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

Date of Decision: 20.09.2024

+ W.P.(C) 10744/2017
MURTI DEVI

.....Petitioner

Through: Mr.Ankur Chhibber & Mr.Ankush
Mehrotra, Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Sanjeev Uniyal & Mr.Dhawal
Uniyal, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J (ORAL)

1. The petitioner, who is the widow of the late Head Constable (HC) Surender Singh, who was serving in the Central Reserve Police Force (CRPF) and had succumbed to 'Cerebral Malaria' and 'Acute Viral Hepatitis with Fulminant Hepatic Failure' on 22.11.2006, has approached this Court under Article 226 of the Constitution of India, being aggrieved by the rejection of her claim for extraordinary pension and *ex-gratia* lump sum compensation under the Central Civil Services (Extraordinary Pension) Rules, 1939 [CCS (EOP) Rules] by the respondents.

2. The facts necessary for the disposal of the writ petition are that in the year 1987, the petitioner's late husband was enrolled in the CRPF in the



rank of Constable (GD). Soon after, in 1990, he was promoted to the rank of HC (RO) and was posted at various stations while being in the said rank.

3. In the year 2004, late HC Surender Singh was posted to the 72 Battalion, Bokaro, Jharkhand, where he contracted Malaria. It is the claim of the petitioner that Bokaro was declared a high-risk Malaria infested area at the time of her late husband's posting there. On 14.11.2006, he was granted a two-month leave to visit his family in Delhi and therefore, despite suffering from high fever, her late husband HC Surender Singh travelled from Jharkhand to Delhi. Upon his arrival at Delhi on 16.11.2006, he was, due to high fever, rushed to the Command Hospital at Group Centre (GC), Delhi, where he remained admitted till 22.11.2006. However, as his condition continued to worsen despite being administered treatment at the Command Hospital, he was shifted to Safdarjung Hospital, Delhi, where he succumbed to his illness on 22.11.2006. The cause of his death was opined to be due to 'Cerebral Malaria' and 'Acute Viral Hepatitis with Fulminant Hepatic Failure'.

4. After the demise of her husband, the petitioner informed the respondents, including the office of the Commandant-1 Signal Battalion regarding his death. The Station House Officer (SHO), Najafgarh was also informed regarding the same. A Court of Inquiry (COI) was also convened to inquire into the cause of death of her husband, which on 17.02.2006 opined that the death of the petitioner's husband was due to 'Cerebral Malaria' and 'Acute Viral Hepatitis C', for which nobody was responsible. This report of the COI was not accepted as it was found that all relevant factors had not been considered by the COI. Consequently, a fresh COI was ordered on 19.04.2006, which gave its report on 06.06.2006, opining that he



was infected with ‘Cerebral Malaria’ and ‘Acute Viral Hepatitis C’ due to his movement in malaria prone areas for performing ops duties. It was further opined that all financial benefits, including extraordinary family pension may be granted to the petitioner.

5. On 08.02.2007, the petitioner was sanctioned family pension and also paid death gratuity. Further, on 20.05.2011, the respondents appointed the petitioner in the CRPF as HC (Ministerial) on compassionate grounds but did not grant extraordinary pension and other benefits claimed by her. The petitioner is currently working as an Assistant Sub Inspector (M) in the CRPF and is posted at the GC CRPF, Greater Noida, Uttar Pradesh.

6. It is the petitioner’s case that she is entitled to extraordinary pension as per Rule 3-A(1) and (2) of the CCS (EOP) and also to the grant of *ex-gratia* lump sum compensation under the liberalized scheme of payment in accordance with the OM dated 11.09.1998, as the death of her late husband had occurred while he was in service and the same was attributable to his service in Bokaro. However, on 23.11.2007, she was informed that the death of her husband could not be treated as being attributable to service, as Bokaro was not a Malaria prone area and even otherwise, the period during which he had contracted the Malaria was when he was on leave.

7. Aggrieved by this stand taken by the respondents, the petitioner vide her letter dated 15.05.2013, approached the respondents with a request that the death of her husband due to Malaria, which was prevalent in Bokaro at the time of his posting there, be treated as being attributable to service and she be granted extraordinary pension and *ex-gratia* compensation. Further, vide her letter dated 19.11.2013, the petitioner brought to the notice of the



respondents that Standing Order 51 of 2001 was applicable to the death of her husband and therefore, her case was covered under Category 'E' thereof.

