



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. LPA-1147-2024 (O&M)

Smt. Kuldeep Kaur

...Appellant

Vs.

Union of India and others

..Respondents

2. LPA-3356-2024 (O&M)

Union of India and others

...Appellants

Vs.

Smt. Kuldeep Kaur

...Respondent

Reserved on: 29.10.2025

Pronounced on: 27.01.2026

Judgment uploaded on: 29.01.2026

*Whether only the operative part of the judgment is pronounced or
whether the full judgment is pronounced: Full Judgment*

**CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present: Mr. Gurpreet Singh, Sr. Advocate assisted by
Ms. Ramandeep Kaur, Advocate for the appellant
in LPA-1147-2024 and for the respondent
in LPA-3356-2024.

Mr. Sunil Sharma, Advocate for the respondents
in LPA-1147-2024 and for the appellant
in LPA-3356-2024.

ROHIT KAPOOR, J.

The above mentioned cross-appeals are directed against the order
dated 13.03.2024, passed by the Learned Single Judge, in CWP-17048-2018,
whereby the writ petition filed by the appellant in LPA-1147-2024 (hereinafter



referred to as the 'writ-petitioner/petitioner'), was allowed and she was held entitled to extra ordinary pension from the date of filing of the writ petition under Category 'C' of the extraordinary pension scheme. The writ-petitioner was also held to be entitled to arrears alongwith interest @ 6% per annum and she was directed to return the compensation received by her under the Workmen's Compensation Act, 1923 (in short 'the Act of 1923') alongwith interest @ 6 % per annum.

CHALLENGE RAISED

2. While the appellants in LPA-3356-2024 (hereinafter collectively referred to as 'UOI') are seeking the setting aside of the order dated 13.03.2024, the writ-petitioner in its appeal, has sought modification of the said order to the following extent:-

- (i) The petitioner be granted arrears of extra ordinary family pension from the date of death of her husband or at least 3 years 2 months preceding to filing of the writ petition.
- (ii) The petitioner's husband's death be categorised to have fallen under category 'E' and not category 'C' as contemplated under EOP Rules 1939.
- (iii) Petitioner be granted 12% interest on the amount of Rs 5 lacs on *ex gratia* in the year 2017 instead of 2000.

FACTUAL MATRIX

3. The husband of the writ-petitioner, namely Mohan Singh, joined General Reserve Engineering Force (hereinafter referred to as 'GREF') in the year 1983 and was working on the post of Overseer. He was awarded Chief Engineering (Project) Commendation Card while in service. As per the petitioner, GREF is a paramilitary force and is an integral part of the Army, which is inter-alia entrusted with projects like construction and maintenance of roads and other crucial infrastructure, in most difficult border terrains like Leh, Ladakh, North-Eastern



Borders etc. On 10.07.2000, the husband of the petitioner was posted at Arunachal Pradesh and while performing his official duty in an active area, was tasked as In-charge Works for formation cutting of Hayliang-Metangliang-Chaglohogam Road, one of the China Study Group (CGS) roads, having national and strategic importance. The road is vital for efficient management of Sino-Indian Border, as its alignment passes through Dalai Valley, comprising of rugged mountainous terrain having extensive rocky stretches. The inhospitable terrain coupled with incessant rains, poses a formidable challenge for formation cutting work. On the given day, Overseer Mohan Singh was standing very close to the edge of the road formation towards valley side, 'supervising' the dozar operation at a location having treacherous and rocky mass with large height of cut. Suddenly, a big boulder from the hilltop started rolling down with huge debris towards the dozar and compressor. Realizing the danger, he immediately raised an alarm and instructed the dozar and compressor operators to move out to a safer place. Without caring for his life, he started assisting others and gave a helping hand in the attempt to move the compressor away from the site. In the attempt, he could not get out of the way of the shooting boulder in time and was swept away and fell down into the 70 meter deep valley, leading to his death.

4. On account of the supreme sacrifice and exemplary courage shown by the petitioner's husband, while serving the Nation in the most difficult terrain, the Government of India awarded him 'Shaurya Chakra', posthumously. She was granted an amount of Rs.1,84,170/- as compensation under the Act of 1923 besides a lump sum amount of Rs.5,00,000/- as *ex-gratia* in terms of OM dated 11.09.1998, on 11.12.2017. The primary grievance of the petitioner is that despite the fact that her husband had made the supreme sacrifice, yet she was only granted ordinary



family pension, contrary to the Rules. The petitioner sent a representation dated 20.12.2005 for grant of pension under the Central Civil Services (Extra Ordinary Pension) Rules, 1939 as amended from time to time (in short 'the EOP Rules'), however, the same was rejected vide communication dated 15.01.2006 on the ground that since her husband died due to hitting of boulder at site, while deployed on bonafide government duties, compensation amount under the Act of 1923 stands paid and no liberalized pensionary award is admissible to next of kin of deceased as per CCS (Pension) Rules, 1972 (in short "1972 Pension Rules"). The petitioner further filed an application dated 09.12.2010, seeking Special Family Pension/Liberalized Family Pension, which was also rejected vide order dated 06.01.2011, on the similar grounds.

5. It is in this backdrop that the petitioner approached the Writ Court, by filing CWP-17048-2018, and sought quashing of the orders dated 15.01.2006 and 06.01.2011 respectively, with the further prayer for issuance of directions for grant of extra ordinary family pension/liberalized family pension under the EOP Rules, w.e.f.12.07.2000, under Category 'E' of Schedule II of the said Rules, with interest. It was averred in the petition that the petitioner was ready to refund the amount of compensation wrongly paid to her by the UOI, under the Act of 1923.

6. The Learned Single Judge, after noticing the relevant facts and the rival contentions of the parties, allowed the writ petition with the directions as mentioned hereinabove, after taking into consideration the enunciation of law by a Constitutional Bench of the Hon'ble Supreme Court, in the case of '**R. Viswan and others Vs. Union of India and others**' (1983) 3 SCC 401, wherein it was held that the officers of GREF are part of the Armed Forces, within the meaning of Article



33 of the Constitution of India. The learned Single Judge also relied upon the decision of a Division Bench of this Court passed in LPA-1000-2009 titled as '**Union of India and others vs. Leela Devi**', decided on 13.05.2014, wherein it was held that the officers of GREF, being part of the Armed Forces, cannot be considered as 'workmen', as defined under the Act of 1923. While allowing the petition, the Learned Single Judge was of the opinion that considering the nature and overall circumstances, under which the husband of the petitioner died while performing his duties, it could not be treated as a 'simple accident' to deny her the benefit of the extraordinary/liberalized pension.

CONTENTIONS OF THE PARTIES

7. Learned Senior counsel appearing on behalf of the appellant-petitioner has at the very outset contended that the question whether the employees of GREF are members of the Armed Forces or not, is no longer *res integra* in view of the decision of the Constitutional Bench of the Supreme Court in **R. Viswan's** case (supra), which has further been interpreted by a Division Bench of this Court in **Leeladevi's** case (supra), wherein it has been conclusively held that the members of GREF cannot be treated as 'workmen' under the Act of 1923. Learned Senior counsel has drawn our attention to the notification dated 14.08.1985 issued by the Deputy Secretary to the Government of India to the Director General, Border Roads Organization, wherein it was communicated that after examining all aspects and keeping in view the decision of the Supreme Court in **R. Viswan's** case (supra), the President of India was pleased to declare GREF to be integral part of the Armed Forces of India. The said notification/letter has been referred to in para 14 of the judgment of the Supreme Court in the case of **Sukhdev Singh Gill vs. State of**



appointment letter of the late husband of the petitioner, to contend that the terms and conditions contained therein required him to serve anywhere in India or outside the country and was required to serve in any defence service or post connected with the Defence of India. Reliance is placed upon *R. Viswan (supra)*, *Leeladevi (supra)*, *N. Bhuvanendran vs. Union of India and others 2014 (21) SCT 797*, *Sukhdev Singh Gill vs. State of Punjab (supra)*, and *Union of India and others vs. Preeti Sidhu 2012 (5) SCT 919*, to advance his argument.

