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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: 11.03.2026

Judgment delivered on: 15.04.2026

Judgment uploaded on: 15.04.2026

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W.P.(C) 16376/2023

SMT RASHMI SHARMA

.....Petitioner

Versus

UNION OF INDIA & ORS.

.....Respondents

Advocates who appeared in this case

For the Petitioner : Mr. Gajendra Giri and Mr. Aditya Giri,
Adv.

For the Respondent : Mr. Niraj Kumar, SCGC with Mr.
Chaitanya Kumar, Advocate.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****JUDGMENT****MANMEET PRITAM SINGH ARORA, J.**

1. The present writ petition has been filed under Article 226 of Constitution of India with the following prayers:

“It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to issue a Writ in the nature of Certiorari quashing/ setting aside thereby the communication of the respondents vide No. 10936/ DGBR/ Retire/ 38/ IRLA dated 5.6.2023 and a Writ in the nature of Mandamus directing the respondents for granting the



Ex- Gratia Compensation to the Petitioner as per the provisions of the DOP& T OM. NO. 45/55/97 P& PW (C) dated 11.9.1998 as amended on 4.8.2016 as OM NO. F.NO. 38/37/ /2016-P&PW (A) (1) dated 4.8.2016 and to consider her for compassionate appointment.

Any other or further order/directions may also be passed by this Hon'ble Court in favor of the Petitioner in the facts and circumstances of the case to meet the ends of justice.”

2. The relevant facts for adjudicating the present writ are as under:

2.1. The Petitioner's husband, late Sh. Mukesh Kumar Sharma, served with the Esteemed Border Roads Organisation ['EBRO'] as JE (Civil) from 30.09.2002 till his death on 20.12.2021, having rendered about 19 years 2 months 10 days of service. The Petitioner asserts that from 2002 till June 2021 her husband ['deceased'] was continuously deployed in high-altitude/hostile and hard areas, and the nature of duties involved exposure to harsh climatic conditions and occupational hazards.

2.2. It is the case of the Petitioner that the deceased was diagnosed with cancer in the year 2020 and underwent treatment at Rajiv Gandhi Cancer Hospital, Delhi, whereafter he resumed his official duties. It is further stated that on 20.12.2021, while he was on duty, he developed chest pain and was immediately taken to Yashoda Hospital and Research Centre, Ghaziabad ['Hospital'], where he expired. Relying upon the death summary, the Petitioner asserts that the immediate cause of death was cardio-pulmonary/cardiac arrest and, therefore, the demise of her husband occurred while in harness on a working day.

2.3. The Petitioner applied for compassionate appointment on 06.04.2022 and thereafter submitted a representation dated 02.05.2023 seeking ex-gratia compensation as per the provision of DOP& T OM. NO. 45/55/97 P& PW (C) dated 11.9.1998 ['O.M. dated 11.09.1998'] as amended on 4.8.2016 as OM NO.



F.NO. 38/37/ /2016-P&PW (A) (1) dated 4.8.2016 ['O.M. dated 04.08.2016'].

2.4. The Respondents rejected the Petitioner's claim of ex-gratia compensation vide impugned letter dated 05.06.2023, on the ground that the deceased had died of cancer, which, according to them, constituted a natural cause of death. The Respondents have further taken the position that the death had not occurred while the deceased was 'on duty'.

3. The Petitioner disputes the said reasoning for denying compensation and asserts that the deceased was *not* on leave and further contends that the Respondents have incorrectly attributed the death to cancer as a natural cause, whereas, according to the medical record relied upon by her, the immediate cause of death was cardiac arrest.

3.1. Learned counsel appearing for the Petitioner has placed reliance upon, the decisions in **Sangita Tomar v. Union of India**¹, **Ram Devi v. DG, BSF**², and **Pushpa Devi v. Union of India**³ in support of the submission that ex-gratia compensation has, in appropriate cases, been held to be payable where death has occurred, while on duty on account of heart attack/cardiac arrest. It is contended that the principle emerging from the aforesaid decisions is that where an employee dies in harness as a result of a sudden cardiac event, such death ought not to be excluded from the ambit of ex-gratia compensation merely by characterising it as a natural death and the claim of the present Petitioner also deserves to be considered in the same light.

