

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.3365 OF 2016

Smt. Ranjana w/o Bhaskar Anasane,
Age-63 years, Occu:Housewife,
R/o-Survey No.2481/1, BPL No.12,
Nagsen Nagar, Near Rameshwar Colony,
Mehrlin, Jalgaon (Maharashtra)

...PETITIONER

VERSUS

- 1) The Director General, CRPF,
Ministry of Home Affairs,
CGO Complex, Lodhi Road,
New Delhi-110 003,
- 2) The Deputy Inspector General of Police,
Central Reserved Police Force,
Group Centre, CRPF,
Talegaon, Pune-410 507,
(Maharashtra State),
- 3) The Inspector General of Police,
M.P., Sector CRPF, Bhopal,
(Madhya Pradesh),
- 4) The Commandant,
89 Bn, Central Reserved
Police Force, New Delhi.

...RESPONDENTS

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Mr.Sujeet D. Joshi Advocate for Petitioner.
Mr.Bhushan Kulkarni, Standing Counsel for
Respondent Nos. 1 to 4.

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**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 6TH FEBRUARY, 2018.

DATE OF PRONOUNCING JUDGMENT: 26TH FEBRUARY, 2018.

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition under Article 226 of the Constitution of India is filed with following substantive prayers:

“B) By issue of Writ of certiorari or any other appropriate writ, order or direction in the like nature, the impugned order dated 21.11.2013 as well as the order dated 18.12.2014, passed by the respondent No.2 may kindly be quashed and set-aside.

C) By issue of Writ of certiorari or any other appropriate writ, order or direction in the like nature, the respondent No.1 to 4 may kindly be directed to grant the ex-gratia compensation to the petitioner in accordance with the guidelines and conditions contained in the office memorandum dated 11.9.1998, issued by the Ministry of Personnel, Public Grievances and Pensions.

D) By issue of Writ of mandamus or any other appropriate writ, order or direction in the like nature, the respondents No.1 to 4 may kindly be directed to grant/ sanction the extraordinary pension to the petitioner within such period along with arrears as deemed fit by this Hon'ble Court."

3. The brief facts, giving rise to this Petition, can be stated as under:

. As per offer of employment dated 19th February, 2013, the son of Petitioner namely,

Parmeshwar Bhaskar Anasane was offered employment as a Constable GD in response to the recruitment process held in the year 2012 by the Respondents. The same was accepted by Parmeshwar. On 20th March, 2013 the son of Petitioner had joined the duties as Constable GD in the pay scale of Rs.5200-20200. Amongst the other duties, the duty of deceased Parmeshwar was to visit the temple and carry out its regular day to day maintenance, performance of pooja etc. Parmeshwar was required to perform the said job even on holidays like Sunday or any other public holidays. Deceased Parmeshwar has performed such duties from 20th March, 2013 upto 25th August, 2013. On completion of training of about six months, son of the Petitioner was to be sent for basic training at RTC, Neemuch, Madhya Pradesh.

4. It is contended by the Petitioner that on 25th August, 2013, deceased Parmeshwar had been to the place of his duty for the purpose of

performing pooja and maintenance of Temple as usual. He has attended the Temple up-to 10.00 hours and thereafter, upon the verbal permission of the BHM Dilip Kumar (HC/GD), Parmeshwar has left for his home. Thereafter, as per the information received from the office of Station Master, Dehu Road Railway Station, Pune, Parmeshwar met with an accident in between Dehu Road and Akurdi Railway Station. This incident had taken place while Parmeshwar was returning from the duties. Therefore, Parmeshwar succumbed to the accidental death on the same day i.e. 25th August, 2013. Thereafter, office of Respondent No.2 has constituted the Court of Inquiry under communication dated 31st August, 2013 to inquire into the circumstances under which Parmeshwar has expired and to fix the responsibility. In the said Court of Inquiry, Respondent No.2 has deduced as many as five conclusions which are in favour of the Respondents.

5. It is submitted by the Petitioner that the Circular dated 11th September, 1998 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension, lays down the conditions and guidelines for paying ex-gratia compensation to the family of deceased CRPF employees. The conclusions have been drawn by the Court of Inquiry, without any notice/ knowledge to the family members and the same are not in conformity with the parameters fixed for paying the ex-gratia compensation. The Respondent authority has made an effort to draw the conclusions adverse to the interest of the family members of the Petitioner to avoid the payment of ex-gratia compensation. The Petitioner has made representation to Respondent No.2 for payment of ex-gratia compensation and extra ordinary pension. It is submitted that by communication dated 18th December, 2014 Respondent No.2 has rejected the claim of the Petitioner for grant of ex-gratia compensation. Hence this Petition.

