IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8055 of 2013
Date of Decision: **March 02, 2016**

Smt. Sharda Devi ...Petitioner

versus

Union of India and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.Ram Avtar Sheoran, Advocate
for the petitioner.

Mr.Amit Sheoran, Advocate
for the respondents.

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HARINDER SINGH SIDHU, J.

This petition has been filed praying for quashing the impugned order dated 04.01.2013 (Annexure P-4) passed by the Director General, Central Reserve Police Force - respondent No.2, whereby the claim of the petitioner for extra-ordinary pension on account of the death of her husband, has been declined.

Rohtash Singh, husband of the petitioner had joined the Central Reserve Police Force on 30.8.1980. He was promoted to the post of head Constable/G.D. and posted in 55 Bn. Central Reserve Police Force, West Tripura. Vide order dated 17.8.2001, he was transferred to C.T.E. III, CRPF Mudhkhed (Nanded) in Maharashtra. He departed on 18.8.2001 to join the duty at Mudhkhed (Annexure P-1). It is pleaded in the petition that at that time, he was having cerebral malaria which was common in Tripura due to which he expired on 27.8.2001 at Taneja Hospital, Gurgaon. The respondent authorities were immediately informed

through wireless message on 28.8.2001 (Annexure P-2). After the death of Rohtash Singh, his transfer orders were cancelled vide order dated 24.9.2001 and he was taken back in 55 Bn. vide order dated 24.9.2001 because he had not joined the transferee place and died in the way as 15 days joining time was allowed to him as per Rules. The petitioner, who is widow of the deceased, was granted family pension.

The claim of the petitioner in the petition is that she is entitled to Extraordinary Family Pension, which is also known as Special Family Pension, for which she made various representations to the respondent authorities. Lastly, she sent a legal notice dated 9.7.2012 (Annexure P-3), which has been replied by respondent No.2 vide letter dated 4.1.2013 (Annexure P-4) informing that the husband of the petitioner died due to fever at his home for which, ordinary Family Pension under Rule 54 of Central Civil Services (Pension) Rules, 1964 is being granted.

Hence, the present petition challenging the impugned letter dated 4.1.2013 (Annexure P-4).

In their reply, respondents have stated that Rohtash Singh has died a natural death, which is not attributed to active Government service and as such the petitioner, his widow has been authorised family pension @ Rs.1897/- per month w.e.f. 28.8.2001 to 27.8.2008 and thereafter @ Rs.1275/- per month till her death or re-marriage. After implementation of 6th Pay Commission, the family pension of the petitioner was revised to Rs.4289/- per month w.e.f. 1.1.2006 to 27.8.2011 and thereafter, Rs.3500/- per month w.e.f. 28.8.2011 in accordance with CCS (Pension) Rules, 1972 and instructions on the subject.

It is denied that at the time of being relieved from service, the husband of the petitioner was suffering from cerebral malaria. And is

further claimed that the petitioner has not produced/ annexed any medical document in proof of the same. As he had died a natural death due to sickness which is not attributed to active Government duty, as such, his widow - petitioner was authorized normal family pension under Category `A' of the Central Civil Services (Extraordinary Pension) Rules.

The petitioner has filed replication along with which she has annexed the Treatment Slip of the Taneja Hospital and Heart Centre, Gurgaon where her husband was admitted on 26.8.2001 and died on 27.08.2001(Annexure P-5) and the contents of the same are extracted below:

"TANEJA HOSPITAL AND HEART CENTRE
113 A, NEW COLONY,
NEAR GEETA BHAWAN
GURGAON-122 001 HARYANA

Name : Mr.Rohtas Singh 38 M Dated:27.8.2001
8.30 PM

38 Yr male. Non-diabetic, Normotensic was admitted in emergency Unit with H/o fever (remittent type) C rigors- 1 Wk H/o Vomitings often. H/o Unconsciousness-8 hrs. No H/o fits/head injury. No H/o cough/Hemoptysis. *On Admission: Fully conscious, Pupils reacting sluggishly. BP:90/60 HR 88 pmt Dehydrated.* *Abd. Tenderness. Urine-output nil since morning. Pt. Was put on ½ fluids, Ceftriaxone, steroids, O2, Catheterizate passed only 100 ml of urine in 4 hrs. Till morning slight GC improvement. Inreshgahons revealed RBC's in urine, Normal TLC. Platelets-Normal ESR: 18mm widal +ve Y160:* *Adv.Malarial Ag study. X Ray Chest:Normal*	*DOA: 26.8.2001* *? Cerebral Malaria* *? Enteric Encephalepals Dehydration* *AC Renal Failure*

