



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Special Appeal (Writ) No. 367/2018

In

S.B. Civil Writ Petition No.13972/2010

1. The Union of India through the Secretary to the Govt. Ministry Of Home Affairs, North Block, New Delhi.
2. The Director General, Border Security Force, BSF Head Quarters C/o 56 APO.
3. The Officiating General Officer Commanding, Border Security Force, Headquarters, 28 Infantry Division, C/o 56 APO.
4. The Commandant, 103 Battalion, Border Security Force C/o 56 APO.
5. The Pay And Accounts Officer, Border Security Force, Central Pension Accounting Office, C/o 56 APO.

----Appellants

Versus

1. Mst Prabhati Devi Widow Of Ex Head Constable Ramjilal, Resident Of Village Kalmari Ki Dhani, Post Khirod, Tehsil Nawalgarh, District Jhunjhunu (Rajasthan)

----Respondent

2. The State Of Rajasthan Through The Chief Secretary, Govt. Of Rajasthan, Secretariat, Jaipur Rajasthan.
3. The Director, Soldier Welfare Department, Govt. Of Rajasthan, Jaipur Rajasthan.

----Performa-Respondents

For Appellant(s) : Mr. B.S. Chhaba, Assistant Solicitor General through Video Conferencing with Mr. Manvendra Singh Advocate.

For Respondent(s) : Mr. Satya Bhan Singh Advocate & Mr. Surendar Meel Advocate.



HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE VINOD KUMAR BHARWANI

Judgment

Reportable

4/05/2022

By the Court:(Per Manindra Mohan Shrivastava, Acting CJ.)

1. This appeal arises out of an order dated 26.10.2017 passed by the learned Single Judge, whereby, writ petition filed by the respondent No.1-writ petitioner has been allowed.

2. By impugned order, learned Single Judge has held the respondent No.1-writ petitioner entitled to benefit of Liberalized Family Pensionary Awards. In addition, learned Single Judge has also directed the appellants to consider the case of son of respondent No.1-writ petitioner for compassionate appointment.

3. The factual matrix of the case leading to filing of the writ petition has been mentioned in the order impugned, therefore, we shall not repeat, however, it would be pertinent to briefly restate that husband of respondent No.1-writ petitioner, was posted as Head Constable in 103 Battalion of Border Security Force and deployed at field Malika under 'D' Coy. He died due to Hypothermia leading to Pulmonary Odema with consequent Cardio Respiratory Arrest with Ischemia of vital organs on 26.03.2004. The respondent No.1-widow was considered eligible for payment of family pension vide pension payment order dated 05.08.2004. A claim for compassionate appointment was also made. The benefits, which were available to respondent No.1-widow under the extra-ordinary pension scheme were extended and that fact has not been disputed. Further though, claim of compassionate appointment was made, the same was





denied by the State Authorities. As the claim of the respondent No.1-widow was that she is entitled to pension under the Liberalized Pensionary Awards Scheme, which was not granted to her and as compassionate appointment was also not granted to her son, petition was filed.

4. Before the Court, the response of the appellants herein was that under the scheme of pension, the case of the husband of Respondent No.1-widow was under Category 'B' of the Office Memorandum dated 03.02.2000 and, therefore, she was accorded family pension treating death of her husband under Category 'B' only. As far as compassionate appointment is concerned, while the appellants stated that the scheme of compassionate appointment as floated by the State may be claimed and if, the respondent No.1-widow is entitled, the same may be granted. State did not file any reply.

5. Learned Single Judge by impugned order held that all the BSF personnel or any other para-military force personnel, who suffer casualty while being posted at the border areas, shall be treated similarly for the purpose of grant of benefit to their widow and similar benefits will be payable to them as has been released for armed force personnel while suffering casualty on account of doing duties at the border areas. On that basis, direction has been issued for releasing Liberalized Family Pensionary Awards benefit to the respondent No.1-widow. Learned Single Judge has also held that her son shall also be considered for compassionate appointment. Other consequential benefits have also been awarded to be released in favour of the respondent No.1-widow.



