



2025:DHC:217-DB



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

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Reserved on: 06.11.2024

Pronounced on: 17.01.2025

+ **W.P.(C) 9319/2022**

SEEMA JAMWAL

.....Petitioner

Through: **Mr. Ankur Chhibber, Adv.**

versus

UNION OF INDIA AND ORS

.....Respondents

Through: **Mr. Anshuman, SPC, Mr. Gokul Sharma, Mr. Piyush Ahluwalia, Advs.**

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 under Article 226 of the Constitution of India has been filed by the widow of late Inspector (General Duty), Bhagmal Jamwal, who unfortunately passed away while serving with the 54th Battalion (Bn.) in the Indo-Tibetan Border Police Force (ITBPF), seeking the following reliefs:

“i) To issue a writ of certiorari for quashing of the order dated 24.12.2021 whereby the Legal notice dated 08.10.2021 has been arbitrarily rejected by the Respondents.

ii) To issue a writ of mandamus directing the Respondents to grant the benefits of Ex-gratia lump sum amount of Rs.35 lakh and extra ordinary pension as per Rule 3-A of the CCS (EOP) Rules along with arrears and interest in favour of the Petitioner considering the death



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of her husband whilst being on active duty at high altitude area of Arunachal Pradesh as per the policies in vogue.”

2. The following factual narration unravel the *raison d'etre* for filing the present petition:

- a. The Shri Bhagmal Jamwal, late husband of the petitioner, (hereinafter referred to as the 'deceased') joined the ITBPF as a Constable (GD) on 06.11.1980 and gained various promotions during his service. He was ultimately promoted to the rank of Inspector (GD) on 23.06.2011, the post he was serving at the time of his demise.
- b. During his career, which spanned over three decades, the deceased had served at various stations, including various Extreme Hard Areas such as Sirahan, Kinnaur in Himachal Pradesh; Gauchar in Uttarakhand; Srinagar in Jammu & Kashmir; Leh & Ladakh on two separate occasions, as also other Hard Areas in the North East, that is, Sikkim and Arunachal Pradesh. Apart from his abovementioned postings, he was also, from time to time, an Instructor at the Basic Training Centre of ITBPF.
- c. While he was posted with the 54th Bn. of the ITBPF at Ziro, District Lower Subansiri, Arunachal Pradesh, for Border Guarding Duty in 2016, the deceased, on 14.03.2016, experienced a sharp pain in his chest. However, at the said time, he did not pay any heed to the pain as he thought the same was a result of a muscle pull/spasm while playing



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badminton. As the pain did not subside but had also spread to his back, the deceased reported the same to his superiors. They, thereafter, directed that he be taken to the District Hospital Ziro, Arunachal Pradesh, where he was examined, and the ECG report revealed that his heart was in a poor condition and he required urgent and immediate medical attention. He was referred to the Government Medical College, Guwahati, Assam for further medical treatment.

- d. Despite his ailment warranting urgent treatment, the deceased was taken to Naharlagun in an ITBPF vehicle, which was the closest Railway Station, being situated four hours away from Ziro. From there, he took an overnight train to Guwahati, where upon his arrival, he was first taken to the ITBPF Transit Camp and thereafter to the Government Medical College, Guwahati.
- e. The deceased succumbed to his cardiac condition and passed away on 18.03.2016. The cause of death was ascertained as *“acute anterior wall myocardial infraction with complete heart block with cardiogenic shock with acute kidney injury and coronary artery diseases tripal vessel disease”*.
- f. Thereafter, since the petitioner had not received complete information pertaining to her husband’s death, she preferred an application under the Right to Information Act, 2005 (RTI), seeking the following documents:

“I. Copies of opinion and recommendation of COI board in the death case of my husband.



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II. Final order of Commandant, 54 Bn in the COI of death case.