Adv.CT Scan/LP-But Pt's condition deteriorated very fast x pt could not be sent for CT scanning. *Pt. was given – Yv Ofloxacin, Ceftriaxone, Quinione, Hydro Carhsone, O2, Amicacen, Deriphyllin, Eptoin, ½ fluids (Isolyte M-10% - Ecot etc.* *Pt developed Cardio. Resp. arrest at 7.00 PM and declared dead at 8.30 PM when all resuscitative measures failed.*	

Sd/-
Dr.R.K.Teneja
M.D.M.C.S.I.
FICA (USA) MACC (AUS)
Cardiologist – Physician
Regd.No.HN 508."

I have heard Ld. Counsel for the parties and perused the record.

The different categories under the Pension Rules are as under:

"(1) Revised provisions effective from 1-1-1996, regulating Disability Pension and Extraordinary Family Pension under the CCS (Extraordinary) Pension Rules and Liberalized Pensionary Awards - *The Fifth Central Pay Commission, and Liberalized Pensionary Awards. - The Fifth Central Pay Commission, interalia, recommended that for determining the compensation payable for death or disability under different circumstances, the case could be broadly categorized in five distinct categories as under:*

Category 'A'	*Death or disability due to natural causes not attributable to Government service. Examples would be chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty, etc.*
Category 'B'	*Death or disability 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 or disability would be examples.*

Category 'C'	*Death or disability due to accident in the performance of duties. Some examples are accidents while traveling on duty in Governments vehicles or public transport, a journey on duty is performed by service aircraft, mishaps at sea, electrocution while on duty, etc.*
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 Organization 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.*
Category 'E'	*Death or disability arising as a result of (a) attach by or during action against extremists, anti-social elements, etc... and (b) enemy action in international war or border skirmishes and warlike situations, including cases which are attributable to (i) extremists 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."*

Category A covers cases where death or disability is due to natural causes not attributable to Government service. Examples of this are chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty etc. Category B covers cases where death or disability is due to causes which are accepted as attributable to or aggravated by Government service. Diseases contracted because of continued exposure to a hostile work environment, subjected to extreme weather conditions or occupational hazards resulting in death or disability would be examples. The petitioner claims that the case is covered under Category B, whereas according to the respondents the case falls under Category A.

Sh. Ram Avtar Sheoran, Ld. Counsel for the petitioner refers to the order dated 17.8.2001 (Annexure P-1), whereby, her husband was ordered to be transferred to C.T.E. III, CRPF Mudhked (Nanded). He departed for leave on 18.8.2001 to join duty, but before he could do so, he died on 27.8.2001. He refers to Rule 5 of the Central Civil Services (Joining Time) Rules, 1979, which is as under:

"(5) (1) The joining time shall commence from the date of relinquishment of charge of the old post if the charge is made over in the forenoon or the following date if the charge is made

over in the afternoon.

(2) The joining time shall be calculated from old headquarters in all cases including where a Government servant receives his transfer orders or makes over charge of the old post in a place other than his old headquarters, or where the headquarters of a Government servant while on tour is changed to the tour station itself or where his temporary transfer is converted into permanent transfer.

(3) Not more than one day's joining time shall be allowed to a Government servant to join a new post within the same station or which does not involve a change of residence from one station to another. For this purpose, the term 'same station' will be interpreted to mean the area falling within the jurisdiction of the municipality or corporation including such of suburban municipalities, notified areas or cantonments as are contiguous to the named municipality, etc.

(4) In cases involving transfer from one station to another and also involving change of residence, the Government servant shall be allowed joining time with reference to the distance between the old headquarters and the new headquarters by direct route and ordinary mode(s) of travel as indicated in the following schedule. When holiday(s) follow(s) joining time, the normal joining time may be deemed to have been extended to cover such holiday(s).

Distance between the old headquarters and the new headquarters	*Joining Time admissible*	*Joining Time admissible where the transfer necessarily involves continuous travel by road for more than 200 kms.*
1,000 km or less	*10 days*	*12 days*
More than 1,000 km	*12 days*	*15 days*
More than 2,000 km	*15 days except in cases of travel by air for which the maximum will be 12 days.*	*15 days*

According to Sh. Sheoran , based on the distance between the old headquarters and the new headquarters the petitioner's husband was entitled to 15 days joining time. The death had occurred within this period. Hence, he is to be treated to be on duty at the time of his death.

