
(2022) 09 DEL CK 0001

In the Delhi High Court

Case No : Civil Writ Petition No. 6176 Of 2020

Sangita Tomar

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 01-09-2022

Acts Referred:

Citation : (2022) 09 DEL CK 0001

Hon'ble Judges : Suresh Kumar Kait, J;Saurabh Banerjee, J

Bench : Division Bench

Advocate : Gajendra Giri, Aditya Giri, Archana Gaur

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

1. The present petition has been preferred by the petitioner, the widow of late Ram Kumar Singh EXGO -004185K AE 9 CIVIL, who was working with Esteemed Border Roads Organizations (EBRO), seeking grant of ex gratia compensation under guidelines vide DoP& Pw OM NO. 45I55/97-P& Pw (C) dated 11.09.1998 as amended from time to time as well as for her appointment on compassionate grounds. Consequentially, petitioner is seeking setting aside of orders dated 19.10.2019 and 23.04.2020 passed by the Officer Commanding 91 Road Construction Coy (GREF), vide which her application dated 25.11.2018, seeking the aforesaid reliefs, has been rejected. The petitioner claims to have filed an appeal dated 04.02.2020 against the aforesaid orders to the Director General Border Roads, New Delhi, which was not decided till filing of the present petition.

2. The petitioner's husband was appointed in EBRO in the year 1985. On 20.01.2018, while being posted at 476RMPL in Shergaon Arunachal Pradesh, he felt uneasiness in breathing, which he was complaining of last two-three days. He complained it to one of his colleagues and was rushed to Military Hospital Tenga Valley, at a distance of 65 kilometres and took three hours to reach there. On the way, his heart got severely damaged, which proved fatal for him and he

succumbed to death on the next day i.e. 21.01.2018.

3. Consequent upon demise of AE (CIV) Ram Kumar Singh i.e. petitioner's husband, the respondents claim to have granted compensation to the tune of Rs.62,91,608/- on account of terminal benefits entitled as per Government rules to his Next of Kin (NoK) i.e. petitioner, his wife and also granted pension as per rules by the last serving unit of the deceased. Being dissatisfied with non-payment of ex-gratia amount in the sum of Rs.35,00,000/-, petitioner filed an application dated 25.11.2018 to the Commandant GREF Centre for and Records Dighi Camp, Pune-15 praying for grant of ex gratia compensation, which was rejected by the competent authority vide letter dated 19.10.2019 intimating that ex gratia lump sum amount does not apply to the NoK of deceased AE (CIV) Ram Kumar in view of DGBR letter no. PF/EXGO-4185K/RKS/09/EIB dated 05.09.2019, as his death was caused due to the heart attack.

4. It is pleaded in the petition that against the aforesaid communication dated 19.10.2019, the petitioner had preferred an appeal on 27.01.2020 before the Director General Border Roads, Seema Sadak Bhawa, Naraina, Delhi praying for grant of ex gratia compensation as well as to consider petitioner's appointment on compassionate grounds. Thereafter, petitioner received a letter dated 02.07.2020 from respondent No.3 stating that her case was being considered for appointment on compassionate grounds and she was found fit for the same and as and when vacancies pertaining to the year 2019 are notified, she would be called for the same. However, since there was no communication from the other side, therefore, the present petition has been filed.

5. During the course of hearing, learned counsel appearing on behalf of petitioner submitted that since the year 1985, petitioner's husband was deployed in very hostile locations ranging from high altitude areas, terror hit areas, perilous outskirts border areas and declared hard areas of North East Region, India; which include Bhutan, Rohtang areas of Himachal Pradesh, Rajouri District of Jammu and Kashmir, Lunglei District of Mizoram, Buddal Kandi in Rajouri in Jammu and Kashmir, Samba area of Jammu and Kashmir, Eastern Arunachal Pradesh, Peng region in Leh Laddakh and his last posting in Sher Gaon area in West Kameng District Arunachal Pradesh. It was also submitted by learned petitioner's counsel that her husband had remained deployed in high altitude areas, where there is extreme paucity of oxygen required to sustain a healthy heart, which made his heart weak. It was submitted that none of the family members had a history of heart attack and his father, aged 83 years is also alive.