8. It is submitted that the fact that the writ petitioner had received compensation under the Act of 1923, would not act as an estoppel, in view of her legal entitlement to receive pension under the EOP Rules, especially when the petitioner had shown her inclination to return the amount with interest.

9. It is further contended that the mere fact that the members of GREF are governed under the Central Civil Services (Classification, Control & Appeal) Rules 1965, (in short “1965 Rules”) would not be a disqualification for grant of extraordinary pension under the circumstances envisaged under the EOP Rules, since the benefits thereunder are admissible to civil post holders also, *albeit* if the death or disability has been occasioned on account of the circumstances envisaged under the categories mentioned therein. It is urged that even otherwise, the late husband of the petitioner was working as an Overseer, which is a supervisory role, which would not fall within the definition of a workman.

10. It is argued that the learned Single Judge has fallen in error in holding that the death of the petitioner’s husband falls under Category ‘C’, whereas it should have been Category ‘E’, by applying the principles of *ejusdem generis* keeping in view that the death occurred in an active area of Indo-China Border,



where the husband of the petitioner made the supreme sacrifice by laying down his life in the service of the Nation, by showing exemplary courage and was, therefore, granted 'Shaurya Chakra', in recognition thereof.

11. It is contended that once the learned Single Judge had held that the death of the husband of the petitioner cannot be said to be a 'simple accident', then it was incumbent to grant the benefits as contemplated in Category 'E', which entitles the petitioner to avail the last drawn salary and allowances, instead of 60% of such pay and allowances, as admissible under Category 'C'. Instances where family members of army personnel have been granted the benefit of extraordinary pension, under similar circumstances have been pointed out. It is further contended that the petitioner was entitled for arrears from the date of death of her husband, i.e. 10.07.2000 as held by the Hon'ble Supreme Court of India in the case titled as '**Balbir Singh vs. Union of India**', Civil Appeal No.3086 of 2012, decided on 08.04.2016, as well as by a Division Bench of this Court in '**Amarjeet Singh vs. Union of India**', in **CWP-20936-2012**, decided on 26.05.2014. As an alternative plea, it is submitted that arrears should have been granted at least for a period of 03 years and 02 months, preceding the date of filing the writ petition, in view of the law laid down by the Hon'ble Supreme Court of India in '**Union of India vs. Tarsem Singh (2008) 8 SCC 648**'.

12. It is further submitted that the petitioner was required to be granted the *ex-gratia* amount of Rs. 5,00,000/- at the time of her husband's death, in terms of OM dated 11.09.1998, however the said amount was paid on 11.12.2017, after a span of 17 years and therefore, interest @ 12% per annum on the said amount

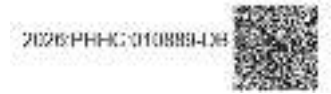


should be paid, or alternatively, an amount of Rs.15,00,000/- should be paid in terms of clause 11(d) of OM dated 02.09.2018.

13. *Per contra*, learned counsel appearing on behalf of UOI, while controverting the arguments raised on behalf of the petitioner, has argued that she had already received compensation under the Act of 1923 and therefore, in view of Rule 2 of the EOP Rules, was not entitled for any extraordinary/liberalized family pension.

14. It is vehemently argued that the employees of GREF are not members of the Armed Forces as their pay and allowances, recruitment, retirement and all other service conditions are governed by the CCS Rules and they are subjected to certain provisions of the Army Act, purely for the purpose of discipline and their status is that of a civilian, as held by the Hon'ble Supreme Court in the case of ***Mohammed Ansari vs. Union of India and others, (2017) 3 SCC 740.***

15. It is urged that the learned Single Judge has wrongly ignored that the petitioner had already received the compensation of Rs.1,84,170/- under the Act of 1923 as well as a lump sum amount of Rs. 5,00,000/- as *ex-gratia* and had thereafter approached the Court at a belated stage, and was thus precluded from claiming benefits under the EOP Rules. Learned counsel has drawn our attention to the provisions of the EOP Rules and the Act of 1923, to buttress the argument that the learned Single Judge has wrongly granted the benefit of extraordinary pension in favour of the petitioner against the provisions of the statutory rules and the Act of 1923, which were undisputedly not under challenge in the writ petition.



16. We may also take note that in the 'Short Synopsis' submitted by the learned counsel for the UOI, certain Circulars/Memo's of the year 2012 and 2024 have been appended, wherein the Employees Compensation Act, 1923, is stated to be applicable to the Border Roads Organization/GREF.

17. It is therefore argued that the order passed by the learned Single Judge is perverse and vitiated on account of non-application of mind to the settled law and the relevant statutory provisions and is thus, required to be set aside.

ANAYLYSIS AND CONCLUSION

18. We have heard learned counsel for the parties and have perused the material available on record, with their able assistance.

19. The seminal issues requiring determination are:-

- i. Whether the husband of the petitioner was a workman as defined under the Act of 1923, or a member of the Armed Forces of the Union?
- ii. Whether the benefits of extraordinary pension/liberalized family pension would be admissible to the petitioner in terms of the EOP Rules; and if the answer is in the affirmative, under which Category?
- iii. If the petitioner is found entitled for extraordinary pension, whether the same is to be granted from the date of death of petitioner's husband, or is to be restricted to thirty-eight months preceding the date of filing of the writ petition, or whether the same is to be granted from the date of filing of the writ petition?

20. Before proceeding further, it would be apposite to cull out the statutory provisions, that are relevant in the facts and circumstances of the present

appeals:-



Statutory Provisions:-

I. Workmens' Compensation Act, 1923:-

“2(n) “workman” means any person who is—
(i) A railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II,
or
(-ia) (a) a master, seaman or other member of the crew of a ship,
(b) a captain or other member of the crew of an aircraft,
(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,
(d) a person recruited for work abroad by a company, and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or;
*(ii) employed (***) (***) in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of (the Armed Forces of the Union (***) and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.”*

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SCHEDULE II

LIST OF PERSONS WHO, SUBJECT TO THE PROVISIONS OF SECTION 2(1)(N) ARE INCLUDED IN THE DEFINITION OF WORKMEN

The following persons are workmen within the meaning of section 2(1)(n) and subject to the provisions of that section, that is to say, any person who is—

- (i) to (vii) xxx*
- viii. employed in the construction, maintenance, repair or demolition of—*
 - (a) xxx*
 - (b) xxx*
 - (c) any road, bridge, tunnel or canal; or*
 - (d) xxx”*

II. The Army Act, 1950:-

“4. Application of Act to certain forces under Central Government.—
(1) The Central Government may, by notification, apply, with or without modifications, all or any of the provisions of this Act to any force raised and maintained in India under the authority of that Government, and suspend the operation of any other enactment for the time being applicable to the said force.



(2) The provisions of this Act so applied shall have effect in respect of persons belonging to the said force as they have effect in respect of persons subject to this Act holding in the regular Army the same or equivalent rank as the aforesaid persons hold for the time being in the said force.

(3) The provisions of this Act so applied shall also have effect in respect of persons who are employed by or are in the service of or are followers of or accompany any portion of the said force as they have effect in respect of persons subject to this Act under 1[clause (i) of sub-section (1) of section (2)].

(4) While any of the provisions of this Act apply to the said force, the Central Government may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of the said force.

21. Power to modify certain fundamental rights in their application to persons subject to this Act.—Subject to the provisions of any law for the time being in force relating to the regular Army or to any branch thereof, the Central Government may, by notification, make rules restricting to such extent and in such manner as may be necessary the right of any person subject to this Act—

(a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour unions or any society, institution or association, or any class of societies, institutions or associations;

(b) to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes;

(c) to communicate with the press or to publish or cause to be published any book, letter or other document.

