IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

224

CWP-4884-2019 (O&M)
Date of decision: 07.04.2025

Smt. Anita Devi ...Petitioner

VERSUS

Union of India and others ...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Rajesh Verma, Advocate for the petitioner(s).

Ms. Puneeta Sethi, Sr. Panel Counsel,
for respondent-UOI.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the orders dated 07.06.2012, 13.07.2012 and O.M.s dated 03.02.2000 and 02.09.2008, whereby despite admitting the claim of the petitioner vide orders dated 28.10.2011, 29.10.2011 and 11.01.2012, the petitioner has been denied the benefit of Ex-gratia amount and Extraordinary Family pension by misinterpreting O.M. dated 03.02.2000 and O.M. dated 02.09.2008.

2. Learned counsel appearing on behalf of the petitioner contends that late Suresh Kumar, husband of the petitioner, bearing No.887022371 HC/AT joined the service of the respondents as City Constable and was later on promoted as a Head Constable. He was attached from 32 Battalion to 12 Battalion, ITBP Force, Matli and was posted on duty at Tekhla Camp. On 13.09.2011 at 20:00 P.M., he had come from Tekhla Camp to Battalion Headquarter, Malti for completing annual P.P.T. While participating in P.P.T. follow-on at 6.30 AM and after completing 2.4 KM race, when he

stood-up for next event, he felt uneasiness and sat down. After being given first-aid, he was put on an Oxygen Mask and taken to the Battalion Hospital, where he was declared dead. The cause of death, as per the postmortem report, was reported as Cardiac Arrest (Result Myocardial Inderaaction/Heart Attack). Claiming the benefit of ex-gratia financial assistance, which was declined by the respondents, the instant petition had been filed.

3. The matter was heard at some length on 04.07.2023 when the following order was passed:-

> *"1. The petitioner through instant writ petition under Articles 226/227 of the Constitution of India is seeking quashing of order dated 07.06.2012 (Annexure P-4) and order dated 13.07.2012 (Annexure P-8) passed by the respondents.*
>
> *2. The case of the petitioner is that husband of the petitioner joined services of respondents as Constable in the year 1988 and he was promoted as Head Constable in the year 2011. On 14.09.2011, he participated in Physical Proficiency Test. After completing 2.4 Km race, when he stood up for next event, he felt uneasiness and sat down. He was given first aid and thereafter, taken to Battalion Hospital where he was declared dead. The son of the petitioner was extended benefit of compassionate appointment. The family of the deceased employee has got benefit in the form of compassionate appointment. The petitioner i.e. wife of the deceased employee*

filed a representation with respondent-authority claiming that she be granted benefit of ex-gratia lump sum compensation as well extraordinary family pension. The respondent-authority has rejected claim of the petitioner qua extraordinary family pension as well as ex-gratia lump sum compensation on the ground that husband of the petitioner has passed away on account of cardiac arrest which is not a specified disease and cardiac arrest was not attributable to service, thus, petitioner is not entitled to benefit of extraordinary family pension as well as ex-gratia lump sum compensation.

3. Learned counsel for the petitioner inter alia contends that case of the petitioner has been classified in Category 'A' of Memorandum dated 03.02.2000 whereas case of the petitioner falls in Category 'B' of the said Memorandum. The husband of the petitioner was on duty when he suffered cardiac arrest, thus, case of the petitioner falls within definition of 'accident' as defined under Rule 3 of Central Civil Services (Extraordinary Pension) Rules 1939. Rule 3 (1) of the aforesaid Rules is reproduced as under:-

> *"3(1) "accident" means –*
>
> *(i) a sudden and unavoidable mishap ; or*
>
> *(ii) a mishap due to an act of devotion to duty in an emergency arising otherwise than by violence out of and in the course of service;"*

Learned counsel for the petitioner further submits that Paragraph 11 of the Memorandum dated 02.09.2008 (Annexure P-5) deals with ex-gratia lump sum compensation and case of petitioner falls under clause (a) of the aforesaid paragraph. Paragraph 11 is reproduced as under:-

> *"11. In terms of Department of Pension & PW O.M No.45/55/97-P&PW(C) dated 11.9.1998, an ex gratia lump sum compensation is available to the families or central Government Civilian employees, who die in the performance of their bona fide official duties under various circumstances. The amount of this ex-gratia lump sum compensation shall be revised as under:*

(a)	*Death occurring due to accidents in the course of performance of duties*	*Rs. 10.00 lakh*
(b)	*Death occurring in the course of performance of duties attributable to acts of violence by terrorists, anti-social elements, etc.*	*Rs. 10.00 lakh*
(c)	*Death occurring (a) enemy action in international war or border skirmishes and (b) action against militants, terrorists, extremists etc.*	*Rs. 15.00 lakh*
(d)	*Death occurring while on*	*Rs. 15.00 lakh*

> *duty in the specified high altitude, inaccessible border posts, etc. on account of natural disasters, extreme weather conditions.*

The Department of Pension & PW O.M. No.45/55/97- P&PW(C) dated 11.9.1988 shall stand modified to this extent."