8. In their reply to the petitioner's application, the respondents on 24.03.2014, reiterated their previous stand and turned down her request for grant of extraordinary pension and *ex-gratia* lump sum payment. Several further representations were made by the petitioner thereafter, seeking redressal of her grievance; but they were all rejected by the respondents on the same ground. In these circumstances, the petitioner has approached this Court assailing the orders dated 31.08.2017 and 25.09.2017 and praying that the respondents be directed to sanction her extraordinary pension along with *ex-gratia* lump sum compensation and other benefits payable, as per the rules by treating her husband's death as attributable to service.

9. In support of the petition, Mr. Ankur Chhibber, learned counsel for the petitioner submits that the respondents have failed to appreciate the fact that the death of the petitioner's husband was attributable to service. While placing reliance on the decision of the Apex Court in ***Dharamvir vs Union of India (2013) 7 SCC 316***, he submits that the onus of proving that the death of the petitioner's husband was not attributable to service, lay on the respondents.

10. He further submits that ordinarily, on the death of a serviceman, a COI is to be immediately conducted to ascertain the cause of death and to determine the attributability of such death to service. In the present case, although the COI was held belatedly, the opinion of the initial COI was not accepted by the DIG. Consequently, a fresh COI was directed to ascertain the cause of death of the petitioner's husband, which COI gave its report on 06.06.2016, specifically opined that she was eligible for grant of



extraordinary pension. The said recommendations have, however, been arbitrarily disregarded by the respondents on account of non-availability of pathological reports of the petitioner's late husband. He contends that once it is not denied by the respondents that the petitioner's husband was admitted to Safdarjung Hospital by the respondents themselves, this stand that the recommendations of the COI could not be accepted for want of pathological reports from Safdarjung Hospital, is liable to be rejected.

11. By drawing our attention to Rule 3-A(1) & (2) of the CCS (EOP), the learned counsel submits that the case of the petitioner for extraordinary pension was squarely covered by the aforesaid provisions. The only requirement for grant of extra ordinary pension, he contends, is that the death should have occurred while 'on duty'. It being a settled proposition that the period of sanctioned leave is also treated as 'on duty', the respondents could not have rejected petitioner's claim merely because her husband succumbed to 'Cerebral Malaria' and 'Acute Viral Hepatitis with Fulminant Hepatic Failure' while on leave. To strengthen his plea, he places reliance on the decision of the Apex Court in ***Pension Sanction Authority vs M.L George (2016) 2 SCC (L&S) 209.***

12. The learned counsel, then, draws our attention to OM No. 38/37/2016/P&PW(A)(I) dated 04.08.2016 and submits, in view of the said OM, the petitioner is also entitled to grant of *ex-gratia* lumpsum compensation of Rs. 25 lakhs. In this regard, he places reliance on the decision in ***Sangita Tomar vs. Union of India*** [2022 SCC OnLine Del 2678] where he contends that the claim of the petitioner therein, for grant of *ex-gratia* compensation, in similar circumstances as in the present case, was accepted.



13. Opposing the submissions made by the petitioner, learned counsel for the respondents submits that the present writ petition being meritless, is liable to be dismissed. He submits that the place of posting of the petitioner's husband, i.e., Chass, PH, Bokaro was not a high-risk area for Malaria and therefore, no causal connection could be established between the death of her husband and his service conditions. Moreover, the postmortem and pathological reports were not made available, which alone could have established that he was suffering from Malaria or any kind of disease before proceeding on leave, in the absence of which, the findings of the fresh COI are irrelevant. Further, when he fell ill, the petitioner's husband was on earned leave during which period, he could not be considered to be 'on duty' and therefore, her claim was rightly rejected.

14. He points out that the petitioner has been granted all due benefits including compassionate appointment, but the grant of *ex-gratia* lumpsum amount and extraordinary pension could not be granted to her as the death of her husband was found not to be due to service. Consequently, the Ministry of Home Affairs has vide its letter dated 14.12.2021 rejected her request for sanctioning of *ex-gratia* lumpsum compensation.