III. The Army Rules, 1954:-

“CHAPTER IV

RESTRICTIONS OF FUNDAMENTAL RIGHTS

19. Unauthorised organisation. No person subject to the Act shall, without the express sanction of the Central Government –

(i) take official cognizance of, or assist or take any active part in, any society, institution or organisation, not recognised as part of the Armed Forces of the Union; unless it be of a recreational or religious nature in which case prior sanction of the superior officer shall be obtained;

(ii) be a member of, or be associated in any way with, any trade union or labour union, or any class of trade or labour unions.

20. Political and non-military activities.

(1) No person subject to the Act shall attend, address, or take part in any meeting or demonstration held for a party or any political purposes, or belong to or join or subscribe in the aid of, any political association or movement.

(2) No person subject to the Act shall issue an address to electors or in any other manner publicly announce himself or allow himself to be publicly announced as a candidate or as a prospective candidate for



election to Parliament, the legislature of a State or a local authority, or any public body or act as a member of a candidate's election committee, or in any way actively promote or prosecute a candidate's interests.

21. Communications to the Press, Lectures, etc. No person subject to the Act shall –

(i) publish in any form whatever or communicate directly or indirectly to the Press any matter in relation to a political question or on a service subject or containing any service information, or publish or cause to be published any book or letter or article or other document on such question or matter or containing such information without the prior sanction of the Central Government, or any officer specified by the Central Government in this behalf; or

(ii) deliver a lecture or wireless address, on a matter relating to a political question or on a service subject or containing any information or views on any service subject without the prior sanction of the Central Government or any officer specified by the Central Government in this behalf."

IV. Central Government Notification SRO 329 & 330 dated 23.09.1960:-

"SRO 329 dated 23rd September 1960

In exercise of the powers conferred by sub-sections (1) and (4) of section 4 of the Army Act, 1950 (46 of 1950), the Central Government hereby :

(a) applies to the General Reserve Engineer Force, being a force raised and maintained in India under the authority of the Central Government, all the provisions of the said Act with the exception of those shown in Schedule 'A' subject to the modifications set forth in Schedule 'B', and

(b) directs that the officers mentioned in the first column of Schedule 'C' shall exercise or perform in respect of members of the said force under their command the jurisdiction, powers and duties incidental to the operations of the said Act, specified in the second column thereof."

"SCHEDULE A

EXCEPTIONS

Sections 10, 11, 13 to 17, 20, 22 to 24, 43, 44 clauses (d), (e), (f), (g) and (k) of Sections 71, 74 to 78 clauses (e), (f) and (j) of Section 80 and clause (a) Section 84. "

As noticed in the case of R. Viswan, the Army Rules 1954 were made applicable to GREF, vide SRO 330, dated 23.09.1960, excepting Rules 7 to 18, 168, 172 to 176, 190 and 191.

V. The Central Civil Services (Pension) Rules, 1972:-

1. Short title and commencement.



(1) These rules may be called the Central Civil Services (Pension) Rules, 1972.

*2. **Application:** Save as otherwise provided in these rules, these rules shall apply to the Government servants appointed on or before 31st day of December, 2003, including civilian Government servants in the Defence Services, appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to-*

- (a) railway servants ;*
- (b) persons in casual and daily rated employment ;*
- (c) persons paid from contingencies ;*
- (d) persons entitled to the benefit of a Contributory Provident Fund ;*
- (e) members of the All India Services ;*
- (f) persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries ;*
- (g) persons employed on contract except when the contract provides otherwise ; and*
- (h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.”*

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5. Claims to pension or family pension.-

(1) Any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be.

(2) The day on which a Government servant retires or is retired or is discharged or is allowed to resign from service, as the case may be, shall be treated as his last completed working day and the date of death shall also be treated as a completed working day”

VI. Central Civil Services (Extraordinary Pension) Rules, 1939,

1. These rules may be called the Central Civil Services (Extraordinary Pension) Rules, 1939.

2. These rules shall apply to all persons paid from Civil Estimates, other than those to whom the Workmen's Compensation Act, 1923 (VIII of 1923) applies (subject to Para 6 of Schedule II), whether their appointment is permanent or temporary, on the scale of pay or fixed pay or piece-work rates who are under the rule making control of the President of India:

Provided that, nothing contained in these rules shall apply to the Government servants appointed on or after the 1st day of January, 2004.

*3. **Definitions.**- For the purpose of these rules unless there is anything repugnant in the subject or context-*

- (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;*

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3-A Disablement/Death

- (1) (a) xxxxx*



(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.

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13. Procedure. [(1) In respect of matters of procedure, all awards under these rules are subject to any procedure rules relating to ordinary pensions for the time being in force, to the extent that such procedure rules are applicable and are not inconsistent with these rules and also, if eligibility concerning pension is not covered under these rules but covered under Central Civil Services (Pension) Rules, 1972 the Central Civil Services (Pension) Rules, 1972 shall be applicable, provided it is not repugnant to or inconsistent with the provisions of these rules.]

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SCHEDULE II

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

Category 'A' 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.

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.

Category 'C' Death or disability due to accidents in the performance of duties. Some examples are accidents while travelling on duty in Government vehicles or public transport, a journey on duty is performed by service aircraft, mishaps at sea, electrocution while on duty, etc.

Category 'D' Death or disability attributable to acts of violence by terrorists, anti-social elements, etc., whether in their performance of duties or otherwise. Apart from cases of death or injury sustained by personnel of the Central Police Organizations while employed in aid of the civil administration in quelling agitation, riots or revolt by demonstrators, other public servants including Police personnel, etc., bomb blasts in public places or transport, indiscriminate shooting incidents in public, etc., would be covered under this category.

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) battle inoculation as part of training exercises with live ammunition."

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6. Additional benefits under the Workmen's Compensation Act, 1923 for Categories 'D' and 'E'.-The Government servants governed by the provisions of the Workmen's Compensation Act, 1923 (VIII of 1923), shall also be eligible for the awards under this rule. Where the benefit admissible under this rule is more than the benefits admissible under the Workmen's Compensation Act, 1923 (VIII of 1923), the compensation admissible under the said Workmen's Compensation Act, 1923, shall not be separately payable. However, if the sum admissible under this rule is less than the amount payable as compensation under (1) the Personal Injuries (Emergency Provision) Act, 1962 (59 of 1962), as amended by the Personal Injuries (Emergency Provision) Amendment Act, 1971 (74 of 1971), and (ii) the Personal Injuries (Compensation Insurance) Act, 1963 (37 of 1963), as amended by the Personal Injuries (Compensation Insurance) Amendment Act, 1971 (75 of 1971), they shall have a right to receive an amount equal to the difference between the sum admissible under this rule and the amount of compensation payable under the said Acts. For the purpose of determining such difference, the latter amount shall be converted, if necessary, into a recurring monthly payment as in the following illustration, by applying the table given below :-

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Judicial precedents:-

21. After examining the relevant statutory provisions, it is necessary to advert to the judgments that have a bearing on the issues that are required to be adjudicated.

22. The Constitution Bench of the Hon'ble Supreme Court of India in the landmark judgment of ***R. Viswan and others*** (supra) examined the question whether Section 21 of the Army Act read with Chapter IV of the Army Rules, is within the scope and ambit of Article 33 of the Constitution, and if it is, whether Central Government notifications SRO 329 and 330 dated 23.09.1960, which *inter alia* made Section 21 of the Army Act and Chapter IV of the Army Rules, applicable to GREF, was *ultra vires* Article 33 of the Constitution. After noticing the history, composition, administration, organization and role of GREF, it was

held that GREF is an integral part of the Armed Forces within the meaning of



Article 33 of the Constitution of India. Some of the relevant observations are extracted as under:-

“5. So far as the personnel of GREF are concerned, they are partly drawn from the Army and partly by direct recruitment. Army personnel are posted in GREF according to a deliberate and carefully planned manning policy evolved with a view to ensuring the special character of GREF as a force intended to support the Army in its operational requirements. The posting of Army personnel in GREF units is in fact regarded as normal regimental posting and does not entitle the Army personnel so posted to any deputation or other allowance and it is equated with similar posting in the Army for the purpose of promotion, career planning etc. The tenure of Army personnel posted in GREF units is treated as normal Regimental Duty and such Army personnel continue to be subject to the provisions of the Army Act 1950 and the Army Rules 1954 whilst in GREF. But quite apart from the Army personnel who form an important segment of GREF even the direct recruited personnel who do not come from the army are subjected to strict Army discipline having regard to the special character of GREF and the highly important role it is called upon to play in support of the Army in its operational requirements. Since the capacity and efficiency of GREF units in the event of outbreak of hostilities depends on their all time capacity and efficiency they are subjected to rigorous discipline even during peace time, because it is elementary that they cannot be expected suddenly to rise to the occasion and provide necessary support to the Army during military operations unless they are properly disciplined and in fit condition at all times so as to be prepared for an eventuality.