III. Annual Medical check-up Report/Medical category of my husband for the period of 5 years.

IV. Reason for non payment of Ex-gratia & Extra ordinary pension to the applicant while my husband died on duty.

V. Interest upon leave Encashment amount paid after none than 3 years due to non submission of no due certificate, to Pension Cell, ITBP by Comdt 54 Bn. Whereas undertaking was taken from applicant in favour of CRO ITBP and concerned Branch Manager of Pension Paying branch at the time of filling of pension paper that if any payment paid to me excess same can be recovered from my pension. Despite under which reason such undertaking has been ignored by retaining of leave encashment amount, be also intimated.”

- g. The respondents, in their reply dated 28.12.2020, rejected her application, stating that none of the information sought by the petitioner come under the purview of the Replying Authority and that if the petitioner was not satisfied, she should approach the Appellate Authority. Aggrieved by this, the petitioner approached the Appellate Authority, who in response stated that as per the provisions of the 7th Central Pay Commission (CPC), an amount of Rs.3,81,000/- as leave encashment is to be paid to the petitioner, which has been approved by the Force and forwarded to the Competent Authority for disbursal. The said amount was later received by the petitioner in the month of September, 2021.
- h. As the petitioner was not satisfied with the entitlements and benefits accorded to her, the petitioner sent a legal notice



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dated 08.10.2021, to the respondents, calling upon the respondents to disburse the amount as per the applicable rules and regulations.

- i. The respondents *vide* the Impugned Order/letter dated 24.12.2021, rejected the claim of the petitioner, compelling her to invoke the writ jurisdiction of this Court.

Submissions on behalf of the petitioner:

3. Mr. Ankur Chhibber, the learned counsel for the petitioner, submitted that the inattentive approach of the respondents, despite the delicate cardiac condition of the petitioner's late husband indicates the lack of seriousness and sensitivity on the part of the Superior Officers. The delay caused in transporting the deceased to a hospital was caused by deficient facilities, coupled with poor decision taken by the Superior Officers of the petitioner's late husband. He submitted that the deceased, prior to his demise had always been healthy, and his Annual Medical Examination had placed him in the Medical Category SHAPE-1 in the year 2014-15. Therefore, his medical condition would be considered as being attributable to service. Reliance has been placed on *Dharamvir Singh vs. Union of India & Ors.*: (2013) 7 SCC 316, and *Venkatesh vs. Union of India & Ors.*: 2018 SCC OnLine Del 12909.

4. He further submitted that the deceased passed away whilst on 'active duty' at a Hard Area posting, as per the Standing Order No.02/2016 issued by the ITBPF, which clearly states that Bhalukpong, which is where the 54th Bn. was stationed, comes under



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the Hard Area Categorization. The term ‘*active duty*’, the learned counsel submitted, is not merely where the Force personnel are in the line of fire or carrying out operations but also all the activities that build preparedness to restore and preserve order, including sporting activities. The law as laid down in ***Ramesh Fonia vs. Union of India***: (2013) SCC OnLine Del 4578, highlights the importance of evening games in a Battalion and clearly outlines that a Force personnel, while indulging in such activities, are considered to be on ‘*active duty*’.

5. The learned counsel while relying upon the Office Memorandum (OM) dated 04.08.2016 issued by the Department of Personnel and Training (DoP&T), specifically Clause 6.1, 6.2 and 12.1, submitted that the petitioner, being the Next of Kin, would be entitled to the maximum limit of gratuity, as her late husband had completed 20 years of service at the time of his unfortunate death, and since his death occurred whilst on duty in a specified high altitude at an inaccessible border post. Further, as per Rule 3-A of the Central Civil Services (Extraordinary Pension) Rules, the petitioner would be entitled to Extraordinary Pension, being the Next of Kin.

6. He submitted that the petitioner has also not been granted the special benefits, that is, *ex-gratia* compensation. The learned counsel submitted that the petitioner was in SHAPE-1 category when he was inducted in the Force. He then, made reference to the DoP&T OM dated 04.08.2016, and submitted that in case of death of a Force member occurs while on duty in a specified high altitude area/zone



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etc., the petitioner is entitled to Rs. 35 lakhs as payment of *ex-gratia* lump sum compensation.