6. Aggrieved by the aforesaid order, this appeal has been filed by the Union of India.

7. Learned counsel for the appellants raised pointed submissions by submitting that grant of pensionary benefits to the respondent No.1-widow of a BSF personnel are governed by Office Memorandum dated 03.02.2000 and the case of death of the husband of respondent No.1-writ petitioner was correctly categorized as death in 'B' Category. According to him, in such cases, where death is categorized in Category 'B' or Category 'C', family pension is payable under extra-ordinary family pension scheme and benefit of liberalized family pension is available only in those cases where the death is categorized either in Category 'D' or Category 'E'. He would argue that learned Single Judge has passed the order directing payment of liberalized pension scheme beyond the scheme with a direction to treat the cases of BSF personnel identical to those, which are applicable for Army personnel, which is not permissible in law because the two categories of officials are governed by different set of rules and regulations as also schemes. By judicial order, it is argued, direction cannot be issued by the Court to extend similar benefits, which are given to the widow of deceased Army personnel because the rules applicable in those cases are entirely different. It is further submitted that the direction for grant of compassionate appointment is dehors the provision of any applicable compassionate appointment scheme either under any statutory rule or under any circular. He would submit that in any case, the grievance of the respondent No.1-writ petitioner was against rejection of her claim for compassionate appointment for her son by the State Government and, if any, direction is issued in that regard to the State



Government, they have no objection. In support of his arguments, learned counsel for the appellants has placed reliance upon the Judgments of the Hon'ble Supreme Court in the cases of **Smt. Radhika Devi Versus Union of India & Others, (Civil Appeal Nos.7525-7526 of 2019)** decided on 23.09.2019 & **Kanchan Dua Versus Union of India & Anr., (Civil Appeal Nos.7459-7460 of 2010)** decided on 23.09.2019.

8. Learned counsel appearing for respondent No.1-writ petitioner would submit that the order of learned Single Judge directing release of pensionary benefits under the Liberalized Pensionary Awards Scheme is well reasoned and after drawing parity between BSF personnel and Army personnel. It is further argued that learned Single Judge has clearly held that the circumstances in which the deceased husband of the writ petitioner was working in borders, were similar to duties in identical hard conditions by the Army personnel and, therefore, there is no reason why similar benefit should not be extended to the widow of deceased BSF personnel by extending benefits of the Liberalized Pensionary Awards Scheme. It is further submitted that the rejection of the claim for compassionate appointment on the ground that if the widow is eligible, right of a compassionate appointment could not be reserved till the son attains the majority, is also arbitrary and seeks to deny the benefit of compassionate appointment and is against the spirit and object of grant of compassionate appointment. In support of his submissions, learned counsel for the respondent No.1 has placed reliance upon the judgments of the High Court of Delhi in the cases of **Mrs. Manju Tiwari Versus Union of India and Others, (WP (C) No.5262/2003)**, decided on 04.03.2005, **Major Arvind Kumar**





Suhag Versus Union of India and Others, (W.P. (C) 4488/2012), decided on 21.02.2013, **J.P. Bhardwaj Versus Union of India and Others, (W.P. (C) No.348/2012)**, decided on 29.05.2013 and **Ram Devi Versus Director General, BSF & Others, (W.P. (C) 3527/2013)**, decided on 27.05.2015

9. We have heard learned counsel for the parties and perused the record as also the order passed by the learned Single Judge.

10. Factual details with regard to the date, time of death as also the fact that the husband of respondent No.1-writ petitioner while working as Head Constable in BSF and on duty died, is also not disputed. Further the cause of death and the medical opinion that death was due to Hypothermia leading to Pulmonary Odema with consequent Cardio Respiratory Arrest with Ischemia of vital organs is also not disputed.

11. The question which arises for consideration is as to the nature of pensionary benefits to which respondent No.1-widow would be entitled.

12. Learned Single Judge having held that provisions relating to pensionary benefit in cases of battle casualty as laid down in Annexure-A/6, which was relied upon by the respondent No.1-writ petitioner, would not be applicable as that is applicable in respect of armed forces personnel, the finding, which has been recorded in Para-13 of the impugned order, is to the effect that as the deceased husband of respondent No.1-writ petitioner was not in the armed forces and was not governed by the Army Act, but governed by the Border Security Force Act and the Rules framed thereunder, as such, Annexure-A/6 (a circular stating circumstances for classifying casualties as battle or physical) has been held to be inapplicable.





