

Sr. No.223

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

**CWP No.17364 of 2016 (O&M)
Date of Decision: 27.08.2019**

Sunita Devi

... Petitioner

Versus

Union of India and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Navdeep Singh, Advocate,
for the petitioner.

Mr. Shivoy Dhir, Senior Panel Counsel,
for the respondents-UI.

ARUN MONGA, J.

Petitioner, a widow of Rifleman Late Jagat Singh, aggrieved against non-grant of ex-gratia compensation/extra ordinary family pension, *inter alia*, seeks issuance of a writ in the nature of certiorari to quash order/letter dated 27.07.2014 (Annexure P-4), vide which the same has been denied to her on the ground that her husband's death was due to sudden cardio-respiratory arrest. Hence it was held that ex-gratia is not admissible as he did not die in harness.

2. A consequential writ in the nature of mandamus has also been sought directing the respondents to grant full arrears of extra ordinary family pension/ex-gratia compensation by treating the aforesaid death being 'attributable to service' in accordance with the applicable policy/law.

3. The foremost question that arises for adjudication herein is whether the death of petitioner's husband due to "sudden cardio-respiratory arrest/ Myocardial Infraction." while he was on active bonafide military duty is to be treated as a death in harness? Whether the administrative action of the respondents in disregarding/over-ruling the opinion of the Competent Military Authorities (Commanding Officer and Brigade Commander) declaring the said death as "attributable to military service" and also a death in harness by duly constituting Statutory Court of Inquiry is sustainable in law?

4. Adverting to facts, shorn off unnecessarily details succinctly are that late husband of the petitioner was detailed for an official course at a military establishment commencing from 01.04.2013 till 22.06.2013. Petitioner was declared fit in shape one medical category by the duly Competent Medical Authority for attending the said course. Shape one category is the highest possible medical category. However, while the petitioner's husband was undergoing the said course, he complained of severe chest pain and requested to be taken to military hospital, where he was declared dead on account of MI (Myocardial Infraction) on 14.04.2013.

5. The death of petitioner's late husband was declared as 'attributable to service' by the duly constituted Statutory Court of Inquiry. Statutory Court declared the death of petitioner's late husband as 'Death in Harness' and so did the Brigade Commander and the Commanding Officer.

6. In the return filed on behalf of the respondents, dismissal of the writ petition has been sought on the ground that as per the post-mortem report dated 15.04.2013 (Annexure R-2) cause of death was sudden cardio-respiratory arrest due to Myocardial Infraction. As per Statutory Court of Inquiry Report (Annexure R-3), it was established that deceased was having severe chest pain after dinner on 14.04.2013 and he expired on the way to military hospital.

7. Both these reports, therefore, reflect that death was natural and yet the Court of Inquiry Report gave a wrong finding that the same was attributable to military service. It was wrongly opined in report that the death occurred while on bona-fide duty. Since the death of the deceased was natural, therefore, the family of the deceased was rightly not found entitled for grant of ex-gratia lumpsum compensation and extra ordinary family pension as per the applicable Policy, is the stand of respondents.

8. I have heard learned counsel for the parties and having gone through the pleadings and perused the relevant record appended thereto.

9. I am of the view that writ petition deserves to succeed for the reasons stated hereinafter.

10. Once the competent authority renders a positive declaration with regard to the attributability/aggravation, then there is no question of administrative authorities sitting over the said positive declaration, unless, of course it is a perverse declaration. The authorities ought to release the requisite pension

in such circumstances. These views are supported by a Division Bench of this Court in ***Ramesh Kumar Sharma Vs. Union of India 2004 (2) SCT 870 (Annexure P-6)***. Even in cases, where the competent medical/military authority has not rendered positive declaration of attributability/aggravation, Hon'ble the Supreme Court has held in ***Dharamvir Singh Vs. Union of India (2013) 7 SCC 316 (Annexure P-7) and Union of India and another Vs. Rajbir Singh (Civil Appeal No.2904 of 2011) (Annexure P-8)***, followed by this Court in ***Union of India Vs. Kashmir Singh (LPA No.737 of 2010 decided on 30.06.2010 affirmed by Hon'ble the Supreme Court in Civil Appeal No.1074/2011)*** that in case there is no note of a disability at the time of entry into service then death or disablement on account of such disability which arises in service is to be deemed to have incurred during and caused due to service conditions.

11. The petitioner, however, has been denied the grant of extra ordinary family pension as well as ex-gratia compensation on the ground that the death of petitioner's husband was not attributable to service/not a death in harness by way of a mere administrative action. In fact, the petitioner ought to have been placed under Category 'B' or 'C' of family pension under the applicable Rules and Policy and granted extra ordinary pension as entitled. As per the applicable Rules, any death declared as “attributable/aggravated” by service leads to the grant of “Extraordinary Family Pension under Category B” (also known as

“Special Family Pension”) rather than ordinary family pension.

Also, any death in course of duty entitles the family to ex-gratia compensation as per Policy.

12. The respondents, however, without applying the provisions of Rules or the law on the subject, have not taken any positive action on the petitioner's representation and have simply rejected her claim for extra ordinary family pension as well as ex-gratia compensation without any justifiable reasons therein.

13. In view of the above, present writ petition is allowed and Annexure P-4 is quashed with a direction to the respondents to consider the claim of the petitioner and grant the benefits due to her under the applicable Rules.

14. **Petition allowed.**

27.08.2019

vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No