

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

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THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.18060 of 2014

S.Balasubramani

... Petitioner

Vs.

- 1.The Union of India,
Represented by its Secretary to the Government,
Department of Home Affairs,
New Delhi.
- 2.The Director General of Police,
O/o. Directorate General,
CRPF, Block No.1,
CGO Complex, Lodhi Road,
New Delhi 110 003.
- 3.The Inspector General of Police,
Southern Sector CRPF,
Road No.10 C, Jubilee Hills,
Near MLA/MPs Colony,
Gayathri Hills,
Hyderabad 500 033.
- 4.The Deputy Inspector General of Police,
Group Centre, CRPF,
Chandrayangutta,
Hyderabad 500 005.
Telungana.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to grant an ex-gratia lumpsum compensation and other related benefits with interest on death of petitioner's brother S.Kumaresan due to Falciparum Malaria while on service in accordance with instructions issued by the Government of India, Department of Pension and Pensioners' Welfare vide Office Memorandum No.45/55/97-P & PW(C) dated 11.09.1998.

For Petitioner	: Mrs.R.Gouri
For Respondents	: Mr.T.L.Thirumalaisamy

O R D E R

Heard Mrs.R.Gouri, learned counsel appearing for the petitioner and Mr.T.L.Thirumalaisamy, learned counsel appearing for the respondents.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Mandamus, to direct the respondents to grant and ex-gratia lumpsum compensation and other related benefits with interest on death of petitioner's brother S.Kumaresan due to Falciparum Malaria while on service in accordance with instructions issued by the Government of India, Department of Pension and Pensioners' Welfare vide Office Memorandum No.45/55/97-P & PW(C) dated 11.09.1998."

3. The case of the petitioner is as follows:

The petitioner is the elder brother of S.Kumaresan who joined CRPF as ASI(M) on 03.07.2000 and he was posted in the office of the fourth respondent. Thereafter, he was sent for training in the Central Training College, Nanded, Maharashtra, for the period from 01.01.2001 to 28.02.2001. While under going training, the petitioner's brother was infected by Falciform Malaria. After completion of the training, the petitioner's brother had come home at Chennai after availing leave to his credit in the month of March 2001. Unfortunately, both his mother and his father were also infected by Falciform Malaria from petitioner's brother.

4. Thereafter, the petitioner's brother joined duty at Hyderabad in the first week of April 2001, where he fell into serious illness, in view of the contracted Malarial infection. The petitioner's brother took treatment at CRPF Base Hospital, Hyderabad and other Private Hospitals in Hyderabad. In the mean time, the petitioner's mother and his father both of them expired on 14.04.2001 and 15.04.2001 respectively, leaving behind the petitioner and his younger brother. Unfortunately, his younger brother too died of the same Malarial infection on 18.04.2001 at Nizam's Institute of Medical Sciences, Hyderabad.

5. The said fact that the petitioner's brother had contracted Malarial infection has not been disputed by the respondents and also the fact that he contracted the said infection during the period of his training and infection was proved to be fatal to the petitioner's brother. The petitioner's brother when died, was not married. The only surviving member in the family is the petitioner herein.

6. In the above circumstances, the petitioner would submit that the department of Pension and Pensioners' Welfare have issued an Office Memorandum dated 11.09.1998, providing for liberalised scheme of payment of ex gratia lumpsum compensation to the families of Central Government Civilian employees who died in harness. As per the Office Memorandum, a compensation of Rs.5,00,000/- was payable as ex gratia towards the death occurring due to accidents in the course of performance of the duties. As per the annexure of the Office Memorandum dated 11.09.1998, conditions were prescribed which are extracted below for effective reference.

"1. The main condition to be satisfied for the payment of the ex gratia lumpsum compensation in the specified circumstances is that, the death of the employee concerned should have occurred in the actual performance of bona fide official duties. In other words, a causal connection should be established between the occurrence of death and Government service.

2. Powers having been delegated to the Administrative Ministries to sanction ex gratia payments under these orders, it shall be their responsibility as well as that of the Financial Advisers to satisfy themselves that, the death of the Government servant to be compensated by the payment of the lumpsum ex gratia to the family, in fact occurred in the actual performance of bona fide official duties and to establish its causal connection and nexus with Government service. This could be done on the basis of medical and other documents relating to the case.