Further reference has been made to `GUIDELINES FOR CONCEDING ATTRIBUTABILITY OF DISABLEMENT OR DEATH TO GOVERNMENT SERVICE' under the Central Civil Services (Extraordinary Pension) Rules.

The relevant parts of these guidelines are reproduced below.

"GUIDELINES FOR CONCEDING ATTRIBUTABILITY OF DISABLEMENT OR DEATH TO GOVERNMENT SERVICE

1. Rule 3-A covers also cases of death after discharge/invaliding from service.

2. In deciding on the issue of entitlement, all the evidence (both direct and circumstantial) will be taken into account and the benefit of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service cases.

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4.	***(a)***	*(i)*	*Injuries sustained when the man is 'on duty' will be deemed to have arisen in, or resulted from, Government service ; but in cases of injuries due to serious negligence or misconduct, the question of reducing the disability pension will be considered.*
		(ii)	*In cases of self-inflicted injuries while on duty, attributability will not be conceded unless it is established that service factors were responsible for such action ; in cases where attributability is conceded, the question of grant of disability pension at full or at a reduced rate will be considered.*
	(b)		*A person subject to the disciplinary code of the Central Armed Police Battalions, is 'on duty' -*
		(i)	*When performing an official task or a task, failure to do which would constitute an offence, triable under the disciplinary code, applicable to him.*
		(ii)	*When moving from one place of duty to another place of duty irrespective of the method of movement.*
		(iii)	*During the period of participation in recreation, organized or permitted by service authorities, and during the period of travelling in a body or singly under organized arrangements.*
		(iv)	*When proceeding from his duty station to his leave station on returning to duty from his leave station at public expenses, that is, on Railway warrant, on cash TA (irrespective of whether Railway warrant/cash TA is admitted for the whole journey or for a portion only), in Government transport or when road mileage is paid for the journey.*
		(v)	*When journeying by a reasonable route from one's official residence to and back from the appointed place of duty irrespective of the mode of conveyance, whether private or provided by the Government.*

	(c)		*An accident which occurs when a man is not strictly 'on duty' as defined above, may also be attributable to service, provided that it involved risk which was definitely enhanced in kind or degree by the nature, conditions, obligations or incidents of his service and that the same was not a risk common to human existence in modern conditions in India. Thus, for example, where a person is killed or injured by someone by reason of his belonging to an Armed Police Battalion (and in the course of his duty in such service, he had incurred wrath of such person) he shall be deemed to be 'on duty' at the relevant time.*

This benefit will be given more liberally to the claimant in cases occurring on 'active service' as defined in the relevant Acts/Rules (e.g., those applicable to BSF/CRPF, etc., Personnel).

5. *In respect of diseases, the following rules will be observed :-*

(a) Cases, in which it is established that conditions of Government service did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease, will fall for acceptance on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for Government service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service.

(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of Government service determined or contributed to the onset of the disease and that the conditions were due to the circumstances on duty in Government service.

(d) In considering whether a particular disease is due to Government service, it is necessary to relate the established facts, in the a etiology of the disease and of its normal development, to the effect that conditions of service, e.g., exposure, stress, climate, etc., may have had on its manifestation. Regard must also be had to the time factor (Also see Schedule I-A).

(I) ***Common diseases known to be affected by exposure to weather:***

Diseases such as Bronchitis, Rheumatism and Nephritis - indeed most diseases of the respiratory system, joints and kidneys - are affected by climatic conditions. The period and the conditions of service at any particular place should be taken into account in determining causal connection with service.

(II) ***Common diseases known to be affected by stress and strain:***

This should be decided with due reference to the nature of the duties which the individual has had to perform in Government service. It may be that in some cases the individual had been engaged on sedentary duties, when they will normally not qualify.

(III) ***Diseases endemic to certain areas:***

Diseases such as Malaria, Kalazar, Filariasis, Dysentery, Cholera, etc., are endemic in certain ares. These diseases may also be introduced by movements of infected persons.

In determining causal connection with service, it will have to

be established that the conditions of Government service exposed the individual to the infections as a result of which he contracted the disease. Where there is medical evidence of the contraction of the diseases either prior to entry into service, or while off duty or on leave or desertion or unauthorized absence, etc., attributability should not be accepted, unless the disease occurs within the incubation period.

