



2025:DHC:455-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 13.01.2025

Pronounced on: 28.01.2025

+ W.P.(C) 181/2017
LEELAM

.....Petitioner

Through: Mr. Ankur Chhibber and Mr.
Anshuman Mehrotra, Advs.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr. Rajesh Kumar, SPC with
Mr. Rahul Sharma, Mr.
Changez Ali Khan, Ms.
Mishika Pandita, Mr. Yash
Narian, Advs. for UOI with Mr.
Shiv Kumar Singh, SI, CRPF
and Mr. Ramniwas Yadav,
CRPF.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J

1. The present petition has been filed by the widow of late Sub-Inspector (SI) Surender Yadav, who unfortunately succumbed to the injuries suffered by him in a motorcycle accident that occurred on 09.11.2014. By way of this petition under Article 226 of the Constitution of India, the petitioner seeks the following reliefs:

“(a) quash and set aside the impugned Letter No J.II.81/2016-Wel-DA-4 dated 16.09.2016. And /Or

(b) issue a writ of certiorari/ mandamus or any other writ, order or direction to the respondents to grant



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Liberalized Family Pension/Extra Ordinary family Pension and Ex-Gratia lump-sum compensation to the petitioner. And /Or

(c) direct respondent to pay the due arrears with interest @ 12% p.a.”

BRIEF FACTS

2. With this preface, we examine certain facts, which are relevant for the adjudication of the case at hand.
3. The late husband of the petitioner, whilst serving with the 181st Battalion (Bn) of the Central Reserve Police Force (CRPF) in Srinagar, Jammu and Kashmir, received an intimation whereby he was informed that his father was seriously ill. He, thereafter, requested that he be granted Casual Leave to visit his father, which was duly sanctioned *vide* the Office Order dated 29.10.2014. Consequently, the petitioner's late husband proceeded to go on leave for a period of 14 days from 03.11.2014 to 20.11.2014.
4. While on leave, on 09.11.2014, the petitioner's late husband, the petitioner, and their daughter were riding on a motorcycle, when they met with an accident. All three of them were taken to the General Hospital, Narnaul by a passerby. Due to the critical condition of the petitioner's husband, he was referred to the Kailash Hospital, Alwar, where he was unfortunately declared dead.
5. A Court of Inquiry (COI) was ordered in view of the death of the petitioner's late husband, which was held on 10.02.2016 at the Office of the Commandant of the 181st Bn, CRPF.
6. The COI, in its findings, opined that the death of the petitioner's late husband was while 'on duty' and in these circumstances, his Next



of Kin would be entitled to Liberalized Family Pension/Extra-Ordinary Family Pension as per the provisions. The COI also opined that the petitioner may be sanctioned *Ex-gratia* lumpsum compensation in addition to other pensionary/financial benefits applicable to Government servants from time to time and that late SI Surender Yadav's elder son from his first wife be granted a Compassionate Appointment.

7. The petitioner made several attempts seeking the benefits accruing to her, however to no avail.

8. Being aggrieved thereof, the petitioner served a Legal Notice-cum-Representation upon the respondents on 31.03.2016, requesting that her case be considered for the grant of Liberalized Family Pension/Extra Ordinary Family pension as well as *Ex-gratia* lumpsum compensation and other permissible benefits.

9. The respondents *vide* the impugned Letter No.J.II.81/2016-Wel-DA-4 dated 16.09.2016, rejected the claim of the petitioner for Liberalized Family Pension/ Extra Ordinary Family pension as well as *Ex-gratia* lumpsum compensation, thereby compelling the petitioner to approach this Court, invoking the writ jurisdiction.

SUBMISSIONS OF THE PETITIONER:

10. The learned counsel for the petitioner, Mr. Ankur Chhibber, submitted that as per the Office Memorandum (OM) No. 33/2/2010-P&PW(F) dated 20.04.2011 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Pension and Pensioners' Welfare, particularly Schedule II thereof, to



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determine the compensation payable for death or disability under different circumstances the case has to be categorized into one of the five distinct categories given therein. While drawing our attention to the said OM, the learned counsel for the petitioner stated that the case of the petitioner squarely falls within Category 'C' and 'D' of the said OM.