3.2. He contends that the Respondents have *also* acted arbitrarily in the matter of compassionate appointment by adopting an improper cut-off and

¹ W.P.(C) 6176/2020, decided 01.09.2022

² W.P.(C) 3527/2013, decided 27.05.2015

³ CWP No. 6894/2015, decided on 18.04.2017



delayed schedule for considering vacancies of year 2022 and rejecting Petitioner's candidature *vide* impugned order dated 25.09.2024 [impugned in the rejoinder] on alleged technical grounds including the Petitioner's higher qualification.

4. In these circumstances, the Petitioner has filed the present petition seeking to grant ex-gratia compensation of Rs. 25,00,000/- under the O.M. dated 11.09.1998 as amended by O.M. dated 04.08.2016, and to reconsider her case for compassionate appointment in accordance with the applicable policy/guidelines.

Submission on behalf of the Respondent

5. Learned counsel for the Respondents states that the deceased was granted 06 days Casual Leave from 13.12.2021 to 20.12.2021. He stated that while the deceased was on leave, he was admitted to the Hospital on 20.12.2021, and expired on the same day as per the medical certificate.

5.1. He relies on the death certificate which records the cause of death as "Recurrent Metastatic Carcinoma of Buccal Mucosa with Sepsis with Shock with Hypoalbuminemia, Hypokalemia Type-II Respiratory Failure with hyperbilirubinemia", ['cancer'] and contends that the demise was due to natural cause, and not by heart attack.

5.2. He further states that prior to death, the deceased had availed more than 595 days of leave between 20.05.2018 and 08.06.2021 on various grounds, remained off duty for long periods, and overstayed sanctioned leave on several occasions. He states that the deceased was also undergoing treatment for mouth cancer (left buccal mucosa).

5.3. He states that all pensionary benefits have already been released to the Next of Kin ['NoK'] through DGBR/Pension Cell.



5.4. As regards ex-gratia lump sum compensation, he states that the manner/cause of death does not fall within the scope of O.M. dated 11.09.1998, as amended by O.M. dated 04.08.2016, and therefore the case is not covered for grant of ex-gratia compensation.

5.5. Regarding compassionate appointment, he submits that the Petitioner's case, along with other eligible cases, was placed before a Board of Officers for assessment of Relative Merit Points ['RMP'] as per parameters laid down in MoD (D/Lab) ID No. 19(2)/2017/D(Lab) dated 09.01.2018 and a consolidated merit list was prepared against vacancy year 2022, where the Petitioner was awarded 45 RMP, however, due to a capping on the vacancies which can be filled up with compassionate appointments, the Petitioner who was at serial no. 394 out of 543 candidates could not be offered the candidature, due to lack of vacancies. He refers to the impugned communication dated 25.09.2024 issued to the Petitioner conveying the said decision.

5.6. He relies on O.M. dated 16.01.2013⁴, stating that compassionate appointment is subject to relative merit and is limited to 5% of direct recruitment vacancies in Group 'C' posts.

5.7. He states that no assurance can be given for appointment on compassionate grounds, and the Petitioner's case depends upon her RMP and position on the eligible candidates list. However, as recorded in the order dated 25.09.2024 she can apply for the next vacancy year.

Case Analysis

6. This Court has heard the learned counsels for the parties and perused the record.

⁴ DoPT O.M. F. No. 14014/02/2012-Estt.(D)



7. The issues arising for consideration in the present writ petition are (a) the claim of ex-gratia compensation as per OM dated 11.09.1998 as amended on 04.08.2016; and (b) re-consideration of the Petitioner's case for compassionate appointment against the vacancy of 2022.

(i) Entitlement of ex-gratia compensation

8. The Learned counsel for the Petitioner contends that late Sh. Mukesh Kumar Sharma ('the deceased') was working with the ERBO as JE (Civil) since 30.09.2002. Starting from 2002 till June 2021, the deceased was continuously deployed in very hostile locations. He submits that the nature of duties required the deceased to work in harsh climatic conditions, including high altitudes and regular exposure to extreme hostile weather conditions, occupational pollutants. He submits that the condition of cancer contracted by the deceased, in the present case is attributable to large amount of dust from rocks, soil and gravel, specially during blasting, drilling and crushing as part of his duties as a JE along with occupation pollutants like diesel exhaust and equipment fumes, dust particles, silica exposure, UV radiation and physical strain. He submits that therefore the disease of cancer contracted by the deceased is attributable to the service conditions.

