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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 06.08.2024***+ **W.P.(C) 15741/2022****SMT. VIJAY DWIVEDI****.....Petitioner****Through: Mr. Basab Sengupta and Mr. R.S. Kaushik, Advs.****versus****UNION OF INDIA AND ORS.****.....Respondents****Through: Mr. Farman Ali, Adv.****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****J U D G M E N T****REKHA PALLI, J (ORAL)**

1. The petitioner, widow of late Head Constable Bal Krishan Dwivedi who was deployed with the 6th Battalion, Border Security Force (BSF) has approached this Court seeking the following reliefs:-

"i- Allow this instant Writ petition;

ii- Consequently quash and set-aside the impugned order dated 23.05.2022 to the extent of its rejection of the request for the lump sum compensation.

iii- Grant ex-gratia lump sum compensation of Rs. 25 lakhs to the petitioner herein, holding that her husband, Late Head Constable Balkrishan Dwivedi, died accidentally in course of performance of his duties;

iv- Grant interest @ 8% p.a. on (iii) above, from the date three years prior to the date of institution of this writ petition, till the date of payment.

v- To direct the respondent to pay the cost of litigation to the petitioner.



vi- To pass any other/further order/direction which this Hon'ble Court deem fit & proper in the facts and circumstances of the case and in the interest of justice."

2. As per the factual matrix emerging from the record, the petitioner's husband late Bal Krishan Dwivedi had joined the BSF as a Constable on 05.04.1988 and was, in due course of time, promoted as a Head Constable (GD). On 20.05.2011, he was, during his Annual Medical Examination, found to be suffering from Hypothyroidism and Obesity and was therefore placed in low medical category. It was, however, opined by the Medical Board that the two disabilities, from which the petitioner's husband was suffering were not attributable to service. It may, however, be noted that despite being placed in a low medical category, no restriction whatsoever was imposed on him for performing duties or undergoing any training.
3. In 2016, based on his willingness, the petitioner's husband was detailed to undergo a Map Reading STD-I course from 03.10.2016 to 31.10.2016 at STC, BSF, Jodhpur which course, it is the common case of the parties, was mandatory to enable the petitioner's husband to be considered for promotion to the rank of Assistant Sub Inspector. Unfortunately, on 20.10.2016, while he was carrying out a point to point exercise in Daizer Range Area as a part of the promotional course, the petitioner's husband at about 08:30 hours, complained of uneasiness and was therefore taken to the nearby Composite Hospital, BSF, Jodhpur, where the doctors declared him as "brought dead".
4. In view of this sudden death of the petitioner's husband, a Court of Inquiry was convened on 24.10.2016 to enquire into the circumstances under which he expired. In the said Court of Inquiry (CoI), seven witnesses



were examined, based on whose testimonies it was opined that the petitioner's husband had expired while on bonafide government duty and therefore, it was recommended that all financial benefits as per rules be extended to his legal heirs. Though based on this opinion of the CoI, the petitioner was sanctioned pension and her son namely Shri Divyansh Dwivedi granted compassionate appointment as a Constable (GD) in the BSF, her request for ex gratia compensation of Rs.25 lakhs as per the Office Memorandum dated 04.08.2016 issued by Department of Pension and Pensioners' Welfare was rejected vide order dated 23.05.2022. It is in these circumstances that the petitioner has approached this Court.

5. In support of the petition, learned counsel for the petitioner submits that once it is admitted that the death of the petitioner's late husband occurred while he was performing *bonafide* government duty, the respondents could not have rejected her claim for *ex-gratia* lump sum compensation of Rs. 25 lakhs, as per O.M. dated 04.08.2016. He submits that the respondents' plea that being aware of his low medical category, the petitioner's late husband ought to have himself refused to undergo the Map Reading course, overlooks the fact that the course was mandatory for earning further promotion. Furthermore, as per medical opinion, no restriction of any kind had been placed on the petitioner's late husband and consequently, he was being detailed for all kinds of duties by the respondents as per service requirement.

6. He contends that the death of her late husband was clearly an accidental death during the performance of his duties and therefore, the petitioner's claim for *ex-gratia* compensation could not have been rejected.



He therefore, prays that the writ petition be allowed and the respondents be directed to release in her favour the *ex-gratia* compensation of Rs. 25 lakhs along with interest @ 12% per annum.

7. Per contra, Mr. Farman Ali, learned counsel for the respondents seeks dismissal of the writ petition by contending that since the death of the petitioner's husband was on account of a heart attack, possibly due to his pre-existing medical conditions of Hypothyroidism and Obesity with DM Type-II, it cannot be said that his death was directly attributable to the condition of service or was an accidental death so as to entitle her to claim *ex-gratia* compensation under the O.M. dated 04.08.2016. Further, the petitioner's late husband being already in a low medical category, should have himself opted out of being detailed for the Map Reading course, which was even otherwise not mandatory and was only required to earn promotion. The respondents, he contends, have acted fairly and released all admissible financial benefits to the petitioner including appointment of her son as a Constable (GD) in the BSF on compassionate grounds. He, therefore, prays that the writ petition be dismissed.