11. Further, the learned counsel brought to our notice the OM No. 45/55/97-P&PW(C) dated 11.09.1998, which mentions the special benefits in the cases of death and disability in Service, which is the payment of *Ex-gratia* lumpsum compensation to the families of Central Government Civilian employees who die in harness. The said OM, he submitted, discusses the rationalization and the liberalization of the existing scheme and guidelines keeping in mind the increased militancy across the country and provides for a grant of *Ex-gratia* lumpsum compensation of Rs. 5 lakhs on death occurring during the course of performing duties, or death occurring in the course of performance of duties attributable to acts of violence by terrorists, anti-social elements, etc. The said amount was, thereafter, enhanced to Rs.10 lakh *vide* the OM dated 02.09.2008. He submitted that keeping in mind the above-mentioned provisions, the petitioner would be entitled to *Ex-gratia* lumpsum compensation as per the said OM.

12. Mr. Chhibber submitted that as per the findings of the COI, held on 10.02.2016, the death of the petitioner's husband was held as attributable to Government Service. The COI further observed that late SI Surender Yadav possessed a valid driving license and had no enmity with any friends or family members. However, there was a



doubt that his death may have occurred due to anti-social/terrorist activities as he was posted in Srinagar and such killings of CRPF personnel were happening as a form of revenge as they were previously posted in terrorist-prone areas. Since there was a doubt, the learned counsel submitted that the case of the petitioner would also fall under Category 'D' of the OM dated 20.04.2011.

13. The learned counsel further referred to the Fundamental Rules Supplementary Rules Part III (Leave Rules) and stated that the period while being on Casual Leave is to be treated as 'on duty'. Therefore, the petitioner would be entitled to Liberalized Family Pension/Extra Ordinary Family Pension as well as *Ex-gratia* lumpsum compensation.

14. To further his stand, the learned counsel placed reliance on the decisions of the Apex Court in *Nand Kishore Mishra v. Union of India & Ors.*(2020) 14 SCC 603, *Balbir Singh & Anr. v. State of Punjab* (1995) 1 SCC 90, *Union of India & Anr. v. Ex Naik Surendra Pandey* (2015)13 SCC 625 and the decision of this Court dated 26.05.2017 in W.P.(C) 6529/2016 titled *Manju Devi v. Union of India* and *Ranju Devi vs. Union of India* 2019 SCC OnLine Del 8037.

SUBMISSIONS OF THE RESPONDENTS:

15. *Per contra*, the learned Senior Panel Counsel (SPC) for the respondents, also placed reliance on the OM dated 20.04.2011, and contended that late SI Surender Yadav passed away due to a road accident that occurred while he was on Casual Leave in his hometown and was not engaged in *bona fide* Government duty and, therefore, the case of the petitioner would be covered under Category 'A' of the said OM and not under Category 'C' & 'D' as alleged by the petitioner. He



submitted that as per the Central Civil Services (Pension) Rules, 1972 (in short, 'CCS (Pension) Rules'), in the present case, the Next of Kin of the deceased is eligible for normal family pension, and the same has already been granted to the petitioner.

16. He submitted that the petitioner had filed a claim before the Motor Accident Claims Tribunal (MACT), Narnaul, wherein the petitioner, along with her minor daughter as well as late SI Surender Yadav's two children from his previous marriage, were granted compensation by the MACT. In view of the compensation granted by the MACT coupled with the fact that the death of the petitioner's late husband had no causal effect with his Service, nothing further remains to be granted to the petitioner.

17. To conclude, the learned counsel submitted that the Commandant of the 181st Bn issued the Impugned Office Order dated 16.09.2016, in the form of an amendment, *vide* which the Next of Kin of the late SI Surender Yadav would be entitled to Family Pension under Rule 54 of the CCS (Pension) Rules and not Liberalized Family Pension/Extra Ordinary Family Pension and/or *Ex-gratia* lumpsum compensation, as the COI had previously wrongly opined. In these circumstances, he prayed that the writ petition be dismissed.

ANALYSIS AND FINDINGS:

18. On careful examination of the record and having heard the arguments put forth by the learned counsels, the question that arises for the consideration of this Court is whether the deceased can be considered to be 'on duty' within the meaning of OM No. 33/2/2010-P&PW (F) dated 20.04.2011, so that the petitioner would be held



entitled to the Liberalized Family Pension/Extra Ordinary Family Pension and *Ex-gratia* lumpsum compensation. Further, we must ascertain under what Category of the OM No 33/2/2010-P&PW (F) dated 20.04.2011 the petitioner's case would fall.