15. Even otherwise, the representation seeking these reliefs was made by the petitioner after a delay of six years and was therefore, rightly rejected. He, consequently seeks dismissal of the writ petition.

Analysis and Findings

16. Having considered the factual matrix, submissions of the parties and perused the record, we find that the only issue arising before this Court for consideration is as to whether the cause of death of late HC/RO Surender Singh, due to 'Cerebral Malaria' and 'Acute Viral Hepatitis with Fulminant



Hepatic Failure', could be treated as being attributable to service conditions. In this regard, we may begin by referring to clause (g) of Standing Order No. 51/2001 issued by Directorate General, Pay and Accounts Office, CRPF, New Delhi No.P.3/I-HC(Pen)-PAO dated 07.09.2001, which deals with grant of extraordinary pension. The relevant extract of the said Standing Order reads as under:-

**"DIRECTORATE GENERAL, PAY AND ACCOUNTS OFFICE,
CRPF, NEW DELHI-18**

**No.P.3/I-HC(Pen)-PAO
2001.**

Dated, the 7th Sept.

STANDING ORDER NO. 51/2001.

**Subject:- PENSION AND TIMELY PAYMENT OF PENSIONARY
BENEFITS.**

A number of instructions have, been issued from time to time on the subject mentioned above and various changes in the admissibility of pensionary benefits to Govt. servants have been effected by the Govt. in implementing the recommendations of the Vth Central Pay Commission. A need has, therefore, been felt to consolidate these instructions into a single order to facilitate easy reference in application and finalisation of pension cases.

CLASSES OF PENSION

The CRPF is governed by CCS (Pension) Rules, 1972. The following types of pension are being granted to the personnel depending on the cases of the circumstances according to the instructions/ rules on the subject:-

xxxxx

(g)L.P.A/E.O.F.P.

Extra Ordinary Pension/Liberalised pension Awards under, CCS(EOP) Rules read with DOP & PW OM No.45/22/97-P&PW(C) dated 3/2/2000, are eligible for the following categories:-

xxxxx

CATEGORY "E"

Death or disability arising as a result of (a) attack by or during action against extremists anti-social 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) inoculation as a part of training exercises with live ammunition.



In the event of death, the family pension benefits are more liberal than those admissible under normal circumstances. The requirement for grant of extraordinary pension is that the disablement or death should have occurred while 'On duty' and the cause has to be accepted as a due to service or aggravated by service. A person subject to disciplinary code of the Central Armed Police Bns. is treated 'On duty'.

- (i) While performing an official task failure to do, which constitutes an offence:*
- (ii) While moving from one place of duty to another place of duty:*
- (iii) During the period of participation in organised or permitted recreations by service authorities:*
- (iv) While proceeding from duty station to leave station or returning there from at public expenses viz. on railway warrants, cash T.A., in Government Transport:*
- (v) While journeying from one's quarter to and back from the appointed place of duty under organised arrangements or private conveyance if service transport is to be given but is not made available:*
- (vi) While participating in local, national or international sports tournaments as a member of a service team:*
- (vii) While participating in mountaineering, gliding expeditions organised by service authorities with approval of Government.*

An accident which occurs while a person is strictly not on duty but which is attributable to the risk of service (eg. a person killed or injured by someone by reasons of his belonging to an Armed Force Battalion) is also treated as 'On duty'."

17. What emerges from a perusal of clause (g) of the aforesaid Standing Order is that as per terms of category 'E', in order to qualify for grant of extraordinary pension, it is required to be shown that the death of the member of the Force had occurred while 'on duty' and that the cause of the death had been accepted as being 'due to service' or being 'aggravated by service'. In the instant case, the respondents have not only disputed the causal connection of death of the petitioner's late husband, but have also contended that his death had not occurred while he was 'on duty'. According to the respondents, he had proceeded on earned leave w.e.f



16.11.2006 to 14.01.2007, during which period he passed away on 27.11.2006, when he was on leave and therefore, the petitioner was not entitled to any benefit under the aforementioned Standing Order.

