

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

**Civil Writ Petition No.2138 of 2015
Decided on : 24.05.2019**

Ompati Devi

... Petitioner

Versus

Union of India and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Saravpreet Gurna, Advocate
for the petitioner.

Mr. P.C. Goyal, Senior Panel Counsel
for the respondents-UOI.

G.S. Sandhawal, J. (Oral)

The petitioner being the widow of Head Constable-Joginder Singh who was serving with the CRPF seeks the grant of extra-ordinary family pension, which has been declined vide order of December, 2014 (Annexure P-6).

2. The reasoning given in the said order to deny the benefit is that there are five distinct Categories from A to E, whereby the entitlement as such would lie. The death in question was covered under category A of Central Civil Services (Extraordinary Pension) Rules, 1939 (hereinafter referred to as '1939 Rules') and, therefore, the earlier classification under Category 'C' on 01.03.2011 (Annexure P-2) was wrong, which has now, thereafter, been changed on 07.03.2014. The judgment passed in '**Kunta Devi Vs. Union of India and others**' 2011 (1) PLR 668 was distinguished on the ground that it was an individual case and it could not be implemented as general rule for other cases, in view of the existing rules on the subject.

Keeping in view the fact that an office order had been issued that the death of the serviceman was not attributed to Government Service and not entitled for extra-ordinary family pension, which has been duly endorsed by IG Jammu Sector on 21.10.2014, the claim as such was rejected. The ground taken was that there was no nexus and casual connection between death and Government Service, as evident from the Court of Inquiry/Postmortem report in the instant case being a natural death.

3. The issue as such is settled beyond any anvil of doubt. In the peculiar facts and circumstances of the present case, as the respondents have chosen to shift the category of the death, on account of the fact that the petitioner had filed a representation for the grant of extra-ordinary family pension, which is totally uncalled for.

4. The factual aspects is that on 21.09.2010 the petitioner's husband had died in Ramban, Jammu & Kashmir after having his dinner in the OR's Mess at 20:25 hours on getting discomfort with giddiness/convulsion and having fainted on the bed he was taken to the District Hospital, Ramban, where the Medical Officer declared him brought dead, as he died due to Cardiac Arrest. The Court of Inquiry in its report dated 01.03.2011 (Annexure P-2) categorized death under Category 'C' that cause of death was due to accident in the performance of duties of the Government of India.

5. It is pertinent to notice that in the Court of Inquiry, it was found that the deceased was not suffering from any disease and had been

placed under medical shape-I in annual medical examination for the year 2009-2010. He was not having any domestic problem and had qualified JD/PET 2010 in first chance. Therefore, his death was put under Category C in terms of the Government of India Rules dated 03.02.2000.

6. In the meantime, the family pension had already been awarded to the petitioner on 19.11.2010. Keeping in view the judgment of this Court **Kunta Devi (supra)**, a representation came to be filed before the competent authorities claiming the extra-ordinary family pension. Keeping in view the fact that a representation had been filed, the category as noticed was changed on 03.02.2014 and, accordingly, a recommendation was given that the petitioner was not entitled for the family pension. Resultantly, a amended order was passed on 07.03.2014 by denying the claim to the petitioner.

7. The petitioner had, thereafter, approached this Court by filing **CWP No.3300 of 2014** seeking directions for consideration of her claim, which was disposed of on 21.02.2014 (Annexure P-5) with a direction to decide her representation. Resultantly, the impugned order has been passed.