13. However, learned Single Judge has drawn equivalence between the BSF personnel and Army personnel, taking into consideration that deployment of the BSF personnel is at the border areas and, therefore, it cannot be denied that the field of duties of personnel of the BSF is same to that of armed forces personnel and there is only a thin line of difference between the two with regard to the nature of deployment and the responsibilities of duties at the border. On such an analogy, learned Single Judge has recorded a finding in Para-20 of the impugned order that all BSF personnel or any other para-military force personnel, who suffer casualty while being posted at the border areas, shall be treated similarly for the purpose of grant of benefit to their widow and similar benefits will be payable to them as has been released for armed force personnel while suffering casualty on account of doing duties at the border areas. It has also been held that once the authorities reached to the conclusion that the death has been caused, the distinction made by the Central Government relating to different cases of death for the purpose of releasing benefit to the widow is wholly unjustified and unconstitutional and, therefore, bad in law.

14. The line of reasoning which has been adopted by the learned Single Judge to extend the benefit of liberalized pension scheme to respondent No.1-widow, is contrary to and against the applicable scheme for grant of pension in the case of death of a BSF personnel.

15. At the cost of repetition, it has to be noted that the learned Single Judge itself held in Para-13 of the impugned order that BSF personnel are governed by different set of Act and Rules and, therefore, Annexure-A/6 which appears to be in relation to Army personnel would not apply.





16. Appellants have placed on record circular of an Office Memorandum dated 03.02.2000 (Annexure-R/3 attached with reply to writ petition), which regulates special benefits in cases of death and disability in service-payment of disability pension/family pension-recommendations of the Fifth Central Pay Commission. Specific averment made by the appellants that in the matter of grant of pension, the field is occupied and regulated by Office Memorandum dated 03.02.2000 (Annexure-R/3) has not been traversed by filing rejoinder.

17. Clause-III of the said Office Memorandum dated 03.02.2000 reads as below:-

"Disability Pension – for cases covered under categories B and C

(1) Normal pension and gratuity admissible under the CCS (Pension) Rules, 1972 plus disability pension equal to 30% of basic pay, for 100% disability.

(2) For lower percentage of disability, the monthly disability pension shall be proportionately lower as at present, provided that where permanent disability is not less than 60%, the total pension (i.e., pension or service gratuity admissible under the ordinary pension rules plus disability pension as indicated at (1) above) shall not be less than 60% of basic pay, subject to a minimum of Rs.2,500/-.

18. Thus, cases of death covered under Category 'A' would continue to be covered under the normal existing provision of Central Civil Services (Pension) Rules, 1972. As far as cases of death, which are covered under different other Categories like 'B', 'C', 'D' & 'E', the scheme of family pension/disability pension has been further elaborated in that circular.



19. Under I, Family Pension for categories 'B' & 'C' has been sated, whereas, under II, Family Pension for categories 'D' & 'E' has been stated. The two schemes are also extracted for ready reference as below:-

"I Family Pension- for categories B & C

(1) Distinction between widows without children or those with children, for determination of the quantum of Extra-ordinary family pension shall stand abolished. The quantum of monthly extra-ordinary family pension for all categories of widows shall be:-

(a) Where the deceased Government servant was not holding a pensionable post:

40% of basic pay subject to a minimum of Rs.1,650/-

(b) Where the deceased Government servant was holding a pensionable post:

60% of basic pay subject to a minimum of Rs.2,500/-

(2) In case where the widow dies or remarries, the children shall be paid family pension at the rates mentioned at (a) or (b) above, as applicable, and the same rate shall also apply to fatherless/motherless children. In both cases, family pension shall be paid to children for the period during which they would have been eligible for family pension under the CCS (Pension) Rules. Dependent parents/brothers/sisters etc. shall be paid family pension one-half the rate applicable to widows/fatherless or motherless children.

II Family Pension-for categories 'D' & 'E'

(1) Family pension in cases, falling under categories D & E shall be determined under the existing provision of Liberalised Pensionary Awards Scheme.