Additionally, it is the stand of the Petitioner that while the deceased was 'on duty' on 20.12.2021, he felt pain in his chest and was taken to the Hospital, where he died on the same day and the immediate cause of death was recorded as 'cardio pulmonary arrest'. He states that in these facts the Petitioner is entitled to receive ex-gratia lumpsum compensation of Rs. 25 lakhs in terms of OM dated 11.09.1998 as amended on 04.08.2016.

8.1. He contends that the Respondent has erroneously rejected the claim of ex-gratia compensation vide impugned letter dated 05.06.2023 and have



incorrectly attributed the death to cancer terming it as a natural cause, whereas, according to the medical certificate dated 20.12.2021, the immediate cause of death is recorded as cardio pulmonary arrest'. The Petitioner also disputes the stand of the Respondent that the deceased was on leave on the day of his demise, i.e., on 20.12.2021.

8.2. The specific entry in the OM dated 04.08.2016 relied upon by the Petitioner pertains to cases where death occurs due to an accident in the course of performance of duties. Since the controversy in the present matter turns upon the scope and applicability of the said OM dated 04.08.2016, the relevant extract of the OM dated 04.08.2016 is reproduced hereinbelow:

EX GRATIA LUMP SUM COMPENSATION

12.1 The amount of ex gratia lump sum compensation available to the families of Central Government Civilian employees, who die in the performance of their *bona fide* official duties under various circumstances shall be revised as under:

Circumstances	Amount
Death occurring due to accidents in course of performance of duties	25 lakh
Death in the course of performance of duties attributed to acts of violence by terrorists, anti social elements etc.	25 lakh
Death occurring in border skirmishes and action against militants, terrorists, extremists, sea pirates	35 lakh
Death occurring while on duty in the specified high altitude, unaccessible border posts, etc. on account of natural disasters, extreme weather conditions	35 lakh
Death occurring during enemy action in war or such war like engagements, which are specifically notified by Ministry of Defence and death occurring during evacuation of Indian Nationals from a war-torn zone in foreign country	45 lakh

9. Conversely, leaned counsel for the Respondent states that the deceased died a natural death due to cancer. He states that the deceased had remained on leave for a total period of 595 days between 20.05.2018 to 08.06.2021 on various grounds and was also undergoing treatment for mouth cancer (left buccal mucosa).

9.1. He submits that the death certificate expressly records, the cause of death of the deceased occurred due to 'Recurrent Metastatic Carcinoma of



Buccal Mucosa with Sepsis with Shock with Hypoalbuminemia, Hypokalemia Type-II Respiratory Failure with hyperbilirubinemia', though, the immediate cause has been recorded as 'Cardio Pulmonary Arrest'. The relevant extract of the medical certificate reads as under:



YHRC/MCCOD/MRD/HS/V1

MEDICAL CERTIFICATE OF CAUSE OF DEATH

(Hospital In-Patient, Not to be used for still birth)
I hereby certify that the person whose particulars are given below died in the hospital in Ward/Bed

No. 1427/2020 Reg. No. 30828 IPD No. 12456

NAME OF DECEASED MR. MUKESH KUMAR SHARMA				
SEX:	MALE		AGE AT DEATH 41 years	
MALE FEMALE	If 1 Year or more age in years	If less than 1 Year age in months	If less than month, age in days	If less than 1 day, age in hours
	41 years			
FATHER/HUSBAND NAME: MR. PRAMOD KUMAR				
ADDRESS: H. NO - H-007, RAJ NAGAR Residency Society, RAJ NAGAR Extension GHATBHO				
DATE & TIME OF ADMISSION: 20/12/2021				
DATE & TIME OF DEATH: 20/12/2021 at 11:45 PM				
CONSULTANT DOCTOR: DR. B. N. KAPUR, DR. BRIJESH PRASAD				
CAUSE OF DEATH: Recurrent Medullary Carcinoma of Buccal Mucosa & Sepsis & Shock & Hypoalbuminemia, Hypokalemia, Type-II Respiratory Failure & Hyperbilirubinemia			Interval between onset & death approx.	30 min
Immediate Cause State the disease, injury or complication which caused not the mode of dying such as heart failure, ashenia etc.			CARDIO-PULMONARY ARREST	
Antecedent Cause Morbidity conditions, if any giving rise to the above cause, starting underlying last.			Recurrent Medullary Carcinoma of Buccal Mucosa & Sepsis & Shock & Hypoalbuminemia Hypokalemia, Type-II Respiratory Failure & Hyperbilirubinemia	
Other significant conditions contributing to the death but not related to the disease or conditions				

