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

\+ W.P.(C) 12256/2022

SUNITA DEVI .....Petitioner

Through: Mr. Sahil Chandra, Adv.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Rahul Sharma, CGSC

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

JUDGMENT (ORAL)

% **26.03.2025**

1. Naresh Kumar, the husband of the petitioner, suffered a heart attack while participating in the Field Physical Efficiency Test[1], which was required to be undertaken as part of his duties when deployed with the 151st Battalion of the BSF, then posted on the Indo-Pak Border at Kutch, Gujarat.

2. The only controversy that has to be addressed is whether the petitioner, as the widow of Naresh Kumar, would be entitled to extra-ordinary pension and to *ex gratia*.

3. We have heard Mr. Sahil Chandra, learned Counsel for the petitioner and Mr. Rahul Sharma, learned CGSC for the respondent.

[1] "FPET" hereinafter

4. At the very outset, we record our appreciation for the eminently fair approach that Mr. Sharma has adopted in the present case.

5. The entitlement to extra-ordinary pension is governed by the Central Civil Services (Extra-ordinary Pension) Rules, 1939[2]. The relevant provisions are contained in Rules 3(4), 3A, 10, Schedule II and Schedule I-A of the CCS (EOP) Rules which, to the extent relevant, are reproduced as under:

> 3(4) "disease" means –
> a disease as is mentioned in Schedule I-A hereto annexed.
>
> **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 causal connection between -
>
> (a) disablement and Government service; and

[2] "the CCS (EOP) Rules" hereinafter

(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.

Schedule II For determining the compensation payable for death or disability under different circumstances, the cases are categorized in five distinct categories as under:

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Category B- 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 would be examples.

6. Seen in conjunction, Rule 10 entitles the widow and children of a government servant, whose death is conceded as due to government service in terms of Rule 3A, to pensionary benefits in accordance with Schedule II. Schedule II determines the compensation payable for death or disability under various circumstances and sub-divides all cases into five categories. Category B covers death or disability due to causes which are accepted as attributable to or aggravated by government service. This includes diseases contracted due to occupational hazards resulting in death or disability. The Schedule sets out the scales at which family pension would be payable in cases covered by each of the aforesaid categories including Category B.

7. The expression “disease” is defined in Rule 3(4) as meaning a disease as mentioned in Schedule I-A to the CCS (EOP) Rules.

8. Diseases affected by stress and strain are enumerated under Head B in Schedule I-A, thus:

> "(B) Diseases affected by stress and strain:
>
> (i) Psychosis and Psychoneurosis;
> (ii) Hyperpiesia;
> (iii) Hypertension (Blood Pressure);
> (iv) Pulmonary Tuberculosis;
> (v) Pulmonary Tuberculosis with pleural effusion;
> (vi) Tuberculosis - Non-pulmonary:
> (vii) Mitral Stenosis;
> (viii) Pericarditis and adherent pericardium;
> (ix) Endo-carditis;
> (x) Sub-acute bacterialendo-carditis, including infective endocarditis;
> (xi) Nyocarditis - acute or chronic;
> (xii) Valvular disease;"

9. Though, strictly speaking, a heart attack is not included as one of the diseases affected by stress and strain, we are of the opinion that a reasonable and meaningful interpretation has to be accorded to the Schedule. When the Schedule includes hypertension and valvular disease in the list of diseases covered under Head B, as diseases affected by stress and strain, it is irrational and illogical to hold that if a person suffers a heart attack, it would not be covered under the Schedule. This would also render the Schedule *prima facie* arbitrary, and it is a well settled principle of interpretation that any interpretation which renders a statutory provision to be arbitrary or unconstitutional must be avoided.

10. We also note that, probably apparently aware of this lacuna, the

CCS (EOP) Rules have been renotified on 30 January 2023 and that the 2023 CCS (EOP) Rules includes, after serial no. (xii) under the Head of "diseases affected by stress and strain", "heart attack/cardio related diseases".