7. Mr. Chhibber further submitted that the deceased was continuously staying in extreme weather condition in high altitude zones, therefore, his resulting medical ailment would be attributable to or aggravated by his service condition. To strengthen his claim, the learned counsel placed reliance on the following Judgments:

i. Phoolwati Devi vs. Union of India in W.P.(C) 3946/2010; 2012 SCC OnLine Del 3756

ii. Rajni Devi Sharma vs. Union of India & Ors. in CWP 187/2016; dated 14.12.2016

iii. Pusha Devi vs. Union of India: 2017 SCC OnLine P&H 5537.

8. To conclude, the learned counsel submitted that the petitioner's husband was the sole bread winner of his family, who had laid down his life while serving the nation, thus, the petitioner is entitled for the release of Extraordinary Pension and *ex-gratia* compensation in accordance with the policies of the Government issued from time to time.

Submissions on behalf of the respondents

9. Mr. Anshuman, the learned SPC for the respondents, while seeking the dismissal of the writ petition, submitted that the claim of the petitioner for *ex-gratia* compensation was forwarded to the ITBPF Headquarter by the 54th Bn., and the same was subsequently rejected *vide* the OM No.580 dated 26.10.2020, with the observation that 'the



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case of *ex gratia* compensation is not admissible to the Next of Kin as per paragraph 12.1 of Department of Pension & Pensioner's Welfare OM No.38/37/2016-P&PW (A)(i) dated 04.08.2016.

10. Further, the case of the petitioner was forwarded to the Base Hospital, Delhi, ITBPF, *vide* the letter dated 22.08.2016, and in response to the said letter, the Base Hospital intimated the petitioner that her late husband would not be entitled to Extraordinary Pension, as her husband passed away from "*acute anterior wall myocardial infraction with complete heart block with cardiogenic shock with acute kidney injury and coronary artery diseases tripal vessel disease,*" which comes under the category of a natural death, and in such case, the petitioner would not be entitled to Extraordinary Pension. More so, the deceased reported chest pain not whilst 'on duty' or 'field duty'.

11. The learned SPC submitted that Rule-3A of the EOP Rules applies solely when a death is demonstrably attributable to or aggravated by Government service conditions, which is not applicable in the present case. He submitted that the cardiac arrest resulting in death, even while being posted at high altitude area, does not satisfy the norms as required for the grant of Extraordinary Pension.

12. The learned SPC further submitted that the Leave Encashment amount has already been released in favour of the petitioner *vide* the ITBPF Central Record Order No.5750 dated 08.11.2019, and a total amount of Rs.4,10,000/- was deposited by the Central Welfare Fund of the North-Eastern Frontier to the Government Medical College,



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Guwahati. The total amount incurred for the treatment of the deceased, that is, Rs.4,53,994/- was reimbursed on 29.08.2021.

13. He submitted that death-cum-retirement gratuity amounting to Rs.10 lakhs was also sanctioned on 10.07.2016 by the Pay & Accounts Office, IBTPF. Subsequently, upon the recommendation of the 7th CPC, the revised death-cum-retirement gratuity amount of Rs.18,21,600/- was sanctioned to the petitioner *vide* PAO letter No.3304-07 dated 31.08.2019.

Analysis and findings:

14. Having considered the factual matrix, the submissions of the parties, and perused the record, we find that the primary issue arising before this Court for consideration is as to whether the cause of death of the deceased due to “*acute anterior wall mycordial infraction with complete heart block with cardiogenic shock with acute kidney injury and coronary artery diseases tripal vessel disease*” could be treated as being attributable to or aggravated by service conditions, or as a natural death.