Manner of Death/How did the injury occur?

1. Natural 2. Accident 3. Suicide 4. Homicide
5. Pending Investigation

If deceased was a female, was pregnancy the death associated with?

1. Yes 2. No

If yes, was there a delivery? 1. Yes 2. No

RAKESH RANJAN
BROTHER
8800486633

(Name & Sign. Medical Officer Certifying the Cause of Death)

Date of Verification: 20/12/2021

Asst Adm Officer
AD/IRLA
for DGBR

TRUE COPY

9.2. Additionally, he states that deceased was on sanctioned six (6) days' casual leave w.e.f. 13.12.2021 to 20.12.2021, with due permission to avail 18th and 19th December, 2021 (Saturday and Sunday) as intervening



holidays. He states that during the said leave period, the deceased was admitted to the Hospital on 20.12.2021, where he passed away on the same day and was therefore not 'on duty'.

9.3. In these facts, the Respondent contends that the family of the deceased is not entitled to claim ex-gratia compensation as per the OM dated 11.09.1998 as amended by OM dated 04.08.2016, as the death of the deceased was neither an accident nor did it occur *on duty*. It is contended that therefore there is no causal connection between the death of the deceased and the service.

10. The fundamental basis of the Petitioner's claim for ex-gratia compensation is based on the judgments of the Division Bench in **Ram Devi** (supra), **Sangita Tomar** (supra) and on the judgment in **Pushpa Devi** (supra). Thus, before we opine upon the Petitioner's challenge to the impugned order dated 05.06.2023, we deem it appropriate to set out the relief granted by the coordinate Benches in the aforesaid judgments.

10.1. In the case of **Ram Devi** (supra), the Division Bench was concerned with the claim of ex-gratia compensation as per OM dated 11.09.1998 as modified by OM dated 02.09.2008. In the said case, the Court concluded that the force personnel died due to heart attack within 15 minutes of completing ambush-cum-patrolling duty at the border outpost. The Court held that the stress occurred while performing the ambush-cum-patrolling duty could have contributed to the heart attack suffered by the force personnel. The Court observed that the death of the force personnel suffered after performing actual duty would be a case of an accidental death in the course of performance of duties. In these facts, the Court concluded that the family of the force personnel therein was entitled to ex-gratia lumpsum



compensation as per OM dated 11.09.1998 as modified by OM dated 02.09.2008.

10.2. In the case of **Sangita Tomar** (supra) the Division Bench was concerned with the claim of ex-gratia compensation as per OM dated 11.09.1998 as modified by OM dated 04.08.2016. In the said case, the Court concluded that the force personnel was serving a hard posting in Arunachal Pradesh when he died of a heart attack on 21.01.2018. The Court noted that on 20.01.2018, the force personnel has gone to visit a road sector O-K-S-R-T Road and Shergaon-Morshing-Phudung Road and returned to his location at Shergaon at 1910 hours, and while returning he complained of chest pain. The Court noted that though the force personnel was rushed to the military Hospital, which was located at a distance of 65 kilometres, immediate medical assistance could not be provided to him and it was provided only after three [3] hours. In these facts, the Court concluded that the force personnel's death occurred during the official course of his duties and therefore the family of the force personnel was held entitled to ex-gratia compensation.

10.3. The Petitioner has also relied upon the judgment of High Court of Punjab and Haryana in **Pushpa Devi** (supra) for grant of ex-gratia compensation, where the death was caused due to heart attack. In the facts of the said case, the Court noted that since at the time of the death the force personnel was 'on duty' and he died due to heart attack, the family of the deceased would be entitled to ex-gratia compensation.