6. Learned counsel strenuously submitted that petitioner's husband was heavily occupied in exigency of duty due to upcoming inspection of roads and due to unavailability of appropriate medical facilities at the place of his posting, he could not consult a doctor. Even on the fateful day of 20.01.2018 he had to be driven 65 kms. in pain resulted in damage of his heart and though he was taken to the Military Hospital Tenga (MH Tenga), Arunachal Pradesh; but there were no advance facilities for his treatment and he was likely to be further shifted to

some hospital in Guwahati at a further distance of 340 kms. Unavailability of treatment proved fatal for his heart and he died on 21.01.2018.

7. Learned counsel placed reliance upon decision of this Court dated 27.05.2015 in W.P.(C) 3527/2013, titled as Ram Devi Vs. Director General BSF and Others to submit that death of defence personnel due to heart attack after performing actual duty would be a case of accidental death in the course of performance of duty. Reliance was also placed upon another decision dated 10.04.2017 of Punjab and Haryana High Court in CWP No. 6894/2015, titled as Pushpa Devi Vs. Union of India wherein it is held that the ex-gratia compensation is payable in cases where the death of the officer has been due to heart attack.

8. Learned counsel further submitted that rejection of petitioner's request for grant of ex gratia compensation vide impugned communication dated 19.10.2019 is against the settled principles of law and deserves to be set aside. Similarly, petitioner's request dated 12.05.2018 for compassionate appointment was rejected by the respondent vide impugned order dated 23.04.2020 though at the first instance vide letter dated 02.07.2020, respondent had informed the petitioner that she was found fit for appointment and would be appointed against the vacancy pertaining to the year 2019, as and when the same is notified. However, instead of offering appointment her request has been turned down, which has not only left the petitioner in financial discomfort but also is against the settled principles and so, deserve to be set aside.

9. To the contrary, learned counsel appearing on behalf of respondents submitted that pursuant to demise of late Ram Kumar Singh, AE (Civ), petitioner, who is his widow and NoK, all legitimate dues and payments have been done in her favour and she has also been granted pension as per her entitlement. Learned counsel for respondents submitted that pursuant to petitioner's request dated 24.02.2018, respondent No.2-GREF vide its letter dated 26.04.2018 had asked her submit her DD form along with documents. The same were sent by respondent No.2-GREF to respondent No.3-DGBR, who after scrutiny thereof, while relying upon DoP OM No. 45/55/97- P&PW(C) dated 11.09.1998, amended vide OM No. 38/37/2016-P&PW(A) (I) dated 04.08.2016; vide letter dated 05.09.2019 informed GREF that cases of death due to illness and natural death are not covered for payment of ex gratia compensation and; it was further informed to petitioner vide letter dated 19.10.2019.

10. It was submitted on behalf of respondents that petitioner's husband had not intimated anyone about his illness and when he complained of severe chest pain on 20.01.2018, he was immediately taken to nearby hospital, where during his treatment he died on 21.01.2018 due to "acute myocardial infarction". Learned counsel submitted that the distance of 45 kms was covered in less than 90 minutes and there is nothing on record to suggest that MH Tenga was planning to shift petitioner's husband to another hospital at Guwahati. Further submitted that petitioner was posted in 476 RMPL/91 RCC at Shergaon, Arunachal Pradesh, which is not of high altitude but a hard area. He was not continuously posted in

high altitude areas and so, this factor is not attributable to his death. Next submitted that as per provisions of Government of India, Ministry of Personnel, Public Grievances & Pension Department of Pension & Pensioner's Welfare letter No. 45/55/97-P&PW (c) dated 11.09.1998; amended vide OM No. 38/37/2016-P & P (A) (i) dated 04.08.2016, ex-gratia compensation is not granted where the death is natural or due to illness.