15. The respondents dispute the entitlement of Extraordinary Pension to the petitioner on the premises that the EOP Rules do not permit the grant of Extraordinary Pension, as the petitioner’s late husband expired due to a complete heart block with cardiogenic shock and acute kidney injury. The learned SPC vehemently contented that the Extraordinary Pension would be admissible only in a case when the death occurs due to a disease contracted on account of continued exposure to a hostile work environment, or subject to extreme weather



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conditions or occupational hazards and accidents while travelling in the Government vehicles on government bonafide duty, however, in the present case, the cause of death is unrelated to any specific high risk service condition and thus, does not qualify for the grant of Extraordinary Pension benefits or *ex-gratia* compensation.

16. In this regard, we may begin by referring to Rule-3A(2) of EOP, 2005, Rules which reads as under:

“(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.”

17. We may further refer to the Government of India’s decisions: revised provisions effective from 01.01.1996, regulating Disability Pension and Extraordinary Family Pension under the CCS, EOP Rules, and Liberalized Pensionary Awards, which so far is relevant to the present petition, is reproduced as under:

<i>“Category ‘A’</i>	<i>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.</i>
<i>Category ‘B’</i>	<i>Death or disability due to causes which are accepted as attributable to or aggravated by Government service. Diseases contracted because of continued exposure to a hostile work environment, subjected to extreme weather conditions or occupational hazards resulting in death or disability</i>



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would be examples.”

18. Rule 3 further provides as under:

“3. The recommendations of the Commission have been under consideration of the Government for some time. Orders have already been issued regarding ex gratia payment in case of death in service vide this Department’s O.M. No.45/55/97-P.&P.W.(C), dated 11-9-1998 [vide Chapter 3]. In respect of disability pension/family pension, the President is now pleased to decide as under:

(i) Cases covered under the Category (A) would continue to be covered under the normal existing provision of CCS(Pension) Rules.

(ii) In cases covered under Categories (B), (C), (D) & (E), the scales of the family pension/disability pension would be as under.”

19. What emerges from a conjoint reading of the above provisions is that while deciding the issue of entitlement, the benefit of reasonable doubt may be given to the claimant, and more liberally when such a complaint arises out of field service. In order to qualify for the grant of Extraordinary Pension, it must be shown that the death of the member of the Force had occurred while ‘on duty’ and that the cause of the death has been accepted as being attributable to or aggravated by Government service. More so, the diseases contracted must be because of continued exposure to a hostile work environment, such as being subjected to extreme weather conditions, or occupational hazards, resulting in death. Natural causes of death are not attributable to Government service and thus chronic heart and renal diseases are not covered under the Rules.



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20. In the instant case, the deceased, at the time of his death, was posted at Bhalukpong in Arunachal Pradesh, which is admittedly a Hard Area posting. It is not disputed that during his service span, he was posted at Sirahan, Leh & Ladakh, and Srinagar, which are Extreme Hard Area postings. However, the respondents have claimed that the late husband of the petitioner did not continuously remain posted in the Extreme Hard Areas, rather, he was also posted in Soft Areas like Dehradun and Bhatinda. This, in our view, may not be sufficient to note out that the condition of the deceased was for reasons attributable to or aggravated by service.

21. It is also true that the petitioner's late husband, who had been promoted from time to time, could not have been promoted unless he was in the SHAPE-1 Medical Category. The plea of the petitioner is that her deceased husband was healthy, hale and hearty, and was not suffering from any chronic problems, and he was subjected to Annual Medical Examinations, which have placed him in the SHAPE-1 Medical Category. The said medical profile of the deceased, the learned counsel for the petitioner submitted, belies the plea that the cause of death was natural and not due to service condition. The respondents have failed to dispute the said fact, as they have not produced the medical record of the deceased, even though the petitioner had filed an RTI application to obtain the opinion of the Court of Inquiry related to the death of her husband, along with the five-year Annual Medical Examination reports/documents related to his Medical Category. Needless to say, the respondents neither



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furnished the said records to the petitioner nor placed the same before us.