These rules obviously owe their genesis to Section 21 and they impose restrictions on the fundamental rights of members of GREF. Since the Army Act 1950 and Army Rules 1954 are made applicable by virtue of SRO Nos. 329 and 330 dated 23rd September 1960, GREF personnel when recruited, are required to accept certain terms and conditions of appointment which include inter alia the following :

"5 (iv). You will be governed by the provisions of Central Civil Service (Classification, Control and Appeal) Rules, as amended from time to time. Notwithstanding the above, you will be further subject to certain provisions of the Army Act, 1950, and Rules made thereunder, as laid down in SROs 329 and 330 of 1960, for purposes of discipline. It will be open to the appropriate disciplinary authority under the Army Act 1950 to proceed under its provisions wherever it considers it expedient or necessary to do so.

5 (v) You will be required to serve anywhere in India or outside India and when so called upon by the Government or the appointing authority or your superior officer, you shall proceed on field service.

5 (vi). You shall, if required, be liable to serve in any Defence Service of post connected with the defence of India.

5 (xi). On your appointment, you will be required to wear the prescribed uniform while on duty, abide by such rules and instructions issued by your superior authority regarding discipline, turnout, undergo such



training and take such departmental test as the Government may prescribe."

The result is that the directly recruited GREF personnel are governed by the provisions of Central Civil Service (Classification, Control and Appeal) Rules 1965 as amended from time to time but for purpose of discipline, they are subject to certain provisions of the Army Act 1950 and the Army Rules 1954 as laid down in SROs 329 and 330 dated 23rd September 1960.

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8. xxx...

The question is : what is the true meaning and scope of the expression "any force raised and maintained in India under the authority of the Central Government". The word "force" is not defined anywhere in the Army Act, 1950. There is a definition of the expression "the forces" in Section 3(xi) but it does not help, because the expression we have to construe is "force" which is different from the forces. There is however an indication to be found in sub-section (2) of Section 4 which throws some light on the sense in which the word "force" is used in sub-section (1) of Section 4. Section 4, sub-section (2) clearly contemplates that the "force" referred to in sub-section (1) of Section 4 must be a force organised on similar lines as the army with rank structure. So far as GREF is concerned, there can be no doubt that it is a force organised on army pattern with units and sub units and rank structure. Moreover, as is clear from the letter dated 16th June, 1960 addressed by the Secretary Border Roads Development Board to the Director General Border Roads, GREF is a force raised and maintained under the authority of the Central Government.

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But if Section 21 were to be applied to persons who are not members of the Armed Forces or the forces charged with the maintenance of public order, Article 33 would not afford any protection to Section 21 in so far as it applies to such persons and the application of Section 21 to such persons would be unconstitutional. We must therefore proceed to consider whether the members of GREF could be said to be members of the Armed Forces within the meaning of Article 33. If they cannot be said to be members of the Armed Forces, the application of Section 21 to them would not have the protection of Article 33 and would be clearly void.

9. The history, composition, administration, organisation and role of GREF which we have described above while, narrating the facts clearly show that GREF is an integral part of the Armed Forces., it is undoubtedly a departmental construction agency as contended on behalf of the petitioners but it is distinct from other construction agencies such as Central Public Works Department etc. in that it is a force intended primarily to support the army in its operational requirement. It is significant to note that the Border Roads Organisation, which is in over all control of GREF was originally created as, part of Army Headquarters and it was only later, for reasons of high policy, that it was separated from Army Headquarters and placed under the Border Roads Development Board. Though the budget of the Border Roads Organisation forms part of the budget of Ministry of Shipping and Transport, the financial control is vested in the Ministry of Finance (Defence). The entire infra structure of GREF is modelled on the pattern of the Army and it is organised into units and sub-units with command



and control system similar to that in the Army. The personnel of GREF right from class IV to class I have to be in uniform with distinctive badges of rank and they have a rank structure equivalent to that of the Army.

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The tasks required to be carried out by the Border Road Task Forces have already been described in some detail in the opening part of the judgment while narrating the facts and we need not repeat the same over again. Suffice it to state that these tasks are required to be carried out by the Border Road Task Forces during operations with a view to providing engineering support to the Army in its operational plans. The Border Road Task Forces have to perform these tasks and provide engineering support to the Army not only up to the border but even beyond up to the extent of advance into enemy territories. Even in peace time, the Border Road Task Forces have to undertake works projected by General Staff, Army Headquarters to meet their operational requirements and these works include construction and maintenance of roads, operational tracks, ditch-cum bund (water obstacles of the border) field fortifications like bunkers, fire trenches and pill boxes, helipads and airfields. It is also significant to note that the Border Road Task Forces and Pioneer Companies attached to them are included in the Order of Battle of the Army which implies that support of these units to the Army is guaranteed and can be requisitioned at any time. The Border Road Task Forces are also sub-allotted to lower army formations and they appear on the Order of Battle of these formations. GREF units consisting of these Border Road Task Forces and Pioneer Companies are placed under the direct control of the Army during emergencies when the entire control of this Force is entrusted to the Chief of the Army Staff. Even during peace time, the Chief of the Army Staff exercises control over the discipline of the members of GREF units through the applicability of the provisions of the Army Act 1950. The Director General, Border Roads who is in over-all control of GREF units is always an army officer of the rank of Major General and his confidential reports are written by the Chief of the Army Staff. The signal communication of GREF is also integrated with the Army communication set up not only during operations but also in normal peace time, it is also a factor of vital significance which emphasises the special character of GREF as a force intended to provide support to the Army in its operational plans and requirements that Army personnel are posted in GREF units according to a carefully planned manning policy so that GREF units can in times of war or hostilities be able to provide effective support to the Army. The tenure of office of Army personnel in GREF units is regarded as normal regimental duty and is equated with similar appointments in the Army for the purpose of promotion, career planning etc. Even the directly recruited personnel of GREF are given training at the GREF Centre before they are posted and the training given is in three military disciplines which we have described in detail in the opening part of the judgment. The training includes not only drill, marching and saluting but also combat training including physical training such as standing exercises, beam exercises, rope work route marches etc. and combat engineering training including field engineering, handling of service explosive, camouflage, combat equipment, bridging, field fortifications, wire obstacles etc. Moreover, the directly recruited personnel are taken up only after they voluntarily accept the terms and conditions of employment which include inter alia



conditions 5 (iv), 5 (v), 5 (vi) and 5 (xi) which have been reproduced in full while narrating the facts. These conditions make it clear that the directly recruited personnel may be required to serve anywhere in India and outside India and when directed, they would have to proceed on field service and if required, they would also be liable to serve in any Defence Service or post connected with the defence of India. It is also stipulated in these conditions that on their appointment, the directly recruited personnel would have to wear the prescribed uniform while on duty and that they would be subject to the provisions of the Army Act 1950 and the Army Rules 1954 as laid down in SROs. 329 and 330 for purposes of discipline. It is abundantly clear from these facts and circumstances that GREF is an integral part of the Armed Forces and the members of GREF can legitimately be said to be members of the Armed Forces within the meaning of Article 33.