6. Learned counsel appearing for the Petitioner, relying upon the grounds taken in the Petition, submits that neither the Petitioner nor any one from her family were given an opportunity to substantiate their claim for grant of ex-gratia compensation. For want of opportunity of hearing or an opportunity to substantiate the claim, the conclusions drawn by the Court of Inquiry deserves to be ignored in totality. It is submitted that there is no record to show that, there are any notings with the Respondents as regards the deceased Parmeshwar having left the premises without permission. Therefore the office order dated 21st November, 2013 and the impugned communication dated 18th December, 2014 deserve to be quashed and set aside. Learned counsel further submits that the family of the deceased is also entitled for grant of extraordinary pension and there has been total inaction as regards processing the said claim even as on today.

Learned counsel therefore prayed that the Petition deserves to be allowed.

7. On the other hand, learned counsel appearing for the Respondents, referring to the affidavit in reply filed on behalf of the Respondents submits that on 25th August, 2013 Parmeshwar had attended Pooja at Mandir upto 10.00 hours and after that HC/GD Dilip Kumar, BHM had given verbal permission to 10 recruits including Parmeshwar Bhaskar Anasane, to meet their relatives at Gate No.2 from where Parmeshwar had left the Group Center CRPF, Pune Campus without permission of the competent authority and further proceeded to Pune City by Local Train at his own. As per telephonic information received from Station Master, Dehu Road Railway Station, Parmeshwar met with an accident in between Dehu Road and Akurdi Railway Station while performing journey in Local Train No.99811, Lonawala-Pune, and expired on 25th August, 2013 at 12.36 hours.

It is submitted that as per instructions, immediate financial assistance of Rs.15,000/- was paid to the Petitioner from the Welfare Fund of Group Centre CRPF, Pune.

8. Learned counsel further submitted that Court of Inquiry was constituted to inquire into the circumstances under which Parmeshwar expired on 25th August, 2013. It was revealed in the Court of Inquiry Proceedings that Parmeshwar absconded from the Group Center, CRPF, Pune Campus without permission of the competent authority and further proceeded to Pune city by local Train at his own. As per information received from Station Master, Dehu Road Railway Station, Parmeshwar met with an accident in between Dehu Road and Akurdi Railway Station. It is submitted that, reportedly, Parmeshwar was leaning outside the local train and dashed with an electric pole and succumbed to his injuries on 25th August, 2013 at about 12.36 hours. As per the medical certificate/ postmortem

report, the probable cause of death of Parmeshwar was shock and haemorrhage due to grievous injury to vital organs and skull involving frontal right temporal parietal occipital bone and brain crushed by railway accident while performing his journey in local train. The injury was sustained while performing journey in local train and succumbed to his head injury/ hemorrhage for which none is held responsible. The Risk Fund Final payment lump sum amounting to Rs.9,00,000/-(Rupees Nine Lakhs) has been paid to the Petitioner. Family pension @ Rs.3500/- p.m. plus DA, Medical Allowance @ Rs.300/- p.m. DCRG Rs.32,148/- vide PPO No.23904140256 dated 28th February, 2014 and GIS Rs.30,000/- and Leave Encashment Rs.5358/- have also been paid to the Petitioner.

9. It is submitted that the Petitioner has filed this Petition seeking ex-gratia compensation for Rs.10 Lakhs and extraordinary pension. The main condition to be satisfied for the payment of

the Extra Ordinary Pension as well as ex gratia lump-sum 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. Nexus and casual connection between the death and Government service are to be established. In the instant case, Parmeshwar left from the campus at his own without any leave or permission of the competent authority and met with an accident while performing journey in local train and expired, which is not attributable to risk of Office/Department for which the individual himself was responsible. The nexus or casual connection between the death and Government service has not been established in the Court of Inquiry. Hence the Petitioner is not entitled to get the consequential benefits as admissible under CCS (EOP) Rules in this case. All terminal benefits including Family Pension under CCS (Pension) Rules, 1972 have been extended to the Petitioner.

10. Learned counsel further submitted that the Petitioner is only entitled to get the pensionary benefits as admissible under the CCS (Pension) Rules which are correctly granted by the competent authority. All the action taken by the Respondents are in conformity to the Government orders/ instructions, hence the contention of the Petitioner is baseless. Therefore it is submitted that the Petition may be rejected.

11. We have carefully considered the submissions of the learned counsel appearing for the Petitioner and learned counsel appearing for the Respondents. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, and the affidavit in reply filed on behalf of the Respondents.

12. At the outset it would be apt to

reproduce herein below the scheme, namely, "Liberalized Scheme of Payment of Ex-gratia Lump-sum Compensation to Families of Central Government Civilian Employees Who Die in Harness", introduced vide Circular dated 11th September, 1998, under the provisions of which scheme the Petitioner is claiming ex-gratia compensation:-

"Category-'B':- Death or disability 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.