19. The learned SPC appearing before this Court emphasized on the fact that the accident which lead to the death of late SI Surender Yadav, did not take place while he was 'performing his duties', rather it was during the period of his Casual Leave. He submitted that the appropriate remedy would lie before the MACT, which has been availed of and the compensation has already been granted to the petitioner.

20. Conversely, the learned counsel for the petitioner stressed on the argument that the case of the petitioner is squarely covered by the provisions of the OM dated 20.04.2011 and, therefore, the petitioner would be eligible for the grant of Liberalized Family Pension/Extra Ordinary Family Pension and *Ex-gratia* lumpsum compensation.

21. In order to appreciate the contentions of the parties, it may be necessary to examine the OM dated 20.04.2011. The relevant extracts read 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 continue 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 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, 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."*

22. What emerges from a perusal of the aforementioned OM is that the cases for grant of compensation payable in the event of death or disability are categorized into five distinct categories. The learned counsel for the petitioner has contended that the case of the petitioner falls either under Category 'C' and 'D', whereas the learned SPC on behalf of the respondents has contended that the case of the petitioner falls under Category 'A'.

23. Fundamentally, the learned counsel for the petitioner is correct



in pointing out that even though the petitioner was on Casual Leave, as per FR SR (Leave) Rules Part-III, he was 'on duty'. However, that itself is not sufficient. There needs to be a relevant and reasonable causal connection between the 'incident' resulting in the death/disability and the Service. Category 'C' states that the accident must take place during 'performance of duties'. The examples given there in also show that there must be a connection between the accident and the performance of duty. Merely because the accident has occurred when the personnel can be said to be 'on duty', is not sufficient to attract Category 'C'. If the death/disability is the result of an act entirely unrelated to the realm of his service or having no reasonable causal connection with it, then it would not be covered under the expression 'performance of duties'. Every death/disability suffered during the period of leave or even otherwise, would not necessarily have a causal connection with the Service.

24. The issue of whether a Force personnel, who had met with a road accident in his native place while on Annual Leave, came up for consideration before the Supreme Court in the case of ***Union of India v. Jujhar Singh***, (2011) 7 SCC 735, wherein it was observed as under:-

"23. As rightly pointed by the counsel for the Union of India, the High Court failed to appreciate that even though the respondent sustained injuries while he was on annual leave in 1987, he was kept in service till superannuation and he was superannuated from service with effect from 1-7-1998. It is relevant to point out that he was also granted full normal pension as admissible under the Regulations. In the case on hand, inasmuch as the



injury which had no connection with the military service even though suffered during annual leave cannot be termed as attributable to or aggravated by military service. The member of the armed forces who is claiming disability pension must be able to show a normal nexus between the act, omission or commission resulting in an injury to the person and the normal expected standard of duties and way of life expected from a member of such forces. Inasmuch as the respondent sustained disability when he was on annual leave that too at his home town in a road accident, the conclusion of the learned Single Judge that he is entitled to disability pension under Regulation 179 is not based on any material whatsoever. Unfortunately, the Division Bench, without assigning any reason, by way of a cryptic order, confirmed the order of the learned Single Judge.”

25. From a reading of the aforesaid, it is evident that the Supreme Court declined the relief of disability pension in the absence of any causal connection between the injury and the military service.

26. In ***Union of India & Anr. v. Ex. Naik Surendra Pandey*** (supra), the respondent therein/Force personnel was travelling from the place of duty to where his family was residing. While he was in his course of journey, he met with an accident. The Supreme Court, while upholding the order of the learned Armed Forces Tribunal which had found causal connection between the accident and Military Service, made the following observations:-

“17. ...He was authorised to perform a journey commencing 25-3-1997 and the accident that led to his disability occurred within two days from the commencement of the journey from Jammu on 25-3-1997. The proximity in point of time between the homeward journey that started from Jammu and the date when he met with the accident as also the distance between the place from where the journey



was started and the place to which he was travelling would give rise to a reasonable inference that the authorised journey had not ended when he met with the incident. The case may have been different if the respondent had reached the destination engaged in some activity, unrelated to military service and in the course of such activity met with an accident resulting in a disability.

18. In Jujhar Singh case the accident occurred in his hometown causing a disability having no causal connection with the military service of the claimant. The present is not a case of that type. We are inclined in the present case to accept the respondent's version that he had not reached the destination when he on 27-3-1997 met with the accident that caused a disability to him. We therefore see no reason to interfere with the order passed by the Tribunal, no matter for reasons different from those recorded by the Tribunal."