11. According to respondents, petitioner's case was also considered for appointment on compassionate grounds and she was put in the waiting list of candidates. Petitioner was informed that since her application was received by the competent authority in July, 2019, her case would be considered for the vacancies pertaining to the year 2019. Learned counsel for respondent submitted that at the time of making the said application, petitioner was aged 48 years and since she belongs to unreserved category, her upper age for consideration should be maximum 30 years and even if relaxation of 03 years is granted, yet petitioner was more than 48 years of age and so she could not be considered for appointment. Further, the petitioner has three children, who all are major in age. The eldest son was earning, the middle daughter was already married and though the younger daughter had attained the age of 20 years, but her name was not mentioned as NoK.

12. Learned counsel next placed reliance upon instructions issued vide DoPT OM F No. 14014/02/2012-Estt. (D) dated 16.01.2013, to submit that if the family is indigent and in financial destitution, then it has to be ascertained by the Relative Merit Point and this policy assessment is governed under Ministry of Defence vide ID No. 19(4) 824-99/1999-D (LAB) dt. 09.03.2001 and amended vide ID dated 22.01.2010; 14.05.2010 and 09.01.2018. Moreover, in terms of DoPT OM F No. 14014/02/2012-Estt. (D) dated 16.01.2013, only 5% vacancies falling in the direct recruitment quota in any Group-C post, can be considered for appointment on compassionate grounds, which are recommended for eligible candidates under Relative Merit Points and no preferential appointment is permitted.

13. On behalf of respondents, reliance is placed upon decision in Umesh Kumar Nagpal Vs. State of Haryana &Ors. JT 1994(3) SC 525 to submit that grant of compassionate appointment is to enable the family to recover from sudden crisis and to relieve the family of the deceased from financial crisis, whereas in the present case, legitimate dues to the tune of Rs.62,91,608/- have already been granted to the petitioner being his NoK and she is also drawing pension as per applicable rules. Reliance is also placed upon decision in Himachal Road Transport Corporation Vs. Dinesh Kumar JT 1996 (5) SC 319 to submit that compassionate appointment can be made only if vacancy is available. Further, reliance is placed upon decision of Hon'ble Supreme Court in Life Insurance Corporation of India Vs. Mrs. Asha Ramchandra Ambedkar and Others JT 1994 (2) SC 183 wherein it is observed that Administrative Tribunals and High Courts cannot give directions for appointment of a person on compassionate grounds but can merely direct consideration of claim for such an appointment. Reliance is next placed upon OM

No. 14014/15/99-Estt.(D) dated 11/19 July, 2001 issued by DoPT to submit that there can be no reservation or demand for appointment of compassionate grounds. Learned counsel submitted that the case of petitioner was considered for compassionate appointment and she was found fit, except in the age criteria, which cannot be ignored.

14. In rebuttal, learned counsel for petitioner submitted that by denying ex gratia compensation and appointment on compassionate grounds, the respondent has infringed petitioner's right to equality, as NoK of similarly placed candidate, who had died of heart attack, has been given the appointment by the same department i.e. Border Roads Organisation in Pushpa Devi (Supra). It was submitted that the amount of Rs.62,91,608/- granted to petitioner consequent upon demise of her husband primarily involves large part of PF, which he had voluntarily got deducted from his salary; gratuity; EL encashment money; insurance scheme and TA/DA and it has nothing to do with demise of officer due to prolonged postings in high altitude area and hard area. It was submitted that death of petitioner's husband was not natural and was caused due to heart attack while on duty at Oxygen deficit posting and due to lack of medical facilities and also that out of last three postings of deceased officer, two postings were in high altitude areas, therefore, petitioner is entitled to ex-gratia compensation in view of the provisions of the Department of Pension & Pensioners' Welfare OM NO. 45/55/97-P&PW (C) dated 11.09.1998 and amended vide OM No. 38/37/2016- P7PW (A) (1) dated 4.8.2016.