18. To counter the same, the petitioner has impressed upon her plea that her late husband was deemed to be 'on duty' during the period of leave. It is urged that though he was on earned leave, at the time of his death, he was already suffering from high fever on 14.11.2016, when he was granted two months leave. However, the treating doctor in the Unit had diagnosed it as viral fever and asked him to take medicines and rest at home during leave. However, upon reaching Delhi, he had to be hospitalized the very next day due to his deteriorating ill health and it was subsequently detected that he was suffering from 'Cerebral Malaria'. She has, therefore, urged that her husband had died due to service conditions while being posted in Bokaro, a Malaria infested area.

19. To examine the said plea of the petitioner, it is apposite to refer to Sections 3A and 10 of the CCS (EOP) Rules, which provide as under:-

"3-A. Disablement/Death. (1) (a) Disablement shall be accepted as due to Government service provided that it is certified that it is due to wound, injury or disease which,-

(i) is attributable to Government service, or

(ii) existed before or arose during Government service and has been and remains aggravated thereby.

(b) Death shall be accepted as due to Government service provided it is certified that it was due to or hastened by,-

(i) a wound, injury or disease which was attributable to Government service, or

(ii) the aggravation by Government service of a wound, injury or disease which existed before or arose during Government service.



(2) There shall be a casual connection between,

(a) disablement and Government service, and

(b) death and Government service;

for attributability or aggravation to be conceded. Guidelines in this regard are given in the Appendix which shall be treated as part and parcel of these Rules.

10. Death due to Government service. *When death of Government servant is conceded as due to Government service in terms of Rule 3-A, his widow and children shall be awarded pensionary benefits in accordance with Schedule II hereto annexed.*

Note. If a Government servant dies leaving behind two or more widows, the pension admissible under this rule to the widow shall be divided equally among all the widows."

20. A symbiotic reading of the aforementioned Rules provides that the widow and children, on death of the government servant, shall be entitled to pensionary benefits, in case the wound, injury or *disease* is found to be attributable to the Force service in some manner or the other, thereby establishing a causal connection between the two.

21. Upon perusal of the medical record of petitioner's late husband, it emerges that he succumbed to 'Cerebral Malaria' and 'Acute Viral Hepatitis with Fulminant Hepatic Failure' on 22.11.2006. The petitioner is correct in urging that her late husband's first symptom of the disease i.e., Malaria was noticed three days after his leaving Bokaro, which indicates that he had acquired the infection prior to his departure from the said station. It is a known fact that every infectious disease has an incubation period i.e., the time taken to develop symptoms of the disease after exposure to a pathogenic organism. The respondents have not been able to show that his



death was not as a sequel to the Malaria infection. Pertinently, the respondents have not denied that Bokaro district was a high-risk Malaria infested area but have averred that Chass PH, Bokaro district, where petitioner's late husband was posted, was never declared a high-risk area for Malaria infestation. Even though, Chass PH may not have been a high risk Malaria infested area, but the respondents have not denied that it was not a Malaria infested place. In such circumstances, therefore, the possibility that the petitioner was infected with Malaria before proceeding on leave to his native place cannot be ruled out.

22. Furthermore, we find that in the counter-affidavit itself, the respondents have themselves stated that the COI had recommended grant of all financial benefits including extraordinary pension to the petitioner. The relevant extract of the counter-affidavit reads as under:

"Accordingly a COI was ordered afresh vide this Office Order No. i.x.-2/2016-EC-2 dated 19/04/2016 and finalized vide this office order No. I.X.-2/2016-EC-2 dated 06/06/2016. Following Orders were passed vide the said Office Order:-

(A) No. 871220106 HC/RO Late Surender Singh was posted to 72 Bn, CRPF Signal Platoon, Bokaro, Jharkhand Due to movement in malaria Prone area for performing Ops duties, he was infected with Cerebral Malaria, Acute Hepatitis-C and died on 22/11/2006 at 1425 hrs in Safdarjung Hospital, New Delhi.

(B) All financial and other benefits including Extra Ordinary Family Pension admissible to NOK of deceased may be granted.

(C) other contents of the earlier Office Order No. I.X.-17/2006-EC-2 dated 17/02/2006 remained unchanged."