10. The petitioners however tried to combat this conclusion by pointing out that the services constituted under Border Roads Engineering Service Group A, Rules 1977 and the Border Roads Engineering Service Group B, Rules, 1977 both of which were made by the President in exercise of the powers conferred under Article 309 and brought into force with effect from 20th September 1977, were expressly designated as Central Civil Services and that in reply to Unstarred Question No. 1100, the Minister for Defence stated on 18th June, 1980 that "GREF as at present organised is a civilian construction force," and similarly in reply to Unstarred Question No. 6002, the Minister of Defence observed on 1st April 1981 that "the civilian employees serving with the Border Roads Organisation and GREF are not under administrative control of Ministry of -Defence but are under the administrative control of the Border Roads Development Board" and so also Minister of Defence stated on 25th February 1983 in answer to Unstarred Question No. 938 that "the members of the General Reserve Engineer Force of the Border Roads Organisation are civilian employees of the Central Government". The petitioners contended on the basis of these statements that GREF was not an Armed Force but was a civilian construction agency and the members of GREF could not possibly be regarded as members of the Armed Forces so as to fall within the scope and ambit of Article 33. This contention, though it may appear at first blush attractive, is in our opinion not well founded and must be rejected. It is undoubtedly true that as stated by the Minister of Defence, GREF is a civilian construction force and the members of GREF are civilian employees under the administrative control of the Border Roads Development Board and that the engineer officers amongst them constitute what may be designed as "Central Civil Services" within GREF but that does not mean that they cannot at the same time form an integral part of the Armed Forces. The fact that they are described as civilian employees and they have their own special rules of recruitment and are governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 is not determinative of the question whether they are members of the Armed Forces. It may be noted that even the members of the Civil General Transport Companies constituted under Government of India, War Department, Notification No. 1584 dated 29th June 1946 as also the members of the Independent Transport Platoons have been treated as members of the Armed Forces for the purpose of application of the provisions of the Army Act 1950 by SRO 122 dated 22nd July 1960 and



SRO 282 dated 17th August 1960. So also when personnel of Military Engineer Service have to function in operational areas under the Army, they too are brought under the provisions of the Army Act 1950 for the purpose of discipline. The question whether the members of GREF can be said to be members of the Armed Forces for the purpose of attracting the applicability of Article 33 must depend essentially on the character of GREF, its organisational set up, its functions, the role it is called upon to play in relation to the Armed Forces and the depth and intimacy of its connection and the extent of its integration with the Armed Forces and if judged by this criterion, they are found to be members of the Armed Forces, the mere fact that they are non-combatant civilians governed by the Central Civil Services (Classification, Control and. Appeal) Rules 1965, cannot make any difference.

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There can be no doubt that without the efficient and disciplined operational role of GREF the military operations in border areas during peace as also in times of war will be seriously hampered and a highly disciplined and efficient GREF is absolutely essential for supporting the operational plans and meeting the operational requirements of the Armed Forces. It must therefore be held that the members of GREF answer the description of "members of the Armed Forces" within the meaning of Article 33 and consequently the application of Section 21 of the Army Act 1950 to the members of GREF must be held to be protected by that Article and the Fundamental Rights of the members of GREF must be held to be validly restricted by Section 21 read with Rules 19 to 21 of the Army Rules 1954. If that be so, the petitioners were liable to be charged under Section 03 of the Army Act 1950, for the alleged violations of Rules 19 to 21 and their convictions by Court Martial as also subsequent dismissals must be held to be valid.

11. Before we part with this point, we may point out that an anguished complaint was made before us on behalf of the petitioners that there is considerable disparity between the Army personnel posted in GREF units and the other officers and men of GREF in so far as the terms and conditions of service, such as, salary, allowances and rations are concerned. It is not necessary for us to consider whether this complaint is justified it is possible that it may not be wholly unjustified but we may point out that in any event it has no real bearing at all on the question whether the members of GREF can be said to be members of Armed Forces. Since the members of GREF are drawn from two different sources, it is possible that the terms and conditions of service of the personnel coming from the two sources may be different. The Army personnel posted in GREF units naturally carry their own terms and conditions of service while the other officers and men in GREF are governed by their own distinctive terms and conditions. It is difficult to appreciate how differences in terms and conditions of service between GREF personnel coming from two different streams can possibly have any impact on the character of GREF as a force integral to the Armed Forces. It is immaterial for the purpose of determining whether the members of GREF are members of the Armed Forces as to what are the terms and conditions of service of the members of GREF and whether they are identical with those of Armed personnel appointed on the same or equivalent posts in GREF units. But, we may observe that in case it is found that the terms and conditions of service of officers and men in



GREF directly recruited or taken on deputation are in any way less favourable than those of Army personnel appointed to the same or equivalent posts in GREF, the Central Government might well consider the advisability of taking steps for ensuring that the disparity, if any, between the terms and conditions of service, such as, salary allowances rations etc., of Army personnel posted in GREF units and other officers and men in GREF is removed.

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13. There was also one other contention advanced on behalf of the petitioners and it raised a question of violation of Article 14 of the Constitution. The contention was that the members of GREF were governed both by the Central Civil Services (Classification, Control and Appeal) Rules 1965 and the provisions of the Army Act 1950 and the Army Rules 1954 in matters of discipline and therefore whenever a member of GREF was charged with misconduct amounting to an offence under the Army Act 1950, it was left to the unguided and unfettered discretion of the authorities whether to proceed against the employee under the Central Civil Services (Classification, Control and Appeal) Rules 1965 or under the Army Act 1950 and the Army Rules. 1954 and SROs 329 and 330 applying the provisions of the Army Act, 1950 and the Army Rules 1954 to members of GREF for purposes of discipline were therefore discriminatory and violative of Article 14. We do not think there is any substance in this contention. In the first place, the nature of the proceedings which may be taken under the Central Civil Services (Classification, Control and Appeal) Rules 1965 against an erring employee is different from the nature of the proceedings which may be taken against him under the provisions of the Army Act 1950 read with the Army Rules 1954, the former being disciplinary in character while the latter being clearly penal. It is significant to note that Section 20 of the Army Act 1950 which deals with dismissal removal or reduction of any person subject to that Act and clauses (d), (e), (f), (g) and (k) of Section 71 which provide for punishment of cashiering, dismissal, reduction in rank forfeiture of seniority and forfeiture of pay and allowances, have not been made applicable to the members of GREF by SRO 329 with the result that, so far as disciplinary proceedings are concerned, there is no overlapping between the provisions of the Central Civil Services (Classification, Control and Appeal) Rules 1965 and the provisions of the Army Act 1950 and the Army Rules 1954 as applied to the members of GREF. Secondly, it is not possible to say that the discretion vested in the authorities whether to take action against an erring member of GREF under Central Civil Services (Classification, Control and Appeal) Rules 1965 or under the Army Act 1950 and the Army Rules 1954 is unguided or uncanalised. It has been denied in the affidavit of Lt. Col. Shergill that unguided discretionary power is vested in the disciplinary authority to proceed against an employee of GREF either under the Central Civil Services (Classification, Control and Appeal) Rules 1965 or the Army Act 1950 and the Army Rules 1954 or to switch over from one proceeding to the other at any stage. Lt. Col. Shergill has stated positively in his affidavit that clear and detailed administrative guidelines have been laid down for the purpose of guiding the disciplinary authority in exercising its discretion whether to take action against an employee of GREF under the Central Civil Services (Classification, Control and Appeal) Rules. 1965 or the Army Act 1950



and the Army Rules 1954, and these guidelines have been set out in full in Annexure R-5 to his affidavit. Thirdly, the decision in Northern, India Caterers Pvt. Ltd. v. State of Punjab (1967) 3 SCR 399 on which the contention of the petitioners is based has been overruled by this Court in Maganlal Chhaganlal v. Municipal Corporation, Greater Bombay (1974) 2 SCC 402 where it has been held that "the connection that the mere availability of two procedures will vitiate one of them, that is, the special procedure is not supported by reason or authority." And lastly, it may be noted that in any event the provisions of the Army Act 1950 and the Army Rules 1954 as applied to the members of GREF are protected by Article 33 against invalidation on the ground of violation of Article 14. The present contention urged on behalf of the petitioners must also therefore be rejected."