10.4. Thus, as can be seen in the aforesaid judgments the Courts concluded that the deceased force personnel therein was 'on duty' at the time of his death and his death by heart attack, occurred due to service conditions. And,



on these findings, the Courts granted ex-gratia compensation to the family of the deceased personnel therein.

11. In this background of law settled by the aforesaid judgments, this Court has to determine whether late Sh. Mukesh Kumar Sharma was 'on duty' on 20.12.2021 and whether his death due to heart attack occurred on account of his service conditions.

12. The Petitioner has contended that the deceased was 'on duty' on 20.12.2021 and was posted at HQ DGBR New Delhi w.e.f. June 2021.

On the other hand, the Respondent in its counter affidavit has contended that the deceased had availed casual leave w.e.f. 13.12.2021 to 20.12.2021 with permission to avail 18th and 19th December, 2021, being a Saturday and Sunday. It is stated that while the deceased was on leave when he was admitted at the Hospital on 20.12.2021 and he passed away on the same day, as per the medical certificate. It is thus contended that the deceased was not 'on duty' as on 20.12.2021.

The Petitioner in the rejoinder has disputed this stand of the Respondent and asserted that the deceased was not on leave as on 20.12.2021, but 'on duty'.

12.1. Neither party has been able to produce any documents to substantiate their respective stands. Thus, the contention of the Petitioner that the deceased was 'on duty' as on 20.12.2021 is a disputed question of fact.

12.2. We have, however, perused the medical certificate dated 20.12.2021 issued by the Hospital and find that the same records the name of one Mr. Rakesh Ranjan as the brother of the deceased, in the right hand corner, which leads the Court to believe that the deceased was brought to the Hospital on 20.12.2021 by his brother which indicates that the deceased was



with his family and on leave. We also note that the Hospital in question is a cancer institute and considering the admitted fact that the deceased was undergoing cancer treatment at the relevant time, it appears that the deceased was consciously brought to the said Hospital due to his medical history of cancer.

12.3. We are therefore in these facts unable to conclude that deceased was ‘on duty’ as on 20.12.2021. Moreover, since Respondent is a government organisation and the counter affidavit has been sworn by the Joint Director (legal) deposing that the deceased was on leave as on 20.12.2021, we are unable to reject the said assertion of facts

13. Notwithstanding the aforesaid conclusion, we have also examined whether the death of late Sh. Mukesh Kumar Sharma was due to heart attack, as contended in the petition.

13.1. The medical certificate has been extracted above and it clearly records that the immediate cause of the death as cardio pulmonary arrest, however, the antecedent cause is expressly recorded as “Recurrent Metastatic Carcinoma of Buccal Mucosa with Sepsis with Shock with Hypoalbuminemia, Hypokalemia, Type-II Respiratory Failure with Hyperbilirubinemia” (cancer). The said medical certificate is undisputed and infact the Petitioner has also placed reliance upon the same.

We are therefore, unable to accept the submission of the Petitioner that the cause of death is heart attack and not cancer, as this is contrary to the medical opinion recorded in the said certificate.

13.2. In the present petition, there are pleadings to allege that the cancer was caused due to service conditions and there is no family history of cancer, however, this submission was not pressed during oral arguments.



Even otherwise we do not find any medical opinion on record to accept the said contention raised in the petition and we are unable to presume that cancer was caused due to the service conditions.

13.3. The facts on record demonstrate that the deceased was diagnosed with cancer on 02.04.2020 and was undergoing treatment at Patna and thereafter at Rajeev Gandhi Cancer Hospital Delhi. In fact, admittedly, the deceased was posted by the Respondents at Delhi to enable him to continue with his cancer treatment w.e.f. June 2021 and he unfortunately passed away on 20.12.2021 due to cancer, as recorded in the medical certificate. In these facts, we are therefore unable to conclude that the death of late Sh. Mukesh Kumar Sharma had any causal connection with his service conditions.