(iv) ***Diseases due to infections in service:*** *Entitlement to pension will be admitted if the exposure to infection arose from the circumstances of the member's Government service.*

SCHEDULE 1-A:

I. LIST AND CLASSIFICATION OF DISEASES WHICH CAN BE CONTRACTED BY SERVICE

A. Diseases affected by climatic conditions

(i) Pulmonary Tuberculosis.
(ii) Pulmonary Oedema.
(iii) Pulmonary Tuberculosis with pleural effusion.
(iv) Tuberculosis - Non-pulmonary.
(v) Bronchitis.
(vi) Pleurisy, empyema, lung abscess and bronchiectasis.
(vii) Lobar pneumonia.
(viii) Nephritis (acute and chronic).
(ix) Otitis Media.
(x) Rheumatism - acute.
(xi) Rheumatism - chronic.
(xii) Arthritis.
(xiii) Myalgia.
(xiv) Lumbago.
(xv) Frost-bite leading to amputation of limb/limbs.
(xvi) Heat Stroke."

As per para 4(b)(ii) of these Guidelines, a person subject to the disciplinary code of the Central Armed Police Battalions is to be treated to be on duty when moving from one place of duty to another place of duty irrespective of the method of movement. This provision, along with Rule 5 of the Central Civil Services (Joining Time) Rules, 1979 clearly indicates that the husband of the petitioner has to be treated to be `on duty' when his death occured.

Category B covers cases where death or disability is due to causes which are accepted as attributable to or aggravated by

Government service. Diseases contracted because of continued exposure to a hostile work environment, subjected to extreme weather conditions or occupational hazards resulting in death or disability are specifically listed as examples of such diseases.

It is not disputed that at the time of his transfer the husband of the petitioner was posted in 55 Bn. CRPF West Tripura. The claim of the petitioner is that he died due to Cerebral Malaria contracted due to his posting in that area. It is claimed that Cerebral Malaria is common in Tripura. The respondents have not given any specific reply to this averment that Cerebral Malaria is a disease which is prevalent in West Tripura. They have only stated that the petitioner has not produced any medical evidence to prove that the husband of the petitioner was suffering from Cerebral Malaria. In my view, this stand would not help the respondents and the petitioner cannot be denied the benefit only on this ground.

Para 5(d)(iii) of the Guidelines referred to by the petitioner mentions the diseases such as Malaria, Kalazar, Filariasis, Dysentry, Cholera etc. as being diseases that are endemic in certain areas.

In Schedule 1-A, Myalgia (Malaria) is listed as item No.(xiii) among the Diseases affected by climatic conditions.

The Guidelines also state that in determining causal connection with service, it will have to be established that the conditions of Government service exposed the individual to the infections as a result of which he contracted the disease. But in cases where there is medical evidence of the contraction of the diseases either prior to entry into service, or while off duty or on leave or desertion or unauthorized absence, etc. attributability should not be accepted, unless the disease occurs

within the incubation period.

The Guidelines require that in deciding the issue of entitlement, all the evidence (both direct and circumstantial) will be taken into account and the benefit of reasonable doubt will be given to the claimant. This benefit will be given more liberally to the claimant in field service cases.

The petitioner was in service and posted at an area where Cerebral Malaria was common. At the time of admission on 26.8.2001 in Taneja Hospital and Heart Centre, the provisional diagnosis was made which suggested Cerebral Malaria, Enteric Encephalepals, Dehydration and Acute Renal Failure. Thus, the circumstantial evidence clearly indicates that he died due to Cerebral Malaria which may have been contracted due to exposure to hostile weather conditions at his place of posting. In any case, as per the guidelines, the benefit of reasonable doubt has to be extended to the claimant.

Thus, the claim of the petitioner deserves to succeed.

Accordingly, this petitiion is allowed. It is held that the petitioner is entitled to Extra-ordinary Family Pension treating her case to be falling in `Category B' instead of in `Category A'. The respondents are directed to recompute the Family Pension accordingly. The petitioner shall also be entitled to arrears of the Extra-ordinary Family Pension thus accruing, for a period of three years prior to the filing of this petition. The necessary payments be made to the petitioner within a period of two months of the receipt of certified copy of this order.

March 02, 2016 **(HARINDER SINGH SIDHU)**
JUDGE

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