23. The issue regarding grant of benefit of Military service to a member of the GREF, towards fixation of his seniority in terms of Punjab Government National Emergency (Concession) Rules, 1965, came up for consideration before the Hon'ble Supreme Court in the case of ***Sukhdev Singh Gill vs. State of Punjab*** (supra). The appellant therein was a superintendent in GREF and rendered service on the said post during the period of external emergency. He therefore claimed that since GREF was an integral part of the Indian Army, he was entitled to count the military service rendered by him for the purpose of seniority in the Municipal administration of the State, which was a provincialized service. After taking into consideration the State Government's rules, it was held that the service of the appellant therein, could not be treated as service rendered in the 'three principal wings' of the Armed Forces which was the requirement under the said Rules. The relevant paragraphs are extracted as under:-

"5. The relevant notification issued under the Punjab Government National Emergency (Concession) Rules, 1965, is dated 20.7.1965 being G.S.R. 160/Const./Article 309/65. Relevant part of material for the purpose of this case reads as follows :-

"No G.S.R. 160/Const./Article 309/65. - In exercise of the powers conferred by the proviso enabling him in this behalf, the Governor of Punjab is pleased to make the following rules :-



1. Short title, commencement and application. - (i) These rules may be called the Punjab Government National Emergency (Concession) Rules, 1965.

(2) They shall come into force at once.

(3) They shall apply to all classes of services and posts in connection with the affairs of the State of Punjab except Medical and Health services.

2. Definition. - For the purposes of these rules, the expression 'military service' means enrolled or commissioned service in any of the three wings of the Indian Armed Forces (including service as a warrant officer) rendered by a person during the period of Operation of the Proclamation of Emergency made by the President under Article 352 of the Constitution on the 26th October, 1962 or such other service as may hereafter be declared as military service for the purposes of these rules. Any period of military training followed by military service shall also be reckoned as military service."

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8. So far as the second part of Rule 2 which refers to "such other service as may be declared" as 'military service', it is not in dispute that there is no separate notification issued by the Punjab Government, notifying the service in the G.R.E.F. for the purposes of Rule 2 of the said Rules.

9. Under these circumstances, the question is confined to the first part of Rule 2, namely; whether the appellant could be said to have been "enrolled" or "commissioned" in any of the "three services" of the Indian Armed Forces?

10. Learned senior counsel for the appellant relied upon the judgment of this Court in **R. Viswan and others v. Union of India and others, 1983(3) SCC 401**, where this court considered the nature of the service in the G.R.E.F. and the applicability of certain provisions of the Army Act, 1950 for the purpose of taking disciplinary action against the officers of the G.R.E.F. In that judgment this Court exhaustively dealt with the provisions of Article 33 of the Constitution of India and the relevant notification issued by the General Reserve Engineering Force under Sections 4(1) and 4(4) of the Army Act, 1950 under SRO 329 dated 23.9.1960. The said notification issued under the Army Act, reads as follows :-

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11. So far as Schedule 'A' of the SRO is concerned, it excepts certain provisions of the Army Act and states that they do not apply to the members of G.R.E.F. whereas Schedule 'B' of the notification relates to certain amendments in Sections 3, 63, 73, 81(4), 113, 114 and 116(1) of the said Act. In the above judgment, this Court noticed the definition of the word, 'the Forces' in Section 3(xi) of the Army Act which reads as follows :-

"3. (xi) "the Forces" means the regular Army, Navy and Air Force or any part of any one or more of them;"

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14. In fact, there is a notification dated 14.8.1985 which forms part of the paper book before us issued by the General Reserve Engineering Force being No. F.81(1)/64 Estt.70463/DGER which states that in view of the judgment in **R. Viswan and others v. Union of India and others**, the



President of India is pleased to declare General Reserve Engineer Force to be an integral part of the Armed Forces of India.

15. Relying on the above said judgment and the order issued by the General Reserve Engineering Force dated 14.8.1985 and Section 4(1) of the Army Act, 1950, learned senior Counsel for the appellant contended that G.R.E.F. was a Force falling within the connotation of Armed Forces under Articles 33 of the Constitution of India and that is why Section 4(1) of the Army Act was made applicable to the G.R.E.F. and if that was the position of law, the appellant was entitled to claim that his past service fell within the definition of "military service" under Rule 2 of the Punjab Government National Emergency (Concession) Rules, 1965.

16. There cannot be any difficulty, in view of the judgment of this Court in the above case and the subsequent notification dated 14.8.1985 issued by the Government of India, that the appellant's service in G.R.E.F. could be treated as service in the "Armed Forces" for purposes of Article 33 of the Constitution of India. But the question is whether that is sufficient for the purpose of attracting Rule 2 of the above said 1965 Punjab Rules dated 21.7.1965.

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18. It appears to us that the words, 'three wings' used in Rule 2 of the above said Rules has to be understood in the light of Section 3(xi) of the Army Act, 1950 which defines, the word, 'the Forces' as the regular Forces, namely, the Army, Navy and Air Force in any part of any one or more of them. The Punjab Rules permitting computation of 'military service', therefore, appear to us to restrict the benefit of military service only to those Officers who are enrolled or commissioned in the three principal wings of the Armed Forces, namely, Army, Navy and Air Force and it was not intended to extend to any other Armed Force to which the provisions of the Indian Army Act are extended under Section 4(1) of the Army Act, 1950.

19. Thus, even though the appellant can be said to belong to the "Armed Forces" for purposes of the Army Act and Article 33 of the Constitution of India, and even assuming that he was enrolled or commissioned in the G.R.E.F., still his service could not be treated as service rendered in the "three principal wings" of the Armed Forces, namely, Army, Navy and Air Force. We are, therefore, of the view that the judgment of the Division Bench of the High Court is correct and the appellant is not entitled to count his service in the G.R.E.F. for the purpose of seniority in the provincialised service under the State of Punjab. The Punjab Rules of 1965 are thus not applicable to the appellant."

(emphasis supplied by us)

24. In the case of ***Leeladevi vs. Union of India and others***, in CWP No.5655, decided on 24.04.2009, the petitioner therein, who was a widow of the driver employed with GREF, who died on duty, approached this Court seeking directions for grant of *ex gratia* lumpsum compensation under office memorandum dated 11.09.1998 and grant of extraordinary pension as per the State policy. The



learned Single Judge of this Court, considering the law laid down in **R. Viswan's** case (supra), allowed the writ petition. The Union of India challenged the said decision by way of an intra-Court appeal in LPA-1000-2009, which was dismissed by a Division Bench of this Court vide order dated 13.05.2014. While negating the contention raised on behalf of the Union of India that as per the judgment of **Sukhdev Singh Gill's** case (supra), members of GREF cannot be treated as members of 'Armed Forces', it was *inter alia* observed as under:-

"It was the contention of counsel for the appellant that as per ratio of the judgment of Sukhdev Singh Gill's case (supra), the appellant cannot be treated as a member of 'Armed Forces'.

We have heard counsel for the parties and have gone through the contents of the judgment passed in the case of R. Viswan's case (supra) and also Sukhdev Singh Gill's case (supra).

In the case of Viswan's case (supra) the question was whether member of the GREF was integral part of armed forces or not. It was observed that "it is abundantly clear from these facts and circumstances that GREF is an integral part of the Armed Forces and member of the GREF can legitimately be said to be the Members of the Armed Forces within the meaning of Article 33". That finding holds till today.

In case of Sukhdev Singh Gill's case (supra), question was altogether different. The Hon'ble Supreme Court considered the claim of the petitioner therein to know whether he is entitled to get benefit of the provisions of Punjab Government National Emergency (Concession) Rules, 1965 or not.