14. In view of the aforesaid findings, we are unable to find any illegality in the impugned order dated 05.06.2023 passed by the Respondents rejecting the Petitioner's claim for ex-gratia compensation as we are of the opinion that the death of late Sh. Mukesh Kumar Sharma did not occur in the course of performance of his duties. Therefore, the relief seeking quashing of the decision dated 05.06.2023 is hereby rejected.

(ii) Consideration of the Petitioner for compassionate appointment

15. The Petitioner has also prayed that she must be considered for compassionate appointment. It is stated that she is a widow, has a minor child and her in laws. It is stated that she is holding the qualification of M.A., B.Ed., with steno experience and had duly applied for the vacancies of 2022. It is stated that during the pendency of the present proceedings the Petitioner has received a communication dated 25.09.2024 stating that her candidature could not be considered against the vacancies for the year 2022. The said order has been impugned in the rejoinder.



15.1. The Petitioner contends that the impugned order directs her to apply for the vacancy year of 2023 with a fresh application and supporting documents, which is onerous. It is contended that the Petitioner's candidature which was verified for the vacancy year 2022 ought to be reconsidered against the vacancies for 2022.

16. The Respondent has contended that the Petitioner's application was duly placed before the Board of Officers for consideration against the vacancy year 2022. It is stated that appointment on compassionate ground is regulated by OM dated 16.01.2013 and such appointments can be upto 5% of vacancies falling under direct recruitment quota in any Group 'C' post.

16.1. It is stated that case of an applicant/Petitioner for compassionate appointment is made after assessing the RMP in accordance with the MoD (D/Lab) ID No. 19(2)/2017/D(Lab) dated 09.01.2018. It is stated that the RMP is assessed out of 100 points scale on the basis of the economic status of a family as per the governing OMs and the Petitioner was given 45 RMP.

16.2. It is stated that vide impugned order dated 25.09.2024 the Petitioner was also called upon to apply afresh for next vacancy year.

17. In response, the Petitioner contends that Petitioner was awarded wrong merit points 45 by the Board of Officers against the expected merit points 61 and therefore there has been wrong calculation of merit points depriving her of consideration for the vacancy year 2022. In view of this, the Petitioner seeks re-consideration for the vacancy year 2022.

18. We have considered the submissions of the parties on this issue. The Respondents have not disputed that the Petitioner is entitled for consideration for compassionate appointment and have submitted that in fact, Petitioner's application has been duly considered for the vacancy year



2022, however, due to the capping of 5% on compassionate appointments against direct recruitments and large number of eligible applicants, the Petitioner who was at serial no. 394 out of 543 eligible candidates could not be offered appointment. The Respondent has called upon the Petitioner to apply for the vacancy year 2023, however, Petitioner has not applied for the same.

19. Although the Petitioner has impugned the communication dated 25.09.2024, whereby she was informed of the Respondent's inability to offer her appointment for the vacancy year 2022, no cogent grounds for challenging the said order have been made out. The Petitioner has been unable to demonstrate any illegality or arbitrariness in the decision-making process of the Respondent that led to the issuance of the communication dated 25.09.2024.

20. Since no substantive challenge to the impugned order dated 25.09.2024 was raised by way of amendment to the writ petition, the stand of the Respondent regarding the basis for assessing the Petitioner's merit points at 45 has not come on record.

21. This petition has been pending since the year 2023 and we find no reason now to embark upon an enquiry as to the breakup of the merit points 45 awarded to the Petitioner, especially since the vacancies for the year 2022 have already been filled and third-party rights have been created.

22. However, since the Petitioner's entitlement to apply for compassionate appointment is not in dispute and she remains eligible to apply afresh, we direct that, in the event the Petitioner submits an application for the upcoming vacancy year, the same shall be duly considered. In such an event, the break-up as well as the basis of the merit



points awarded to her by the Board of Officers shall also be communicated to her within four [4] weeks of the decision thereon, so as to enable her to avail of her remedies in accordance with law, in the event her candidature is once again rejected for the said vacancy year.

23. No further directions for compassionate appointment are being issued in the present proceedings.

24. With the aforesaid directions, the petition stands disposed of. Pending applications stand disposed of.

**MANMEET PRITAM SINGH ARORA
(JUDGE)**

**V. KAMESWAR RAO
(JUDGE)**

APRIL 15, 2026/rhc/AJ