27. The Court, therefore, found that the journey being undertaken by the employee therein was also in performance of service and had a causal relation to service. The Court, in fact, distinguished the case of ***Union of India v. Jujhar Singh***, (2011) 7 SCC 735, by stating that in the said case, the accident had occurred when the personnel was in his hometown and, therefore, the accident had no causal connection with military service.

28. In the present case as well, the husband of the petitioner was granted Casual Leave with effect from 03.11.2014 to 20.11.2014. On 09.11.2014, whilst the late husband of the petitioner was on leave and was travelling to meet a friend on his motorcycle, he met with an accident that unfortunately led to his demise. It is to be noted that the accident took place six days after the leave of the petitioner's late husband had commenced and that he was travelling on his own



motorcycle, for his personal reasons completely unrelated to the performance of his duties, while being on leave.

29. In the OM dated 20.04.2011, Category 'C' deals with death or disability while performing Government duties such as while travelling in Government vehicles or public transport, etc. Category 'D' deals with death or disability while performing Government duties, which are attributable to acts of violence by terrorists, anti-social elements, etc. Category 'A', on the other hand, deals with death or disability due to natural causes that are not attributable to Government Service.

30. It is not disputed that SI Surender Yadav was on Casual Leave and was not 'performing any Government/official duty' at the given point of time when the accident occurred. As per Category 'C', the death or disability should have occurred due to an accident while 'performing Government duties'. In the present matter, that is not the case.

31. Coming to the next submission of the petitioner that the COI had opined that the death of the petitioner's late husband could have been due to the involvement of terrorists on account of his posting in Srinagar and had, therefore, recommended providing Extra Ordinary Pension and *Ex-gratia* lumpsum Compensation. Although, the COI had specifically opined the aforementioned, there is no material on record to substantiate the said claim. Further, once the MACT as also the Judicial Magistrate, Narnaul, have verified the antecedents of the accused, who was the other party in the accident, and granted the petitioner compensation and acquitted the said accused, there remains



no doubt that there was, in fact, no element of terrorist activity involved in the said incident. More so, the findings of the COI are vague and casual. Therefore, Category 'D' of the OM does not apply to the petitioner.

32. Insofar as the other judgments cited on behalf of the petitioner are concerned, they are distinguishable on facts. In *Nand Kishore Mishra* (supra), the appellant suffered a gunshot wound while travelling to work, causing him to lose a finger. In *Manju Devi* (supra), the petitioner was seeking Compassionate Allowance and in *Ranju Devi* (supra) the accident took place while the deceased was returning to join his duties.

33. Indisputably, the petitioner died in a road accident at his native place, while he was on Casual Leave, and was not performing Government duty, therefore, his case falls under Category 'A' of Schedule II to the OM dated 20.04.2011 and not under Category 'C' or 'D'.

34. Further, we may note that the respondent no.2 had declined the petitioner's request for the grant of *Ex-gratia* lumpsum compensation on the ground that her case did not fall under Category 'C' or 'D' of the OM No dated 20.04.2011 but instead, falls under Category 'A'.

35. We shall now refer to the OM dated 11.09.1998, one of the two OMs the respondent no.2 has placed reliance on while passing the Impugned Order. The said OM provides for *Ex-gratia* lumpsum compensation to the families of the employees who die in harness, as also the OM dated 02.09.2008, whereby the amount to be given as *Ex-gratia* lumpsum compensation, as mentioned in the OM dated



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11.09.1998, was enhanced.

36. From a study of the aforementioned OMs, it is evident that the Next of Kin of the deceased Force personnel, who dies in the performance of their official *bona fide* duty, are granted *Ex-gratia* lumpsum compensation. While granting such compensation, the intensity, magnitude and deprivation to be experienced by the family are to be seen.

37. Having noted the contents of the OMs mentioned hereinabove and considering the fact that Sub-Inspector (SI) Surender Yadav, the late husband of the petitioner was not on *bona fide* official duty, we find ourselves unable to sustain the submission of the petitioner that the death of her husband was in any way connected to his *bona fide* official duty. The findings in the Impugned Order, therefore, do not suffer from any illegality.

38. In view of the aforesaid, we find no merit in the plea of the petitioner. Accordingly, the writ petition is dismissed.

SHALINDER KAUR, J

NAVIN CHAWLA, J

JANUARY 28, 2025/FK

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