Category-'C':- Death or disability due to accident in the performance of duties. Some examples are accidents while travelling 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.

Category-'D':- Death or disability, attributable to acts of violence by terrorists, antisocial 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 transports, indiscriminate shooting incidents in public, etc., would be covered under this category.

Category 'E':- Death or disability arising as a result of (a) attack by or during action against extremists, antisocial 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."

. It is the contention of the Petitioner that Petitioner's case is covered under Category "C".

13. It appears that office of Respondent No.2 has constituted the Court of Inquiry under communication dated 31st August, 2013 to enquire into the circumstances under which Parmeshwar has expired and to fix the responsibility. Upon going through the Court of Inquiry (COI) Proceedings, Respondent No.2 has deduced about five conclusions, which reads as under:-

"(i) The responsibility of the accident was fixed upon the individual (Parmeshwar) himself.

(ii) That, there is no nexus or casual connection between the death and

Government duty,

(iii) That, the family of the deceased was held entitled to get pensionary benefits as admissible under CCS (Pension) Rules.

(iv) Outstanding dues, if any, against the Constable GD to be recovered from his payable dues.

(v) In order to avoid such recurrence in future, the newly appointed RTS should not ordinarily be allowed to proceed outside Group Centre, CRPF, Pune Campus."

14. The Petitioner has grievance about the conclusion Nos. (i), (ii) and (v) arrived in the said Court of Inquiry Proceedings. According to the Petitioner, in the said inquiry no opportunity was given to the Petitioner or any family member of deceased Parmeshwar to put forth the stand/contention on behalf of deceased Parmeshwar. However, learned counsel appearing for the

Petitioner has not brought any provision to our notice which provides for affording an opportunity of hearing to the family members of deceased employee. In absence of bringing such provision to the notice of this Court, we find it difficult to accept the contention that in the said inquiry an opportunity should have been given to the Petitioner or other family members of deceased Parmeshwar to put forth their contentions.

15. In order to find out whether the Petitioner would be entitled for ex-gratia compensation, keeping in view the afore mentioned circular and in particular Category 'C' thereof, we have summoned the original record maintained by the office of the Respondents in relation to inquiry conducted by the Court of Inquiry (COI). During the said inquiry statement of superior officer of deceased Parmeshwar, namely, HC/GD Dilip Kumar, (BHM) has been recorded. It appears that certain questions were asked to said officer

during the course of inquiry. It is stated by Dilip Kumar that on 25th August, 2013 at 9.00 a.m. he has taken round in the temple and at that time deceased Parmeshwar was present in "Mandir Marka". In reply to question asked to said officer, whether said Parmeshwar (now deceased) was sent by him out of the Camp, the officer stated that all the trainees were sent for cleaning purpose and, at that time in all ten trainees, requested to permit them to go to Gate No.2 to meet their relatives. In said ten trainees, one of them was Parmeshwar. When specific question was asked to the officer, whether he is aware that new trainees cannot be sent out of Camp without pass, in reply to said question the officer replied that, he is aware about such procedure but he allowed said ten trainees to go up-to Gate No.2 only. Further specific question was asked to him, by whose permission Parmeshwar Bhaskar went to local Railway Station/ Rail. In reply to said question the officer replied that, Parmeshwar went up to

Gate No.2 to meet relative and from Gate No.2, without taking any body's permission, Parmeshwar went to Dehu Road Railway Station and boarded in Lonawala-Pune local Train.

16. Therefore, the statement of the Officer, namely Dilip Kumar, makes it clear that deceased Parmeshwar, without permission, went from Gate No.2 of the Camp to the Railway Station and boarded in the local Train i.e. Lonawala-Pune Train. In that view of the matter, we cannot accept the contention of the counsel appearing for the Petitioner that Parmeshwar died during the course of his employment and therefore the family members of deceased Parmeshwar are entitled for ex-gratia payment by invoking Category 'C' of the Categories stipulated in above referred Circular. It cannot be said that death of Parmeshwar was due to accident in the performance of duties. Admittedly, as contended by the Respondents, all the monetary dues payable to the Petitioner, are

already paid to the Petitioner, including Risk Fund Final Payment amounting to Rs.9,00,000/-, Family Pension @ Rs.3500/- per month plus D.A., Medical Allowance @ Rs.300/- per month, DCRG Rs.30,000/- and Leave Encashment of Rs.5358/-. Only ex-gratia payment is not paid to the Petitioner as the Petitioner is not entitled to receive the same.

17. Though we are at pains to reject the Petition, keeping in view the entire record of the case, we are unable to persuade ourselves to grant any relief in favour of the Petitioner. Accordingly, the Writ Petition stands rejected. Rule stands discharged.

[S.M. GAVHANE, J.] 2
J.]

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[S.S. SHINDE,