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

\+ W.P.(C) 3233/2019 & CM APPL. 14855/2019

MRS. SUDHISHA DUBEY .....Petitioner

Through: Brigadier Anil Srivastava, Adv.

versus

UNION OF INDIA AND ORS. .....Respondents

Through: Ms. Pratima Lakra, CGSC with Mr. Chandan Prajapati and Mr. Shailendra Kumar Mishra, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% 13.05.2025

1. On 7 August 1981, the petitioner's husband K.K. Dubey[1] joined the Indian Coast Guard as Assistant Commandant. He was promoted as Deputy Commandant in November, 1987, as Commandant in November, 1992 and as Deputy Inspector General[2] in 2007.

2. During the course of his service in the Indian Coast Guard, four tenures of Dubey were spent afloat.

3. In 2007, Mr. Dubey was diagnosed as suffering from Left Bundle Branch Block[3]. He was placed under Low Medical Category LMC S2 A2 (Temporary) in September 2007 and LMC (Permanent)

[1] "Dubey" hereinafter
[2] "DIG", hereinafter
[3] "LBBB", hereinafter

with effect from 16 November 2009.

4. Thereafter, Dubey was further appointed as Principal Director (Air Material) with effect from January, 2009.

5. On 18 December 2009, during the course of discharge of duties, Dubey felt uncomfortable and proceeded for a medical checkup to the Armed Forces Clinic[4]. En route, he fell unconscious in the car. He was shifted to an auto-rickshaw and rushed to the AFC, where he was declared to have been brought dead at 12.45 pm on the same day i.e. 18 December 2009. His death was diagnosed as attributable to cardiac arrest.

6. In the hospital records, it was noted that Dubey had died owing to "cardiac arrest following Acute Myocardial Infarction".

7. Following the death of Dubey, the petitioner, as his widow, was granted pension *vide* PPO No. C/CGO/EP/10006/2010.

8. The petitioner claims that she is entitled to Extraordinary Pension[5] in terms of CGO 4/91 read with CGO 03/2005.

9. We may reproduce the relevant clauses of CGO 4/91 and CGO 03/2005, thus:

"**CGO 4/91**

[4] "the AFC", hereinafter
[5] "EOP" hereinafter

CASUALTY PENSIONARY AWARDS - DEATH DUE TO CARDIOVASCULAR CATASTROPHE

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2. However, it has recently been agreed to by the Govt. that myocardial infarction (IHD) can now be considered attributable to service in the following circumstances :-

(a) When a myocardial infarction arises during service in close-time relationship to service compulsion involving severe trauma or exceptional mental, emotional or physical strain provided that the interval between the incident and the development of the symptoms is approximately 24 to 48 hrs.

(b) In cases related to activities like high pressure planning for/in operations or extreme physical strain, but not in cases of stress and strain in office of extra duties which are matters of normal official duties."

"CGO 03/2005

GUIDELINES TO DECIDE THE ATTRIBUTABILITY OR OTHERWISE TO SERVICE IN CASES OF DEATH/DISABLEMENTDUETO INJURY
(NK/0341)

1. These orders spell out the broad guidelines for deciding the attributability or otherwise to the service in, cases of death/ disability of a person subject to the Coast Guard Act, 1978 owing to incidence/accident while in service.

2. The disability or death may be termed as due to Coast Guard service provided it is established that:-

(a) The disability is due to wound, injury or disease which:-

(i) is attributable to the service, or

Explanation. The cause of a disability or death resulting from wound or injury, will be regarded as attributable to the service if the wound/injury was sustained during the actual performance of "duty" in Coast Guard service. The cause of a disability or death resulting from a disease will be regarded as

attributable to the service if it is established that the disease arose during service and the conditions and circumstances of duty in the Coast Guard service determined and contributed to the onset of the disease.

(ii) arose during the service and has been and remains aggravated thereby. This will also include the precipitating /hastening of the onset of a disability.

Explanation. Cases, in which it is established that the service conditions did not determine or contribute to the onset of the disease, but influenced the subsequent course of the disease, will be regarded as aggravated by the service. A disease which has led to an individual's discharge or death will ordinary be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the Coast Guard. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have risen during service.