By taking note of the language of the Rules under consideration, it was said that an employee who was working in GREF was not entitled to get benefit of those Rules. However, in paragraph No. 16 by making reference to the ratio of the judgment in the case of R. Viswan's case (supra), it was said that in view of the aforementioned judgment and subsequent notification dated 14.08.1985 issued by Government of India, the service of the appellant in GREF could be treated as service in the Armed Forces' for purpose of Article 33 of the Constitution of India.

Similarly in paragraph No. 19, it was said that even though the appellant therein can be said to belong to the 'Armed Forces' for purposes of the Army Act and Article 33 of the Constitution of India, and even assuming, that' he was enrolled or commissioned in ORSF, however, his service could not be treated as service rendered in the "three principal wings' of the armed forces to get benefit under the above laid Rules.

In Sukhdev Singh Gill's case (supra), the Hon'ble Supreme Court has not taken different view from that R. Viswan's case (supra).

Under these circumstances, the impugned order under challenge passed by learned Single Judge, is perfectly justified."



25. The issue regarding the jurisdiction of the Central Administrative Tribunal and/or the Armed Forces Tribunal over the members of GREF was considered by the Hon'ble Supreme Court in the case of **Mohammed Ansari vs. Union of India and others** (supra). While adjudicating the said issue, it was *inter alia* observed as under:-

"3. Dissatisfied with the order of the tribunal, the respondents preferred W.P. (C) No. 4074 of 2012 seeking quashment of the order passed by the tribunal. The High Court by the impugned order dated 2.8.2013 posed the following question:-

*"8....Whether a member of the GREF can be regarded as member of Armed Forces, for, such a member, if regarded, in law, as a member of the Armed Forces, then, would the provisions, embodied in the Administrative Tribunals Act, 1985, not be available to such a member? 4. The High Court referred to the Constitution Bench decision in **R. Viswan & Ors. v. Union of India & Ors, (1983) 3 SCC 401** reproduced various passages from the said authority and also the order passed in **S.L.P. (C) No. 8096 of 1995 (Union of India v. Smt. Vidyawati)** and came to hold as follows:-*

*"21....In the light of the decision, reached by the Supreme Court, in Vidyawati's case (supra), one can have no escape from the conclusion, and we do conclude, that as far as Central Administrative Tribunal is concerned, a member of the GREF is not covered, in the light of the decision in **R. Viswan** (supra) read with the decision in Vidyawati's case (supra), by the provisions of the Administrative Tribunals Act, 1985, and, hence, a member of the GREF would be disentitled from invoking the jurisdiction of the Central Administrative Tribunal."*

*5. Thereafter, the High Court addressed the issue whether a member of the GREF is covered by the provisions embodied in the Armed Forces Tribunal Act, 2007 (for brevity, "the 2007 Act"). The Court adverted to the provisions of the Army Act, 1950 (for short, "the 1950 Act"), the provisions contained in the 2007 Act, the Central Civil Services (Control, Classification and Appeal) Rules, 1965, the authority in **Union of India & Ors. v. Sunil Kumar Sarkar, 2001(2) S.C.T. 64 : 2001(2) RCR (Criminal) 40 : (2001) 3 SCC 414** and eventually arrived at the following conclusion:-*

*"32. What surfaces from the above discussion is that the present respondent, as a member of the GREF and a member of the Armed Forces, cannot, in the light of the decision, in **R. Viswan** (supra) read with the decision, in Vidyawati's case (supra), and could not have taken recourse to the provisions of the Administrative Tribunals Act, 1985. Consequently, the learned Central Administrative Tribunal has/had no jurisdiction in the matter of the petitioner's (i.e., the present respondent's) grievance as regards refusal to grant him financial up gradation and, at the same time, the respondent's grievance shows that even the Armed Forces Tribunal cannot redress, and could not have redressed, his grievance as regards refusal to grant him financial up gradation. The remedy of the respondent, therefore, lies in making*



appropriate application in the High Court, under Article 226 of the Constitution of India, or in instituting appropriate suit for remedy of his grievances."

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8. Ms. Pinky Anand, learned Additional Solicitor General appearing for the respondents contends that the High Court has appositely held that the Central Administrative Tribunal has no jurisdiction to dwell upon the matters relating to employees of General Reserve Engineering Force which constitutes a part of the Border Roads Development Board (BRDB). It is her submission that the Armed Forces Tribunal does not have jurisdiction in terms of exceptions carved out under SRO 329 and 330 which have been issued by the Government in exercise of its power under Section 4(1) of the 1950 Act. It is put forth that these exceptions exclude the GREF from the purview of the 1950 Act in certain cases which pertain to service matters. On that basis, the learned counsel would urge that Section 2(1) of the 2007 Act though applies to all persons subject to the 1950 Act, yet regard being had to the language employed in SRO 329 and 330, the matters related to the service conditions of GREF would be governed by the Central Civil Service Rules, 1965. Therefore, submits the learned senior counsel, it is only the High Court that can entertain a lis relating to service dispute under Article 226 of the Constitution of India.

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13. The aforesaid decision makes it clear that the proceedings under the 1950 Act as well as the 1965 Rules are maintainable and do not amount to double jeopardy. The principle that is deducible is that the person aggrieved under the 1950 Act at that juncture can approach High Court and similarly, the same person aggrieved by the imposition of punishment under the disciplinary proceeding can challenge the same under Article 226 of the Constitution before the High Court. Thus, it is graphically clear that this Court did not think that the aggrieved party can agitate the grievance before the Central Administrative Tribunal under the 1985 Act.

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25. The statement of objects and reasons of the 2007 Act, as is manifest, mandates adjudication of complaints and disputes regarding service matters of the members of the Armed Forces. There is no dispute that members of the GREF belong to the Armed Forces. The constitution of GREF, as has been understood by this Court, has to be appreciated. It is a departmental construction agency responsible to build and maintain roads in the North and North Eastern border areas of the country. It is different from other construction agencies like CPWD, PWD, etc, inasmuch as, it is a Force raised and maintained by the Central Govt. to support the Army in latter's operational role at the border areas. The GREF functions under the Border Road Development Board, and its Units are modelled on the lines of Army Units/Sub Units like Task Force, Road Construction Companies, Road Maintenance Platoons etc.

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31. In view of the statutory framework, it is demonstrable that the 1950 Act and the Army Rules, 1954 have been applied to civilian personnel of the GREF only for the purpose of discipline. The reasons are obvious. The GREF is a force raised and maintained under the authority of the Central Government, its units are set up on the lines of the Indian Army,



it works with and under close coordination with regular army in border areas, facilitates the Indian Army to carry out its operational role, etc. Hence, it has been felt appropriate that the 1950 Act should be made applicable to a force raised and maintained by the Central Government as considered necessary in the interest of discipline. The issue can be perceived from a different perspective. The GREF personnel are subjected by legislative scheme to dual disciplinary control, and such an arrangement is permissible as has been held in R. Viswan (supra). When the offence is such that the provisions of the 1950 Act, as extended to GREF, apply for the purpose of discipline, it will be open to the competent disciplinary authority under the 1950 Act, to proceed against the delinquent under its provisions, and if found guilty, award appropriate punishment. In this context, we may give an example. If an offence is committed in relation to an enemy, offences on active service, mutiny, desertion, disobedience, etc., considering the nature and gravity of the offence, it may warrant severe action against the delinquent by way of trial by a court martial. In other disciplinary cases, the competent authority may decide to proceed under CCS(CCA) Rules, 1965 in which the maximum permissible punishment is only 'dismissal from service'.

34. From the aforesaid, the legal position that emerges is that AFT shall jurisdiction (i) to hear appeals arising out of courts martial verdicts qua GREF personnel. To this extent alone the AFT shall have jurisdiction. At the same time if the punishment is imposed on GREF personnel by way of departmental proceedings held under the CCS(CCA) Rules, 1965 the same cannot be agitated before the AFT and (ii) AFT shall have no jurisdiction to hear and decide grievances of GREF personnel relating to their terms and conditions of service or alternatively put 'service matters'."