11. Besides, the petitioner has also placed on record a communication dated 15 October 2018 addressed by the Commandant, 151st Battalion, BSF, to the Administrative Directorate, HQ BSF, which deals with the petitioner's representation for grant of extraordinary pension. Para 2 thereof reads thus:

> "2. In this context, it is submitted that No. 89131521 Late (Const/GD) Naresh Kumar was serving in ex "F" coy of this unit, when the unit was deployed at Bhuj, Kutch-Bhuj (Gujarat). Troops of 'F" Coy was undergoing the remaining two weeks coy collective training which was terminated on 21st June 2008. The test of coy collective training was scheduled to conduct on 20th & 21st June 2008. On 20th June 2008, the FPET event of coy troops was conducted in which above deceased was participated along with other coy troops at Bn HQ 151 Bn BSF, Bhuj. After completion of 3.2 mile run and successful over the 9' ditch, coy troops along with deceased were lined up for doing next obstacles of 6' wall, No. 89131521 Const/GD Naresh Kumar was fell down and complained of pain in the left side of chest at about 0644 hrs on same day i.e. 20th June 2008. He was declared brought dead at about 0702 hrs by the treating doctor. Cause of death "Acute Cardiac Arrest". Accordingly a Staff of Court of Inquiry was ordered vide SHQ BSF. Bhuj order No. Estt/D-151/SHQ/2008/10633-37 dated 20th June 2008 and the Court opined that:-
>
> > "Nobody is to be blamed for the death caused to No. 89131521 Ct Naresh Kumar. His death is attributed to bonafied Govt duty".
>
> <u>Remarks of the Offg DIG SHQ BSF, Bhuj :-</u>
>
> > "No. 89131521 Ct Naresh Kumar of 151 BN BSF expired due to 'Acute Cardiac Arrest while on Govt. bonafide duty, which is attributable to Govt. service for which no body is

to be blamed".

<u>Remarks of the Inspector General, Frontier HQr BSF, Gujarat :-</u>

> "The death of No. 89131521 Ct Naresh Kumar is attributable to bonafide Govt. Duty."

12. Given all these facts, we are of the opinion that the petitioner cannot be denied extraordinary pension following the death of her husband which took place owing to a heart attack suffered during the course of undergoing FPET, which was part of his duties as a Constable in the 151st Battalion of the BSF. We, therefore, hold that the petitioner would be entitled to extraordinary pension as claimed in accordance with Schedule II to the CCS (EOP) Rules.

13. Insofar as the entitlement of the petitioner to *ex gratia* is concerned, the petitioner predicates her claim on an Office Memorandum dated 11 September 1998 issued by the Department of Pension and Pensioners' Welfare[3], para 5 of which reads thus:

> "5. In supersession of all earlier orders issued by Government as well as by individual ministries and departments in so far as these relate to the payment of an ex gratia lumpsum compensation in certain specified circumstances, the President is pleased to decide that families of Central Government Civilian employees who die in harness in the performance of their bonafide official duties under various circumstances shall be paid the following ex gratia lumpsum compensation:
>
> (a) Death occurring due to accidents in the course of performance of duties ₹ 5.00 lakhs
>
> (b) Death occurring in the course of performance of duties attributable to acts of

[3] "DOPW" hereinafter

violence by terrorists, anti-social elements, etc. ₹ 5.00 lakhs

(c) Death occurring during (a) enemy action in international war or border skirmishes: and (b) action against militaries, terrorists, extremists, etc. ₹ 7.50 lakhs"

14. The rates of *ex gratia*, available under the aforesaid OM were revised by para 11 of the DOPW OM dated 2 September 2008, thus:

> "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 of 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 ₹ 10.00 lakh
>
> (b) Death occurring in the course of performance of duties attributable to acts of violence by terrorists, anti-social elements, etc. ₹ 10.00 lakh
>
> (c) Death occurring (a) enemy action in international war or border skirmishes: and (b) action against militants, terrorists, extremists, etc. ₹ 15.00 lakh
>
> (d) Death occurring while on duty in the specified high altitude, inaccessible border posts, etc on account of Natural disasters, extreme weather conditions. ₹ 15.00 lakh
>
> The Department of Pension & PW O.M. No.45/55/97-P&PW(C) dated 11.9.1998 shall stand modified to this extent."