8. The cumulative facts would, thus, go on to show that the respondents have treated the death of the exserviceman under Category C, keeping in view his physical fitness that he was not a chronic patient. Thereafter, they had changed the said category to the detriment of the petitioner depriving her of the claim of the extra-ordinary family pension. A consistent view has been taken in various judgments by this Court,

which has now sought to be distinguished by Mr. Goyal on the ground that in **Kunta Devi (supra)** it was a case where the deceased was on night patrol duty and was also serving with the CRPF, as in the present case. However, a perusal of the judgment would go on to show that the Coordinate Bench of this Court had taken into consideration Category 'A'. Thereafter, it had come to the conclusion that the serviceman was not suffering from such a condition that had been detected or had been treated and, therefore, on account of the stressful conditions created on account of his posting and aggravated due to his being on duty, therefore, it was held that the claim for the extra-ordinary family pension would arise. Relevant portion of the said judgment reads as under:-

“8. There is no denial to the fact that the petitioner was on duty at the time when he suffered heart attack and died. It is also not disputed that he was serving in the disturbed area and was on night patrol duty. Therefore, the issue of his being on duty is not in dispute. The only question that has to be determined is as to whether death, on account of heart attack, while on duty, could be attributable to natural causes or could it be attributed to the government service. If the Government of India orders, category A, upon which reliance has been placed by the learned counsel for the respondent, is to be perused, then it becomes manifestly clear that the rules contemplate the grant of extraordinary pension to an incumbent in the event of death or disability not due to natural causes, and attributable to government service and denial thereof to causes that have been classified as chronic ailments like “heart and renal diseases, prolonged illness, accidents while not on duty”. Therefore, it becomes abundantly clear that if an ailment like heart disease etc. are suffered by an

incumbent of the services while not on duty, then he shall not be entitled to any extraordinary pension, on account of any fall-out of such a disease. But if the person is on duty and in the process suffers a heart attack and such condition of heart has not been traced to natural cause earlier, to mean a continuous neglective condition or a prior treated condition, then in such an eventuality, the possibility of the personnel of the armed forces suffering such a problem, resulting in his death, cannot be stated to be not on account of government service. It is not the case of the respondents that the petitioner was earlier suffering from such a condition and that such a condition was detected or was being treated. Therefore, the possibility of the husband of the petitioner suffering such a condition on account of stressful conditions, created on account of his posting, cannot be ruled out. Even if there was a prior condition of heart and the same was aggravated due to his being on duty, even then the incumbent would have been entitled to extraordinary pension.

9. The counsel for the respondent has contended that a personnel of the armed forces is expected to be able to bear such stressful situations, with which the Court is in absolute concurrence, but it would still depend upon individual to individual and his capability and capacity to withstand stress, and even though, two persons are individually trained through the same process, they would not necessarily react in a similar fashion, when under stress. Thus, the contention of learned counsel for the respondent necessarily has to be rejected. In any eventuality, the petition has to be allowed and it is to be held that the petitioner shall be entitled to the extraordinary pension as her husband died while on duty and which death can be attributed to the government service, while on duty. The petitioner shall be entitled to such a pension from the date of death of her husband.

Petition allowed.”

9. Similarly, in **CWP No.1399 of 2011 'Promila Devi Vs. Union of India and others'** decided on 18.10.2011 (Annexure P-8), the serviceman was posted in Assam and involved in Active Insurgency Operations and also suffered from Myo Cardial Infarction while training for anti-naxalism operations. The pension was, accordingly, granted while placing reliance upon judgment passed in **'P. M. Annamma Vs. Union of India and others' 2008 (3) SCT 707.**

10. If reference is made to the said judgment, the Air Force Officer had died on account of Acute Myocardial Infraction and Cardiac Genic Shock and the Commanding Officer in the Column No.13, on account of the death of the officer had recommended the case by considering it as a disability/death aggravated by service. In such circumstances, it was held that the special family pension was made out. Relevant portion of the said judgment reads as under:-