8. Having considered the submissions of learned counsel for the parties and perused the record, we may begin by noting the opinion of the CoI. The same reads as under:-

"After going through the statement of witnesses and relevant documents produce by them, the Court is of the opinion that No. 888008501 HC-Bal Krishna Dwivedi of 06 Bn BSF was undergoing MR Std 1st Course w.e.f. 03.10.16 to 31.10.16 at STC BSF JDR got expired on 20.10.2016 at about 0830 Hrs during point to point exercise in Daizer area while searching 2nd point nearby Mandir location of Jogifirth, he was immediately evacuated by Dy. Comdr 'E' by Sh. Nand Kishore to CH __ HE BSF JDR where doctor declared



him brought dead. As per post mortem report the cause of death was acute myocardial infarction (Heart-attach).

His I/Card bearing No. 677980 issued by 06 Bn BSF kept in the custody of 'E' by Clerk may be sent to his unit for dispose off.

HC-Balkrishna Dwivedi expired on govt. bonafide duty hence all financial benefits may be extended to NOK of deceased as per rule."

9. From the aforesaid opinion rendered by the CoI, it is evident that the petitioner's late husband suffered a heart attack while performing bonafide government duties and succumbed to this sudden heart attack. We have also perused the statements of the witnesses examined in the CoI and find that prior to suffering a sudden heart attack, the petitioner's husband had no point of time complained of any discomfort or uneasiness. The death of the petitioner's husband was therefore clearly a sudden death.

10. The respondents have, however, rejected the petitioner's claim for *ex-gratia* compensation primarily on the ground that her husband's death being due to a heart attack, could not be treat as death due to an accident. Learned counsel for the respondents has vehemently urged that only when death is a result of a motor accident or an act of violence by terrorists, anti-social elements, etc. that the same could be said as death due to an accident. His plea being that death due to natural causes would not qualify within the ambit of the O.M.

11. In order to appreciate this plea, it would be apposite to refer to the paragraph 12.1 of the O.M. dated 04.08.2016 which provides for ex-gratia compensation under the following circumstances:

"EX GRATIA LUMP SUM COMPENSATION

12.1 The amount of ex gratia lumpsum compensation available to the families of Central Government Civilian employees, who die in the performance of their bona fide official duties under various circumstances shall be revised as under-



<i>Circumstances</i>	<i>Amount</i>
<i>Death occurring due to accidents in course of performance of duties</i>	<i>25 lakh</i>
<i>Death in the course of performance of duties attributed to acts of violence by terrorists, anti-social elements, etc.</i>	<i>25 lakh</i>
<i>Death occurring in border skirmishes and action against militants, terrorists, extremists, sea pirates</i>	<i>35 lakh</i>
<i>Death occurring while on duty in the specified high altitude, unaccessible border posts, etc., on account of natural disasters, extreme weather condition</i>	<i>35 lakh</i>
<i>Death occurring during enemy action in war or such war like engagements, which are specifically notified by Ministry of Defence. and death occurring during evacuation of Indian Nationals from a war-torn zone in foreign country”</i>	<i>45 lakh</i>

12. The question which, therefore, accordingly needs to be determined is as to whether the death of the petitioner’s husband would qualify as death due to an accident during the course of performance of duties as envisaged under the aforesaid O.M. The respondents have urged that death due to a heart attack cannot be treated as death due to an accident. Having given our thoughtful consideration to this plea of the respondents, we are unable to agree. As per Black’s Law Dictionary accidents include something which happens suddenly, unexpectedly and not according to the usual course of things. In this regard, we may also refer to the definition of ‘accidental death’ from the Black’s Law Dictionary. The same reads as under:

“One caused by unexpected or unintended means.”

13. In our view, the term ‘*accident*’ in the O.M. dated 04.08.2016, which is a beneficial policy, can, therefore, not be given such a restrictive meaning so as to include only motor accidents or accidents involving terrorists or



anti-social elements, etc. In the present case the death of the petitioner's husband was undoubtedly sudden and unexpected. The same was, therefore, evidently an accidental death. In these circumstances, we are of the considered view that the death of the petitioner's husband would certainly qualify as death due to an accident in the course of performance of duties, as envisaged under the O.M. dated 04.08.2016.

14. We have also considered the respondent's plea that the petitioner's husband, being in a low medical category, should have himself opted out of the promotional course. We, however, find absolutely no merit in this plea of the respondents as we are of the opinion that it is undisputed that the medical specialists, while placing the petitioner's husband in a low medical category, had not endorsed any restrictions on his activities and therefore, there was no reason for him not to opt for the course, which was a mandatory course to enable him to earn further promotion in the Force. Even otherwise, if we were to accept the respondents' plea that the petitioner's husband, being in a low medical category, ought not to have opted for the promotional course, the onus to explain as to why despite being aware of his low medical category, the respondents accepted his plea for being detailed in the aforesaid course, would lie on the respondents.

15. In the light of the aforesaid, we have no hesitation in holding that the respondent's rejection of the petitioner's claim for *ex-gratia* compensation is unsustainable. The death of the petitioner's husband would clearly qualify as death within the ambit of the expression "*Deaths occurring due to accidents in course of performance of duties*" for which a sum of Rs.25 lakhs is payable to her in terms of O.M. dated 04.08.2016.



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16. We, therefore, allow the writ petition by setting aside the respondents' order dated 23.05.2022 rejecting the petitioner's prayer for grant of *ex-gratia* compensation and direct the respondents to pay a sum of Rs. 25 lakhs to the petitioner within a period of eight weeks. If the amount is not paid within eight weeks, the same will bear interest @ 9% per annum.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

AUGUST 06, 2024/ss