15. Mr. Chandra submits that the death of the petitioner's husband Naresh Kumar would fall within the Category A of para 11 of the aforesaid DOPW OM dated 2 September 2008, as a "death occurring due to accidents in the course of performance of duty". That the death of Naresh Kumar occurred owing to the heart attack suffered by him during the course of performance of his duties as a Constable in the 151st Battalion of the BSF cannot be disputed. We were only concerned about whether the circumstances fall within the meaning of the expression "accident".

16. Mr. Chandra has drawn our attention to two decisions rendered by Division Benches of this Court in ***Ram Devi v Director General, BSF***[4] and ***Smt Vijay Dwivedi v UOI***[5], the relevant paras of which read thus:

> From ***Ram Devi***
>
> "19. The two Office Memorandums are the beneficial face of the executive policy and therefore must receive a liberal interpretation.
>
> 20. Blending the statutory definition of active duty in the potion of the two Office Memorandums, in harmony with the rule of interpretation of beneficial legislation, it can be said that the death of a force personnel due to heart attack suffered just after performing actual duty would be a case of an accidental death in the course of performance of duties. An accident would be an unfortunate incident that happens unexpectedly and unfortunately; an event that happens by chance or that is without apparent or deliberate cause; a circumstance or attribute that is not essential to the nature of something; a misfortune.
>
> 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

[4] **2015 SCC OnLine Del 14661**
[5] **2024 SCC OnLine Del 5455**

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 ₹ 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."

From ***Vijay Dwivedi***

"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 an 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."

17. We may note that, in fact, in ***Vijay Dwivedi,*** the husband of the petitioner before this Court had only been asked to undergo a map reading STD-I Course, which required him to carry out a point to point exercise and that, in the course of carrying out the said exercise, he complained of uneasiness at about 8.30 am and, when he was carried to the hospital, was declared as brought dead.

18. The circumstances in the present case are, in fact, more favourable to the petitioner's claim than the circumstances which obtained in the case of ***Vijay Dwivedi***.

19. Mr. Rahul Sharma has, with commendable fairness, also submitted that a similar view has been taken by a Division Bench of this Court in ***Sangita Tomar v UOI***[6], which was also a case of heart attack. The *ratio decidendi* of the said decision is to be found in the following paragraphs:

> "16. Pertinently, the twin questions which are required to be determined by this Court in the present petition are, first; as to whether consequent upon death of Ram Kumar Singh EXGO-004185-K AE 9 CIVIL, who was working with Esteemed Border Roads Organisations (EBRO), his wife i.e. petitioner, who is his NoK, is entitled to grant of ex gratia compensation and second; whether she is entitled to appointment on compassionate grounds.
>
> 17. Relevantly, the conditions for grant of ex gratia compensation has been laid in by Department of Pension & Pensioners' Welfare vide OM No. 45/55/97-P&PW (C) dated 11-9-1998 and amended vide OM No. 38-37-2016-P7-PW(A)(i) dated 4-8-2016, whereunder the main condition for payment of ex gratia lump sum compensation is "that the death of employee concerned should have occurred in actual performance of bona fide official duties. In other words, a casual connection should be established between the occurrence of death and government service".
>
> 18. Petitioner has placed reliance upon decision of this Court in *Ram Devi*, wherein consequent upon death of Head Constable in BSF because of "cardio respiratory arrest due to multi-organ diseases and in particular liver cirrhosis"; his wife was denied ex gratia compensation by the competent authority and this Court had observed as under:
>
>> "*20.* Blending the statutory definition of active duty in the potion of the two office memorandums, in harmony with the rule of interpretation of beneficial legislation, it can be said that the death of a force personnel due to heart attack suffered just after performing actual duty would be a case of an accidental death in the course of performance of duties. An accident would be an unfortunate incident that happens unexpectedly and unfortunately; an event that happens by chance or that is without apparent or deliberate cause; a circumstance or attribute that is not essential to the nature of something; a misfortune."
>
> 19. Reliance is also placed by petitioner upon a decision of