22. Furthermore, the respondents have admitted that the deceased, before his death, was deployed with the Unit which was working in a temporary accommodation, and only basic medical facility was available at the Unit hospital, and the District Hospital was around 300 meters away from the 54th Bn. The deceased, after breakfast, had complained about chest pain and back pain to his roommate. He was examined at the district hospital and thereafter was referred to the Government Medical College, Guwahati, for further treatment. It is not denied that the deceased was taken by road to the Naharlagun Railway Station, which took four hours, and, thereafter, was sent to Guwahati by train, a journey that was completed in 8 hours. He was diagnosed with “*acute anterior wall myocardial infraction with complete heart block with cardiogenic shock with acute kidney injury and coronary artery diseases tripal vessel disease*”. The said medical condition of the deceased could not have occurred in a short span of time, and the possibility cannot be ruled out that it was because of continuous exposure to hostile work environments/being subjected to extreme weather conditions, or occupational hazard, which ultimately resulted in his death. In any case, the deceased was not given timely medical attention which could have prevented his death. The respondents have miserably failed to assign any reason for not placing the medical documents of the deceased or the proceedings of the Court



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of Inquiry, if any, that was conducted to investigate into the death of the deceased.

23. In view of the above, we have no hesitation in holding that the death of the late husband of the petitioner falls under Category 'B' of the Government of India's decisions. It cannot be denied that his death had occurred due to causes which are attributable to or aggravated by Government service. The petitioner, in our view, is therefore, correct in contending that in these circumstances, she is entitled for Extraordinary Pension.

24. Now, we may deal with the petitioner's prayer for grant of *ex-gratia* lumpsum compensation. Mr. Chhibber, the learned counsel for the petitioner submitted that since the deceased passed away whilst on '*active duty*' in a Hard Area posting located at high attitude, therefore, the petitioner being the Next of Kin of the deceased, is entitled to the *ex-gratia* compensation. The learned counsel brought to our notice the paragraph 12.1 of the OM dated 04.08.2016, issued by the DOP&T, and submitted that she is entitled to *ex-gratia* lumpsum compensation amounting to Rs.35 lakh.

25. To appreciate the said claim, we may refer to paragraph 12 of Office Memorandum F.No.38-37/2016-P&PW(A)(i) dated 04.08.2016, and the same is reproduced as under:

"EX GRATIA LUMP SUM COMPENSATION

12.1 The amount of ex gratia lump sum 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</i>	<i>25lakh</i>



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<i>performance of duties</i>	
<i>Death in the course of performance of duties attributed to acts of violence by terrorists, anti social elements etc.</i>	25 lakh
<i>Death occurring in border skirmishes and action against militants, terrorists, extremists, sea pirates</i>	35lakh
<i>Death occurring while on duty in the specified high altitude, inaccessible border posts, etc. on account of natural disasters, extreme weather conditions</i>	35 lakh
<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>	45 lakh

26. The respondents have not disputed that at the time of the demise, the petitioner's late husband was on duty in the specified high altitude area. For the reasons noticed hereinabove, the cause of death of the deceased was in circumstances which have direct connection with his service and happened during the official course of his duties. Therefore, the petitioner, being the Next of Kin of the deceased, is also entitled to grant of *ex-gratia* lumpsum compensation of Rs.35 lakhs in terms of the clause 12.1 of OM dated 04.08.2016.

27. For the aforesaid reasons, the writ petition is allowed by setting aside the Impugned Order/letter dated 24.12.2021, whereby the claim of the petitioner for the grant of Extraordinary Pension and also for *ex-gratia* lumpsum compensation was rejected.

28. The respondents are, accordingly, directed to sanction Extraordinary Pension to the petitioner and pay the same to the petitioner, in accordance with the Rules applicable thereto, effective



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from the date of death of the deceased, within a period of 12 weeks from today as far as arrears is concerned, and continue to pay the same in future as well.

29. The respondents shall also pay to the petitioner *ex-gratia* lumpsum compensation of Rs.35 lakhs along with interest @ 8% per annum with effect from the date of the death of the deceased, within a period of 12 weeks from today.

30. The petition is allowed in the above terms.

SHALINDER KAUR, J.

NAVIN CHAWLA, J.

JANUARY 17, 2025/ab/F

Click here to check corrigendum, if any