26. The Delhi High Court in the case of **Sunita Devi vs. Union of India and others, W.P.(C) No.1962/2017**, decided on 23.04.2019, has held as under:-

"1. The prayer of the Petitioner is for grant of extraordinary pension (EOP) on account of death of her husband in a landslide. The Petitioner states that her husband was a Junior Engineer (Civil) in the Border Road Organization (GRA) when the mishap occurred.

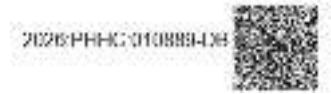
2. In the counter affidavit, it is pointed out that the Petitioner has received a compensation in the sum of Rs.6,25,880/- pursuant to an Award passed by the Employees Compensation Commissioner, Jind, Haryana. Further the provisional family pension for the period 11th February, 2014 to 10th August, 2015 had been paid to her.

3. In that view of the matter, the request for the extraordinary pension was turned down by the said order dated 6th December, 2014, which has been communicated to the Petitioner.

4. One of the conditions for grant of EOP under the CCS (EOP) Rules, is that the victim should not have been governed by the Workmen's Compensation Act. Inasmuch as, the husband of the Petitioner had in fact been granted the above compensation under the said Act, and the amount having been paid to the Petitioner on 12th January, 2015, this Court is unable to grant the relief prayed for in this petition."



27. We have given our anxious consideration to the statutory provisions extracted hereinabove and the various judicial pronouncements cited before us. While there is no doubt that members of the GREF are an integral part of the Armed Forces, for the purpose of Article 33 of the Constitution of India, as held in the case of *R. Viswan* (supra), however, the moot question is whether they can be considered as ‘*members of the Armed Forces of the Union*’ as mentioned in the Workmen’s Compensation Act, 1923, and would thus not fall within the definition of a workman, so as to be covered under the EOP Rules. Admittedly, certain exceptions were carved out vide SRO 329 and 330, while making the provisions of the Army Act and Army Rules, applicable to GREF. For the purpose of discipline they are under dual control. The CCS Rules are applicable to them as regards their service conditions. After careful perusal of Section 2 (n) read with Schedule II of the Act of 1923, we are of the opinion that it cannot be said that the members of GREF are carrying out normal activities of laying down roads, bridges, etc. as regular ‘workmen’ of any ordinary employer or construction agency. The nature of activities carried out by GREF, as discussed in detail by the Constitutional Bench, lead to the inescapable conclusion that they are undoubtedly part of the Armed Forces of the Union for the purposes of the Act of 1923. Although, learned counsel for the UOI has laid much emphasis on the fact that the notifications making certain provisions of the Army Act and Chapter IV of the Army Rules, were limited to suspension of rights as envisaged under Article 33 of the Constitution of India, and only for the purpose of maintaining discipline, however the matter has to be examined, keeping in view the peculiar facts involved in the instant case. The death of the husband of the petitioner happened when he was



posted at the hostile Indo-China border, and he laid down his life for saving his colleagues and the essential equipment required, to complete the task. If members of GREF can be held to be under dual control for the purpose of 'discipline', then for the nature of services being provided at the time of their death or disability will have to be seen, to ascertain whether they would fall within the definition of the 'armed forces of the union' at the relevant time. Considering the services that the late husband of the petitioner was carrying out, at the time of his unfortunate death, the same would have to be construed as services of that of 'a member of the armed forces' and not of a 'workman'.

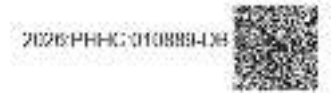
28. The subsequent circulars/memos, appended with synopsis, would not come the case of the deceased husband of the petitioner would be covered under the Act of 1923. Neither such circulars were placed on record before the learned Single Judge, to enable the petitioner to controvert the same, nor are they the basis of rejection of her claim, which has not been held to be admissible on the solitary ground that she has already received the compensation under the Act of 1923. It is not being shown to us whether such circulars/memos were applicable at the time of death of the late husband of the petitioner.

29. We are also unable to find favour with the argument of the learned counsel for the UOI, that since the petitioner had received the compensation under the Act of 1923, she would be precluded from getting any benefit under the CCS (EOP) Rules. Constitutional Courts, while exercising their powers under Article 226 of the Constitution of India, are Courts of equity. We find ourselves in agreement with the view taken by the learned Single Judge, who has ordered refund of the compensation amount along with 6% interest.



30. As regards the issue regarding the Category under which the case would fall, we may notice that under paragraph 6 of Schedule II of the said Rules, the Government servants governed by the provisions of Act of 1923 are also eligible for the awards under the EOP Rules, if they fall within the category 'D' and 'E'. The learned Senior counsel appearing for the petitioner has laid much emphasis that since the operations involved blasting of rocks and a liberal approach has been taken as regards similarly situated army personnel, the case of the petitioner should be considered under Category 'E', basis the peculiar facts. Although, we find ourselves in agreement with the observations of the learned single judge that the instant case cannot be termed as a 'simple accident' as is understood in common parlance, however, it definitely falls within the definition of 'accident' under Rule 3 (1) (ii) of the EOP Rules, which covers within its ambit 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.

31. As much as we appreciate the act of supreme sacrifice of the late husband of the petitioner, however we are unable to interpret the Rules in the manner as is sought by the petitioner, especially when there is no challenge to the Rules nor any prayer has been made for directions to the UOI to grant equal benefits to the civilian members of GREF, as are admissible to their counterparts in the Army. We are fully conscious of the observations made by the Constitutional Bench of the Hon'ble Supreme Court of India in the case of **R. Viswan** (supra), in paragraph 11, wherein it was observed that the Central Government may consider the advisability of taking steps for ensuring that the disparity, if any, between the terms and conditions of service of Army personnel posted in GREF units and other



officers and men in GREF is removed. However, it appears that the said observations were advisory in nature and cannot be the basis for us to pass any directions in this regard, especially in the absence of a specific challenge, as discussed above. We therefore concur with the opinion of the learned Single Judge that in the peculiar facts and circumstances of the case, the claim of the petitioner would be covered under Category 'C' of Schedule II.

32. We need not detain ourselves on the claim of the petitioner regarding the payment of interest upon the *ex gratia* amount, as we find that no such prayer was made in the writ petition.

33. Lastly, it is to be decided as to from which date, the arrears are to be released to the petitioner. The learned Single Judge has held the petitioner to be entitled to the extraordinary pension from the date of filing of the writ petition. The petitioner has claimed that she is entitled for the amount along with interest from the date of death of her husband, or in the alternative, at least from 38 months preceding the filing of the writ petition.

34. Records reveal that at the time of issuance of notice in the writ petition before the learned Single Judge, the counsel for the petitioner had contended that the petitioner is ready to restrict the arrears upto three years. From a perusal of the judgment of the learned Single Judge, no reasons are forthcoming as to why the release of benefits have been restricted to, from the date of filing of the writ petition. The only plausible reason may be delay in approaching the writ court. Law is well settled that grievances pertaining to pension are in the nature of a continuing wrong, and even in cases where there is delay in approaching the Court, the arrears are to be restricted to a period of three years preceding the date of filing of writ



petition, as per the law laid down by the Hon'ble Supreme Court in the case of ***UOI vs. Tarsem Singh*** (supra). Since the petitioner had herself restricted her claim for receipt of arrears, to a of period three years preceding the date of filing of the writ petition, it would be in the fitness of things to grant such benefit in terms of the said undertaking.

35. In that view of the matter, LPA-3356-2024 is dismissed, while LPA-1147-2024 is allowed in part, and the judgement dated 13.03.2024 stands modified to the extent that the benefit of arrears and interest would be computed from the period of three years preceding the date of filing of the writ petition.

36. Pending application(s), if any, stand(s) disposed of.

(ASHWANI KUMAR MISHRA)
JUDGE

(ROHIT KAPOOR)
JUDGE

27.01.2026

Dinesh/mohit

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No