(b) The death was due to or hastened by:-

(i) A wound injury or disease which was attributable to service; or

(ii) The aggravation by Coast Guard service of a wound, injury or disease, which arose during service.

Note. In terms of eligibility for family pension under EOP and ex-Gratia payment, for instance the main condition to be satisfied is that the death of the CG personnel concerned should have occurred in actual performance of bonafide official duties. In other words, a connection should be established between the occurrence of death and Government service. In deciding the above all evidence (both direct and circumstantial) shall be taken into account and the benefit of reasonable doubt given to the CG personnel. This benefit of reasonable doubt will be further extended more liberally in field

cases, viz, incidents at sea, while going to/returning from a specific task/beck and call of duty etc."

10. The case of the petitioner, *qua* her entitlement to EOP, was referred by the Coast Guard Headquarters to a Board of Inquiry[6] convened for the purpose.

11. It is admitted, in the counter-affidavit filed by the respondent by way of reply to the present writ petition, that the BOI "after examining the relevant witnesses and documents, concluded that the death had occurred due to cardiac arrest following Acute Myocardial Infarction *and the same was attributable to service in terms of para 2 (b) of Coast Guard Orders (CGO) 03/2005*."

12. Accordingly, the BOI recommended the case of the petitioner for grant of EOP.

13. The recommendations of the BOI appear to have been put up to the Coast Guard Headquarters which, *vide* certificate of attributability dated 31 December 2009, opined that the death of Dubey was not attributable to or aggravated by military service.

14. We deem it appropriate to provide a screenshot of the said certificate thus:

[6] "BOI", hereinafter

AFMSF 93 Par–II (ver 2002)

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CERTIFICATE OF ATTRIBUTABILITY : FATAL CASE

SECTION A

PERSONAL PARTICULARS

Name : Keval Krishan Dubey
Rank : DIG No : 4008J Unit /Ship : CG HQ
Died on : 18 Dec 2009 at 1245H.
Cause of Death : CARDIAC ARREST following ACUTE MYOCARDIAL INFRACTION (ICD No.....)

Note : This from is to be accompanied alongwith AFMSF-93 A

SECTION-A
STATEMENT OF COMMANDING OFFICER

1. Date, the individual joined your Unit/Ship 02 Jan 2008
2. Was he in Low Medical Category (Y/N)...YES
   If Yes
   (a) What was/were the disability/disabilities ? LEFT BUNDLE BRANCH BLOCK
   (b) What was his medical category and since when? $S_2A_2(P)$ PMT since 10 Dec 09
   (Last Categorisation Medical Board)
   (c) How long has he been in lower medical category? Since Sep 2007
3. Was he excused any duty ? NO
4. Nature of duties in the Unit (Give details) PRINCIPAL DIRECTOR (NR MATERR
5. Did the duties involve severe/exceptional stress and strain ? (Give details).
   (a) Since when NO
   (b) On special day/occasions
6. Was he living with his family? If so. YES
   (a) Since when 14 Feb 1989
   (b) In Govt accommodation or under own arrangements GOVT. ACCOMODATION.
7. Was he living in Unit lines? NO
8. Dates of last leave and where spent (Village/Town/State) 03 days C/L w.e.f. 13.12.2009 LOCAL. NEW DELHI
9. If disability is due to infection ND
   (a) Any other case in the unit.
   (b) Is the disease endemic in the town, in surrounding areas? } NA
   (c) Preventive measures taken?
10. In case of Sexually Transmitted Diseases
    (a) When and where was it contacted?
    (b) Name of Hospital/STD Centre where treated.
    (c) Was surveillance and follow – up treatment completed ? (If so give, date of FTC). } NA
    (d) If surveillance and follow – up treatment was not completed, state service factors responsible.
11. Do you consider the death is attributable to or aggravated by service ? (give reasons)*
    NC

Unit/Ship
Station New Delhi
Date 31 Dec 09

Signature of Commanding officer
Rank & Name in full
B.S. JUNDRA, SINGH
Inspector General
Dy. Director General
Coast Guard Headquarters
New Delhi

*NOTE. Injury Report (for injury cases) / 14 days Charter of Duties (for IHD) should be attached by the Commanding officer and endorsement made in the column

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15. It is apparent from a glance at the afore-extracted certificate of attributability that no reason has been provided for the decision that the death of Dubey was not attributable to or aggravated by military service, though there was a specific requirement at S. No. 11 of the said certificate, for reasons to be adduced in that regard.