“5. Learned counsel for the petitioner has invited our attention to the 'Report on the cases (other than those due to injuries) which have ended fatally or are proposed for invalidating' (Annexure P-27), Part 'A' of which was filled by the Medical Officer and Part 'B' by the Air Officer Commanding, 12 Wing Air Force, where husband of the petitioner was posted at the time of his death. In Part 'B' relating to 'circumstances of the case', under column No.13, in answer to question 'Do you consider the disability/death aggravated by service?', it has been written by the Officer Commanding, 12Wing Air Force, as 'yes'. Thus, the contention of the respondents in the written statement that death of the husband of the petitioner was considered as neither attributable to nor aggravated by Air For Service, is not

correct. Under the circumstances, we hold that the death of the husband of the petitioner was aggravated by the Air Force Service. Pension Regulation 85 provides that a Special Family Pension may be granted to the family of an officer if his death was due to or hastened by a wound injury or disease, which was attributable to military service or the aggravation by military service of a wound injury or disease, which existed before or arose during the military service.

6. Resultantly, the petitioner is held entitled to Special Family Pension on account of the death of her husband. Her pension will be calculated as per the rates fixed by the Central Government from time to time from the date husband of the petitioner died. However, arrears of pension, so calculated, shall be restricted to three years preceding the filing of this writ petition. The respondents are directed to disburse the arrears to the petitioner within three months from the date of receipt of a copy of this order. In case the arrears are not disbursed within the said period, the entire arrears will carry interest at the rate of nine per cent per annum from the date of expiry of three months till the date of payment.

This writ petition is allowed in the above terms with no order as to costs.”

11. As noticed in the present case also the Court of Inquiry at the initial stage on 01.03.2011 had also recommended and the case had been put in Category 'C'. It is not disputed that the deceased was posted at Ramban in Jammu & Kashmir which has been the hotbed of terrorism for the last several years and the armed forces are under consistent threat of their lives at all times and the factum of such hostile work environment cannot be ignored. Therefore, now the respondents cannot wriggle out of the earlier findings recorded regarding the fitness of the deceased and the fact that death had occurred which could be caused due to continued

exposure to a hostile work environment, which would fall in Category B.

Category A to E of reads 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. 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 traveling 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, 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.

Category ‘E’ Death or disability arising as a result of (a) attack by or during action against extremists, antisocial element, 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.”

12. The said categories were subject matter of consideration before the High Court of Himachal Pradesh and the Division Bench in **CWP No.187 of 2016 'Rajni Devi Sharma Vs. Union of India and others'** decided on 14.12.2016. While keeping in view all the case law as such, the Division Bench came to the conclusion that the serviceman serving with CRPF was posted at Kishtwar, Jammu & Kashmir had died due to severe Myocardial Infraction while on his bed. He was medically fit and the defence that the death was not attributed to Government service but cold weather was rejected. It was held that there was no past history of heart disease and therefore, it could be safely inferred that the incident which has taken place would fall under Category B, as discussed above. Relevant portion of the said judgment reads as under:-

“20. In nutshell, case of the respondents is that husband of the petitioner died due to natural cause i.e. ‘M.I.’ which is not attributable to Government Service and as such being covered under Category “A”, petitioner is not entitled to grant of extraordinary pension in terms of aforesaid Rules.

21. True, it is that chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty have been declared to be not attributable to or aggravated by Government service under Category “A”, but, if Category “B” is perused carefully, it clearly suggests that if disease is contracted because of continued exposure to a hostile work environment, subjected to extreme weather condition or occupational hazards resulting in death or disability same are to be accepted as attributable to or aggravated by Government service.

22. In the instant case, this Court cannot loose sight of the fact that at that relevant time late husband of the petitioner being ASI was in active service of CRPF and there is no denial of the fact that he was serving insurgency hit area i.e. Kishtwar (J&K). Similarly, this Court is fully conscious of extreme weather condition of the area of Kishtwar, especially in the month of January, when that entire area is submerged with snow.”

13. Keeping in view the above cumulative discussion, the impugned order (Annexure P-6) cannot be sustained and, accordingly, the same is quashed. The respondents shall process the case of the petitioner and give all necessary benefits alongwith arrears within a period of three months from the receipt of a certified copy of this order.

14. The writ petition stands allowed, accordingly.

MAY 24, 2019
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No