public servants including police personnel, etc. bomb blasts in public places or transport indiscriminate shooting incidents in public. etc. would be covered under this category.”

11. A comparison of the relevant ingredients of the two OMs would show that the Category ‘D’ and para (b) reproduced above relate to cases of death which is attributable to violence by terrorists and anti social elements are a common factor.
12. We may notice that at the time when Ex-gratia payments was paid to the petitioner, clause 5 (b) was relied upon, however at the time when the petitioner seeks liberalised family pension, the respondents have submitted that Category ‘D’ would not be applicable as it was not on account of either terrorist attack or anti social elements as the father and brother of petitioner were involved.
13. In our view, the respondents are estopped from taking a diametric opposite view while considering the request of the petitioner for grant of Ex-gratia payment to the petitioner. The respondent was satisfied that the death of the husband of the petitioner was on account of attributable violence by anti social elements which is evident by the order so passed above and which has been reproduced hereinabove. Category ‘D’ of the O.M. dated 03.02.2000, in our view would be

equally applicable, moreso, when the father and brother of the petitioner stand acquitted and the judgment of the Sessions Court has attained finality. The reading of Category 'D' hereinabove would show that there is no restriction of number of years spent on duty for availing the benefit of Category 'D' since the husband of the petitioner died while on duty, as a result of violence by anti social elements in the own understanding of the respondents.

14. Accordingly, for the reasons stated above, the order of the Tribunal is set aside. The petitioner would be entitled to liberalised family pension from the date of filing the first O.A. In case the pension arrears are paid within four months, no interest will be payable on the arrears. In case the pension arrears are not paid to the petitioner within four months, the respondents will be liable to pay interest @ 8% to the petitioner on her arrears. Resultantly, the writ petition is allowed. Rule is made absolute.

C. M. APPL. 5128/2014 (Stay)

15. In view of the order passed in the writ petition, the application is also disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 08, 2015

SC