23. In the light of the aforesaid, once the COI, as noted hereinabove, had specifically opined that the death of the petitioner's husband was due to movement in a Malaria prone area for performing Ops duties, it was for the respondents to rebut the said conclusion arrived at by the COI, which they have failed to do. The medical documents further go to show that



petitioner's late husband was suffering from fever at the time of travelling to Delhi and that he had consulted the Unit Doctor before travelling to Delhi, who opined that he was suffering from viral fever and should take medicines for the same. Moreso, the subsequent event of the petitioner being hospitalized due to high fever and his ultimately succumbing to illness further clinches the issue that he had been infected with Malaria when he was in Chass PH.

24. We find that the primary argument of the respondents to contend that the death of petitioner's late husband could not be accepted as being due to service condition, is premised on the fact that no pathological reports had been submitted. We find no merit in this plea, as it was only for the COI to ensure that all requisite documents were collected from the hospital/laboratory. The petitioner, who had lost her husband on 22.11.2006, could not be expected to collect the pathological reports without even being informed that the same would be required for processing her claim. Once a fresh COI had been set up for the purpose of investigating the cause of death of the petitioner's late husband, it was the duty of the COI to procure all the documents, which were available at that stage. In any event, this fresh COI that investigated into the cause of death of the petitioner's late husband, having specifically recommended that the petitioner was eligible for extraordinary pension, the respondents cannot be permitted to urge that these recommendations of the COI should be disregarded. We also find that though no postmortem of petitioner's late husband was conducted, the certificate provided by the Safdarjung hospital in itself recorded that he was suffering from Cerebral Malaria infection. This certificate has never been challenged by the respondents.



25. In view of the above, we have no hesitation in holding that the death of petitioner's late husband falls under the category of 'death due to accident in course of performance of duties' i.e., while he was posted in Bokaro, a Malaria infested area. Taking into account that even as per the medical certificate issued by the Safdarjung hospital, he was found to be suffering from Cerebral Malaria infection, it cannot be denied that he had contracted the disease while he was serving with the battalion itself i.e. before his period of leave began on 14.11.2006. The petitioner, in our view, is therefore, correct in contending that in these circumstances, she is entitled for extraordinary pension.

26. Now we may proceed to deal with the petitioner's prayer for grant of *ex-gratia* compensation. For this purpose, we may refer to the decision of this Court in ***Sangita Tomar vs. Union of India*** (supra), where it was held as under:-

"21. Accordingly, we find no hesitation to hold that death of petitioner's husband happened during the official course of his duties and, therefore, petitioner being the NoK of deceased Ram Kumar Singh is entitled to grant of ex gratia compensation. Consequently, order dated 19-10-2019 passed by the respondent relying upon DoP OM No. 45/55/97-P&PW(C) dated 11-9-1998; amended vide OM No. 38-37-2016-P&PW(A)(i) dated 4-8-2016, for rejection of grant of ex gratia pension to petitioner, is misplaced, as the case of deceased falls under the category of "death due to accident in course of performance of duties". Hence, petitioner is entitled to grant of ex gratia lump sum compensation of Rs 25,00,000 in terms of Clause 12.1 of OM No. 38-37-2016-P&PW(A)(i) dated 4-8-2016."

27. From the aforesaid, it is clear that once the death of a member of Force is found to be during the course of his duties, his widow and children are entitled to grant of *ex-gratia* compensation. In the present case, in view of our conclusion hereinabove that the death of the petitioner's husband had,



as found by the COI, to be treated as being during duty and for the reasons attributable to service. The respondents' order rejecting the petitioner's claim of *ex-gratia* compensation is also, therefore, liable to be set aside.

28. For the aforesaid reasons, the writ petition is allowed by setting aside the impugned order dated 25.09.2017, whereby the petitioner's representation for grant of extraordinary family pension as also for *ex-gratia* compensation, was rejected.

29. The respondents are, accordingly, directed to sanction extra-ordinary family pension in favour of the petitioner along with the *ex-gratia* compensation of Rs. 25 lakhs in term of the DoPT's OM dated 11.09.1998 and release the said amount to her within a period of 12 weeks. In case, payment in terms of this order is not made within 12 weeks, the same will bear interest @6% per annum.

(SHALINDER KAUR)
JUDGE

(REKHA PALLI)
JUDGE

SEPTEMBER 20, 2024
SU/ss