(2) If the Government servant is not survived by widow but is survived by child/children only, all children together shall be eligible for family pension at the rate





of 60% of basic pay subject to a minimum of Rs.2,500/-. Children allowance, as admissible now, shall stand abolished.

(3) When the Government servant dies a bachelor or as a widower without children, dependent pension will be admissible to parent without reference to pecuniary circumstances, at the rate of 75% of pay last drawn if both parents are alive and at the rate of 60% if only one of them is alive."

20. It would thus be clear that in cases covered by Categories 'B' & 'C', widows of the deceased personnel are entitled to monthly extraordinary family pension.

21. It is only in cases falling under Categories 'D' & 'E' that scheme allows the grant of pension under the Liberalized Pensionary Awards Scheme.

22. Though, none of the parties have filed along with their pleadings, the Liberalized Pensionary Awards Scheme, in order to justify the claim of grant of the Liberalized Pensionary Awards benefits, it has to be established that the death of deceased personnel is covered either under Category 'D' or Category 'E'.

23. Under Office Memorandum dated 03.02.2000 (Annexure-R/3) cases have been broadly categorized into five distinct categories for determining the compensation payable for death or disability, they are as below:-

"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."

24. According to the appellants, the case of death of BSF personnel, in the present case, is categorized under Category 'B'. However, the argument of learned counsel for the respondent No.1-widow is that it is covered under Category 'E'. This argument,





however, cannot be accepted upon careful reading and close scrutiny of the provisions contained in the Office Memorandum for the purpose of categorization in Category 'E'.

25. Admittedly, in the present case, the death of the BSF personnel had taken place while he was on duty on the borders. It has, therefore, been rightly categorized as death or disability due to causes which are accepted as attributable to or aggravated by Government service because the BSF personnel are exposed to extreme weather conditions and other occupational hazards. However to say that it would be a case covered by Category 'E', any one of the situations exhaustively enumerated in Category 'E' will have to be made out. For this purpose, several judgments have been relied upon by the learned counsel for the respondents.

26. The case of **Mrs. Manju Tiwari (supra)**, on facts, was a case of an Army personnel, who was deployed on Pakistan border during Kargil War. The claim of liberalized family pension as is applicable in the case of Army personnel was examined by the Court with reference to the peculiar provisions contained therein. Having held that unit of the deceased was deployed in "Operation Vijay" and, thus, it being an undisputed position that death was on account of participation in an operation in a war like situation, bringing it within the Category 'E' as applicable in that case.

27. The case of **Major Arvind Kumar Suhag (supra)**, on facts, was a case where the deceased Army personnel died during conduct of "Operation Vijay" at Kargil as his jeep met with an accident. The question which arose for consideration in that case was whether his case is to be categorized under Category 'E' of the scheme applicable to Army personnel. On facts, it was held that the death was while he



was deployed in an operation. On that basis, claim for grant of war injury pension in terms of scheme applicable in that case was allowed.

28. In another case of **J.P. Bhardwaj (supra)** also, that was a case relating to an Army personnel. In that case also, on facts, it was found that death had taken place due to accident of the vehicle while "Operation Rakshak-III" was in progress.

29. Relying upon the decisions in the cases of **Major Arvind Kumar Suhag (Supra) & Mrs. Manju Tiwari (Supra)**, it was held that the case was required to be categorized under Clause (i) of Category 'E' in Para 4.1 of the circular dated 31.01.2001, applicable in the case of Army personnel.

30. Thus, all the aforesaid decisions are completely distinguishable on facts itself. Interpretation to war like situation or death while in a notified operation was made a basis for categorization as battle injury.

31. In the present case, not only the scheme of pension is different, but various categories are not absolutely identical, though, bear resemblance on many aspects. Further, on factual aspects also, the case in hand and those which were considered in the cases of **Mrs. Manju Tiwari (supra), Major Arvind Kumar Suhag (supra) & J.P. Bhardwaj (Supra)** are completely different.