In support of his contention, petitioner relied upon judgment dated 27.05.2015 passed by Delhi High Court in Ram Devi Versus Director General, BSF and Others; W.P. (C) 3527/2013 wherein Delhi High Court has granted ex-gratia lump sum compensation of Rs.10 Lacs to widow of the employee who had died on account of cardiac arrest. The relevant extracts of said judgment read as under:-

> *"xxxx xxxx xxxx xxxx*
>
> *2. Posted with the 67th Bn. BSF, Late Sh.Yatinder Singh had to discharge duties at the Indo-Pak Line of Control in Kutch Area in the State of Gujarat because the 67th Bn. was deployed at said place. The Border Outpost 966 at Jagmal was the area to be patrolled by the Coy of the Battalion of which Late Yatinder Singh was a member of.*
>
> *xxxx xxxx xxxx xxxx*

21. The late husband of the petitioner died on September 16, 2010 within 15 minutes of completing ambush-cum-patrolling duty at the Border Outpost Jagmal at the Line of Control in Kutch. He may have had a liver problem which may have contributed to the heart attack suffered by him but no less could be the contribution of the stress occasioned while performing ambush-cum-patrolling duty. The late husband of the petitioner was on active duty and the concept of accident envisaged by the two Office Memorandums dated September 11, 1998 and September 02, 2008 has to be given a liberal interpretation keeping in view that the two Office Memorandums embody a beneficial executive policy. The liberal interpretation of accident would be as per para 20 above. Thus we hold that the petitioner would be entitled to the ex-gratia lump sum compensation payable under the Office Memorandum dated September 11, 1998 as modified by the Office Memorandum dated September 02, 2008. The compensation payable would be Rs.10,00,000/- (Rupees Ten Lacs only) which we direct to be paid to the petitioner within 8 weeks from today failing *which the amount shall be paid with simple interest @ 8% per annum reckoned 8 weeks from the date of this decision."*

4. Learned counsel for the respondents seeks short accommodation to address the issues raised by the petitioner.

Adjourned to 28.07.2023."

4. Since the counsel for the respondents had sought time to seek instructions and to assist this Court, the matter was adjourned.

5. On resumed hearing, counsel for the respondents contends that the benefit of compassionate appointment had already been extended to son of the petitioner and that as such the petitioner cannot be given the benefit of ex-gratia financial assistance. She further contends that the petitioner was not entitled to grant of financial benefit since the death of her husband did not occur in the circumstances specified for the entitlement of Ex-gratia benefit(s). Husband of the petitioner died at Matli which was not a High Altitude area, hence, the demand of the petitioner has been rightly declined. She contends that heart-attack has been placed in the ailments specified in Category A of Ministry of Personnel, Public Grievances and Pensioners, GOI memo dated 03.02.2000. The petitioner thus could not be granted the benefit of Extra Ordinary Pension (E.O.P.) and that all financial benefits toward General Provident Fund, Gratuity, Leave Encashment, Group Insurance Scheme etc. has already been released and her son Mandeep Singh has been appointed as Head Constable on 02.07.2012 on compassionate grounds. The deceased having not died in harness or in performance of

bona fide duties and the son having already been offered appointment to the post of Head Constable on compassionate grounds, no further benefit can be extended to the petitioner.

6. Learned counsel appearing on behalf of the petitioner, however, places reliance on a Division Bench of Delhi High Court judgment **dated 06.08.2024** passed in **W.P.(C) No. 15741 of 2022** titled as '**Smt. Vijay Dwivedi Vs. Union of India and others**' wherein the widow of Head Constable Bal Krishan Dwivedi, 6th Battalion , Border Security Force (BSF) had sought similar relief on account of death of her husband at Jodhpur (Rajasthan) due to cardiac arrest. He submits that the death in the said case had also taken place during routine proficiency test and the ex-gratia financial amount was directed to be disbursed to the petitioner therein. The operative part of the said judgment reads thus:-

> *"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.*
>
> *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."

7. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended with the instant petition as well as the judgment of Division Bench of the Delhi High Court with their able assistance.

8. It is evident from a perusal of the same that the issue before the Division Bench of the Delhi High Court was identical and once the benefit of ex-gratia compensation has been extended to the petitioner therein, there is no reason to not extend the same to the petitioner herein.

9. The present writ petition is accordingly **allowed** in view of the aforesaid judgment passed in the matter of ***Smt. Vijay Dwivedi*** **(**supra**).** The impugned orders are **set aside**. The respondents are directed to re-examine the claim of the petitioner to ascertain her entitlement for grant of ex-gratia compensation.

10. Let the aforesaid exercise be undertaken within a period of 02 months of receipt of a certified copy of this order and the admissible benefits to the petitioner be released to the petitioner within a further period of 8 weeks, failing which, the petitioner shall be entitled to interest @6% per annum.

(VINOD S. BHARDWAJ)
JUDGE

07.04.2025
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No