15. Learned counsel submitted that for appointment on compassionate grounds, there is no upper age limit and placed reliance upon decision of High Court of Uttarakhand, dated 18.03.2019 in W.P.(S/S)No. 1900 of 2017 in Smt. Shashi BalaVs. Union of India to submit that compassionate appointment is a benevolent scheme and it cannot be denied to a person merely because of overage. Lastly, it was prayed that impugned orders dated 19.10.2019 and 23.04.2020 passed by the respondents be set aside and this petition be allowed in the interest of justice.

16. Pertinently, the twin questions which are required to be determined by this Court in the present petition are, first; as to whether consequent upon death of Ram Kumar Singh EXGO -004185K AE 9 CIVIL, who was working with Esteemed Border Roads Organizations (EBRO), his wife i.e. petitioner, who is his NoK, is entitled to grant of ex gratia compensation and second; whether she is entitled to appointment on compassionate grounds.

17. Relevantly, the conditions for grant of ex gratia compensation has been laid in by Department of Pension & Pensioners' Welfare vide OM No. 45/55/97-P&PW (C) dated 11.09.1998 and amended vide OM No. 38/37/2016- P7PW (A) (1) dated 4.8.2016, where-under the main condition for payment of ex gratia lump sum compensation is "that the death of employee concerned should have occurred in actual performance of bona fide official duties. In other words, a casual connection should be established between the occurrence of death and government service".

18. Petitioner has placed reliance upon decision of this Court in Ram Devi (Supra), wherein consequent upon death of Head Constable in BSF because of "cardio respiratory arrest due to multi-organ diseases and in particular liver cirrhosis"; his wife was denied ex gratia compensation by the competent authority and this Court had observed as under:-

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

19. Reliance is also placed by petitioner upon a decision of High Court of Punjab and Haryana in Pushpa Devi (Supra), wherein the learned Single Judge in a case where a Driver employed under Border Roads Organization had died of heart attack, granted ex gratia compensation to his widow while relying upon decision of Division Bench of High Court of Punjab and Haryana in Kamlesh Devi Vs. State of Punjab 2002 (1) SCT 929 wherein it was held that the word "accident" would also include person dying of "heart attack" which is an unexpected event which happens without design.

20. It is not disputed that Ram Kumar Singh EXGO -004185K AE 9 CIVIL was serving a hard posting at 476RMPL in Shergaon, Arunachal Pradesh when he died of heart attack on 21.01.2018. It is also not disputed that out of his last three postings, two were in high altitude areas and the last was a hard posting. There is no denial from the respondents that in the family of the petitioner, there is no history of death by heart attack. Moreover, at the time of filing of the present petition, father of the petitioner, aged 83 years, was said to be living a healthy life. The cause of death of petitioner's husband has been opined as "acute myocardial infarction". In medical terms, the reasons for most myocardial infarctions are coronary artery disease due to prolonged deprivation of oxygen supply and when one or more areas of heart muscles do not get enough oxygen, it results into heart attack. It is not wrong to presume here that due to various postings in high altitude areas, Ram Kumar Singh might have been deprived of oxygen necessary for a healthy heart and sustained medical problems, which could not be known at initial stage. It is admitted by respondent that on 20.01.2018, deceased Ram Kumar Singh had gone to visit the road sector O-K-S-R-T road and Shergaon-Morshing-Phudung Road and returned to his location at 476RMPL in Shergaon at 1910 hours and on return he complained of chest pain and at about 1945 hours, he was rushed to the Military Hospital Tenga Valley, which is indisputably located at a distance of 65 kilometres and so, the necessary medical assistance which supposedly was required to be provided to him instantly, however, could only be given after approximately three hours thereof.