[6] **2022 SCC OnLine Del 2671**

High Court of Punjab and Haryana in ***Pushpa Devi v. Union of India***[7], wherein the learned Single Judge in a case where a driver employed under Border Roads Organisation had died of heart attack, granted ex gratia compensation to his widow while relying upon decision of Division Bench of High Court of Punjab and Haryana in ***Kamlesh Devi v. State of Punjab***[8], wherein it was held that the word "accident" would also include person dying of "heart attack" which is an unexpected event which happens without design.

20. It is not disputed that Ram Kumar Singh EXGO-004185-K AE 9 CIVIL was serving a hard posting at 476 RMPL in Shergaon, Arunachal Pradesh when he died of heart attack on 21-1-2018. It is also not disputed that out of his last three postings, two were in high altitude areas and the last was a hard posting. There is no denial from the respondents that in the family of the petitioner, there is no history of death by heart attack. Moreover, at the time of filing of the present petition, father of the petitioner, aged 83 years, was said to be living a healthy life. The cause of death of petitioner's husband has been opined as "acute myocardial infarction". In medical terms, the reasons for most myocardial infarctions are coronary artery disease due to prolonged deprivation of oxygen supply and when one or more areas of heart muscles do not get enough oxygen, it results into heart attack. It is not wrong to presume here that due to various postings in high altitude areas, Ram Kumar Singh might have been deprived of oxygen necessary for a healthy heart and sustained medical problems, which could not be known at initial stage. It is admitted by respondent that on 20-1-2018, deceased Ram Kumar Singh had gone to visit the road sector OKSRT road and Shergaon-Morshing-Phudung Road and returned to his location at 476 RMPL in Shergaon at 1910 hours and on return he complained of chest pain and at about 1945 hours, he was rushed to the Military Hospital Tenga Valley, which is indisputably located at a distance of 65 km and so, the necessary medical assistance which supposedly was required to be provided to him instantly, however, could only be given after approximately three hours thereof.

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

[7] **2017 SCC OnLine P&H 5537**
[8] **2001 SCC OnLine P&H 1507**

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."

20. Following the law laid down in the aforesaid decisions, we have no doubt in our mind that the petitioner would also be entitled to *ex gratia* compensation as per the rates contained in the DOPT OM dated 2 September 2008, consequent on the death of her husband, Naresh Kumar, Constable.

21. We, therefore, allow the present writ petition.

22. The respondents are directed to disburse the amounts of extra-ordinary pension and *ex gratia* compensation as would be payable to the petitioner within a period of twelve weeks from today.

23. In passing, we may note that we have requested Mr. Rahul Sharma to confer with his department as to whether Rule 10 of the CCS (EOP) Rules may require a re-drafting to make it more gender neutral, as the Rule, as it stands, would not enure to the benefit of the widower of the children of a women government servant whose death may be conceded due to government service in terms of Rule 3A of CCS (EOP) Rules.

24. We note that the Rules are archaic, having been framed nearly a century ago in 1939.

25. Mr Rahul Sharma has ensured that he would communicate our concern to the respondent.

26. The writ petition is allowed in the aforesaid terms with no orders as to costs.

C.HARI SHANKAR, J.

AJAY DIGPAUL, J.

MARCH 26, 2025
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Click here to check corrigendum, if any