3. Even, if a Government servant had died in such circumstances that a medical report could not be secured, the nexus and causal connection with Government service would need to be adequately established in determining the entitlement to the ex gratia lumpsum payment. In deciding this issue, all evidence (both direct and circumstantial) shall be taken into account and the benefit of reasonable doubt given to the claimant. The benefit of reasonable doubt will be extended more liberally in field service cases, as provided in the guidelines for conceding attributability of a disablement or death to Government service forming part of the Central Civil Services (Extraordinary Pension) Rules."

7. As per the above conditions, the grant of ex gratia payment should be extended more liberally. In this circumstances, the petitioner seemed to have made a representations on 30.05.2012, followed by remainder on 30.10.2012, 16.11.2012 etc., However, without considering the circumstances in which the petitioners brother died in harness,

the authorities concerned vide letter in January 2013, rejected the claim for grant of ex gratia compensation. After the said rejection order, the petitioner has approached this Court seeking for issue a mandamus for payment of ex gratia compensation in terms of the Office memorandum dated 11.09.1998.

8. Upon notice, the learned counsel for the respondents entered appearance and filed a detailed counter affidavit. According to the learned counsel for the respondents, infection of Malaria is not disputed but he would submit that only north eastern region in the Country was declared as Malaria prone and not southern India i.e., Hyderabad, where the petitioner's brother was last serving and died. Other than the said reason, no other factor has been mentioned for denying the ex gratia compensation payable to the family of the petitioner's brother on his death while in service.

9. Although the detailed counter has been filed, resisting the claim of the petitioner, but the reasons said forth in the counter affidavit do not merit serious consideration of this Court as the same are not tenable.

10. The learned counsel appearing for the petitioner would submit that when the death due to malarial infection is not disputed by the respondents, there is no justification in denying the benefit of the provisions contained in the Office Memorandum dated 11.09.1998, particularly, when the memorandum provides for liberal consideration of the claim towards grant of ex gratia compensation. In the instant case, it was quiet unfortunate that due to malarial infection not only the petitioner's brother died and also the petitioner's father and mother too fell for the infection. In the said circumstances, the action by the Department in not granting ex gratia compensation to the petitioner cannot be acceptable as a valid action and the rejection of his claim by the respondent is therefore, unreasonable and unjust.

11. Since the petitioner's brother died within a short lifespan of his service at young age and because of infection contracted by him which had also claimed the lives of both his father and mother leaving the petitioner as the only surviving member of the family, the petitioner herein is entitled to be considered for payment of ex gratia compensation as contemplated in Office Memorandum dated 11.09.1998, against the provision i.e., death occurring due the accidents in the course of performance of duties. It is needless to mention that the accident has to be construed to include the death due to contracting of any virus which ultimately claimed the life of the service personnel.

12. In the above circumstances, the rejection of petitioner's claim is declared as invalid and therefore, the respondents are directed to pay ex gratia compensation to the petitioner in terms of paragraph 5 of Office Memorandum.

13. The said direction of this Court shall be complied with by the respondents within a period of two months from the date of receipt of a copy of this order. It is also made clear that the petitioner is directed to make available the legal heir certificate to the respondents certifying that he is the only surviving legal heir available for claiming the said compensation. With this direction, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS III)

/TRUE COPY/

Sub Assistant Registrar

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To

- 1.The Union of India,
Represented by its Secretary to the Government,
Department of Home Affairs,
New Delhi.
- 2.The Director General of Police,
O/o. Directorate General,
CRPF, Block No.1,
CGO Complex, Lodhi Road,
New Delhi 110 003.
- 3.The Inspector General of Police,
Southern Sector CRPF,
Road No.10 C, Jubilee Hills,
Near MLA/MPs Colony,
Gayathri Hills,
Hyderabad 500 033.

4.The Deputy Inspector General of Police,
Group Centre, CRPF,
Chandrayangutta,
Hyderabad 500 005.
Telungana.

+1 C.C. to M/S.R.Gouri Advocate SR.NO. 66791/17

+1 C.C. to M/S.T.L.Thirumalaisamy Advocate SR.NO. 66557/17

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VGI (CO)
T.R (27/10/2017)



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