16. The petitioner, therefore, has approached this Court by means of the present writ petition, challenging the decision not to grant her EOP and seeking a mandamus to the respondent in that regard.

17. We have heard Brig. Anil Srivastava, learned Counsel appearing for the petitioner, and Ms. Pratima N Lakra, learned CGSC, for the respondents.

18. Brig. Srivastava has drawn our attention to CGO 4/91 and CGO 03/2005 and to the clauses of said CGOs, extracted *supra*. He submits that, applying the instructions contained in the said CGOs, the petitioner was unquestionably entitled to EOP and the respondents have, without due justification, denied her request in that regard.

19. Ms. Lakra, on the other hand, places reliance on Schedule II to the Central Civil Services (Extraordinary Pension) Rules, 1939[7].

20. We may note that there is no dispute about the fact that, if Dubey were to satisfy the requirements of attributability to or aggravation by, military service, the petitioner's entitlement to EOP would be as per the provisions of CCS (EOP) Rules.

21. It would not be proper, however, to refer to the said schedule by itself, without referring first to the Rules.

22. Rule 10 of the CCS (EOP) Rules provides that where the death

[7] "CCS (EOP) Rules", hereinafter

of the government servant is conceded as due to Government service in terms of Rule 3-A of the CCS (EOP) Rules, his widow and children would be awarded pensionary benefits in accordance with Schedule II. Rule 3-A(1)(b) further provides that death shall be accepted as due to government service provided it is certified that it was due to, or hastened by, a wound, injury or disease, which was attributable to government service. For attributability or aggravation to be conceded, Rule 3-A (2) requires there to be a causal connection between the death and the government service. The Guidelines for conceding attributability of disablement or death to government service provides in Clause 2 that in deciding the issue of entitlement, all the evidence, both direct and circumstantial, is required to be taken into account and benefit of reasonable doubt is to be given to the claimant. Clause 2 of CGO 03/2005, titled "Guidelines to decide the attributability or otherwise to service in cases of death / displacement due to injury" which admittedly governs the present case provides in the Explanation to Clause 2 (a)(ii) thus:

> "A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of the individual's acceptance for service in the Coast Guard. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have arisen during service."

23. Applying the above test, in the present case, (i) no note of Dubey suffering from LBBB was made at the time of acceptance of Dubey for joining service in the Coast Guard and (ii) there was no medical opinion to the effect that Dubey may have been suffering

from LBBB prior to his acceptance for service in the Coast Guard, but the disease could not have been detected on medical examination. Thus, applying CGO 03/2005 along with the aforenoted provisions of the CCS (EOP) Rules, the entitlement of the petitioner to EOP becomes manifestly apparent.

24. Significantly, the explanation to Clause 2(a)(ii) of CGO 03/2005 accords primacy to two medical opinion. In the present case, the report of the Medical Board was that the LBBB, detected in the case of Dubey during service was in fact attributable to his military service in the Coast Guard. The respondents, while rejecting the petitioner's claim to EOP, baldly disagreed with the opinion of the Medical Board. Even though the "certificate of attributability" specifically require the authority to provide reasons for disagreement, no such reasons were provided.

25. The disagreement, therefore, is of no value at all.

26. We, therefore, are of the opinion that the petitioner was entitled to EOP, as claimed by her.

27. The respondent is directed to disburse the EOP as due to the petitioner within a period of six weeks from today.

28. Failure to do so shall entail an interest at the rate of 12% per annum till the date of disbursement.

29. The writ petition is allowed in the aforesaid terms.

C.HARI SHANKAR, J.

AJAY DIGPAUL, J.

MAY 13, 2025
an/dsn/ar

Click here to check corrigendum, if any