21. Accordingly, we find no hesitation to hold that death of petitioner's husband happened during the official course of his duties and, therefore, petitioner being the NoK of deceased Ram Kumar Singh is entitled to grant of ex gratia compensation. Consequently, order dated 19.10.2019 passed by the respondent relying upon DoP OM No. 45/55/97- P&PW(C) dated 11.09.1998; amended vide OM No. 38/37/2016-P&PW(A) (I) dated 04.08.2016, for rejection of grant of ex gratia pension to petitioner, is misplaced, as the case of deceased falls under the category of "death due to accident in course of performance of duties". Hence, petitioner is entitled to grant of ex gratia lump sum compensation of Rs.25,00,000/- in terms of Clause 12.1 of OM No. 38/37/2016-P&PW(A) (I) dated 04.08.2016.

22. With regard to petitioner's claim for appointment on compassionate grounds, we find that in Pushpa Devi (Supra), the claim of petitioner therein for appointment of compassionate grounds was accepted and it already existed in the wait list of the candidates and so, the Court had directed to keep her claim alive till she gets it. In the present case, vide letter dated 23.04.2020 respondent No.2- GREF had informed the petitioner that her case had been put up before the BOO for checking eligibility and necessary action and also that vacancy for the year 2019 for compassionate appointment has not been released by the competent authority, Thereafter, respondent No.2- GREF vide letter dated 02.07.2020 had informed the petitioner that on the date of receipt of DD form by the competent authority, her age was 48 years and 04 months, which is more than the prescribed upper age limit for appointment on compassionate grounds and had also informed that her name was recommended for appointment on compassionate grounds and after the vacancies for the year 2019 were received and if her name comes in the merit list, she would be issued call letter in this regard. During pendency of the present petition also, on 20.11.2020 this Court was informed that petitioner's case for appointment on compassionate grounds is being reconsidered and as and when 2019 vacancies are notified, she would be called.

23. Appositely, the eligibility conditions with regard to age for appointment on compassionate grounds have been enumerated in DoPT OM F No. 14014/02/2012-Estt. (D) dated 16.01.2013, relevant part whereof reads as under:-

"2. TO WHOM APPLICABLE

XXX

(B) of a member of the Armed Forces who –

(a) dies during service; or

(b) is killed in action; or

(c) is medically boarded out and is unfit for civil appointment

XXXXXX

5. ELIGIBILITY

(a) The family is indigent and deserves immediate assistance for relief from financial destitution; and

(b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.

6. B. RELAXATIONS

(a) Upper age limit could be relaxed wherever found to be necessary. The lower age limit should, however, in no case be relaxed below 18 years of age.

Note I Age eligibility shall be determined with reference to the date of application and not the date of appointment.

Note II Authority competent to take a final decision for making compassionate appointment is a case shall be competent to grant relaxation of upper age limit also for making such appointment."

24. In terms of afore-noted Note-I of DoPT OM F No. 14014/02/2012-Estt. (D) dated 16.01.2013, we find that though it is established that the petitioner's husband had died during service and being on duty, however, on the date of receipt of DD form filed by the petitioner seeking compassionate appointment by the competent authority, she was aged 48 years and 04 months, which according to clause 6 B (a) thereof is more than the prescribed upper age limit for appointment on compassionate grounds. Further, Clause-5(b) of the dated 16.01.2013 makes it clear that the applicant seeking compassionate appointment should be eligible and suitable for the post in all respect, which is not the position in the case of petitioner. Moreover, out of petitioner's three children, her eldest son is said to be employed; second daughter is already married and third daughter is also major and of marriageable age. Thus, we find that no case for petitioner's appointment on compassionate grounds is made out.

25. With aforesaid observations, the present petition is partly allowed to the extent that petitioner is entitled to grant of ex gratia compensation under "accident OR /death occurring while on duty", whereas no case for her appointment on compassionate grounds is made out. The respondents are directed to release lump sum amount of ex gratia compensation within eight weeks with interest @9% p.a. from the date of death of the deceased.

26. The present petition is accordingly disposed of.