32. Reliance has been placed on another judgment of Delhi High Court in the case of **Ram Devi (supra)**, who happened to be widow of a constable in Border Security Force. That was a case where after returning from duty, the BSF Constable was found unconscious and later on, he was declared dead. The postmortem report revealed that death was as a result of 'Cardio Respiratory





Arrest' due to multi-organ diseases and in particular Liver Cirrhosis. A claim was made for ex-gratia compensation on the ground that the BSF personnel died while on active duty, therefore, he would be entitled to ex-gratia compensation as per Office Memorandum dated September 02, 2008. It would, thus, be seen that in that case, the claim was considered on the basis of Office Memorandum dated 02.09.2008, whereas, in the case in hand, the death of the husband of respondent No.1-writ petitioner had taken place much before coming into force of circular of 2008. While examining the scheme of Office Memorandum dated 02.09.2008 as also an earlier Office Memorandum dated 11.09.1998 with regard to grant of ex-gratia lump sum compensation, it was held 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.

33. This particular observation made in Para-20 of that judgment has been relied upon by the learned counsel for the respondents to submit that present should be treated to be a case of an accidental death because in this case also, the BSF personnel died while on duty. Even if, we accept this submission, that would at the most lead to categorization under Category 'C' of Office Memorandum dated 03.02.2000, but in any case, not one either under Category 'D' or under Category 'E' as claimed by the appellants. The scheme, as has been discussed hereinabove, provides for identical family pension for Categories 'B' & 'C'. In order to succeed in a claim for grant of Liberalized Pensionary Awards Scheme, it has to be established that the case is covered by Categories 'D' or 'E'.





34. In view of the above consideration, we are of the firm view that under the applicable scheme, the case of death of the BSF personnel was rightly categorized under Category 'B' and no case is made out for categorization under Category 'E', therefore, benefit of the Liberalized Pensionary Awards Scheme could not have been extended to respondent No.1-widow.

35. We have gone through the pleadings made by the respective parties and material available on record and are satisfied that as far as benefits of extra-ordinary pension payable in cases covered by Category 'B' has been actually extended to the respondent No.1-widow of the deceased and it is not the case of the respondent No.1-widow that even benefit of family pension for Categories 'B' & 'C' has not been accorded to her.

36. Learned counsel for the appellants have relied upon two decisions of the Hon'ble Supreme Court in the case of **Smt. Radhika Devi (Supra) & Kanchan Dua (Supra)**, in the case of **Kanchan Dua (supra)**, entitlement to benefits of liberalized family pension scheme was considered. In that case, on facts, it was found that in order to succeed in claim for release of pension under the Liberalized Pensionary Awards Scheme, benefits can be extended only to those troops in active operations against militants in terms of Para-1 of letter dated 24.02.1972. That was also a case of a military personnel. The judgments, which have been relied upon by the respondents namely; **Mrs. Manju Tiwari (supra)**, **Major Arvind Kumar Suhag (supra) & J.P. Bhardwaj (supra)** were also referred to in the aforesaid decisions and it was observed that though relief of liberalized family pension was granted by the High



Courts in those judgments, the High Courts have not examined the letter dated 24.02.1972 and Notification dated 07.05.1990.

37. Be that as it may, the cases dealt with in respect of Army personnel with reference to their own Rules and Regulations and Schemes of Liberalized Pensionary Awards cannot be made applicable in case of BSF personnel and in case of death of BSF personnel, Office Memorandum dated 03.02.2000 (Annexure-R/3) would be applicable and categorization can be claimed only under the provisions of the said Office Memorandum and not beyond that. Unless death is covered under Categories 'D' or 'E', claim for Liberalized Pensionary Awards Scheme cannot be sustained.

38. As far as compassionate appointment aspect is concerned, we find that the claim of the respondent No.1-widow was that her son should be granted compassionate appointment. The said claim was considered, but rejected by the State Authorities vide their communication dated 18.09.2007 (Annexure-5). The said communication made to respondent No.1-widow refers to Government circular dated 09.03.2005 and The Rajasthan Various Service (Amendment) Rules, 2002. It has been stated that once the dependent is eligible to get compassionate appointment, her right to compassionate appointment cannot be kept reserved to provide employment to other person/son as and when he attains eligibility. According to this communication, such right being considered for compassionate appointment can be reserved only when the widow/children are not in a position to immediately take up the employment on that day. On that basis, the respondent No.1-widow was offered compassionate appointment. This aspect was not at all taken into consideration by the learned Single Judge before issuing a





direction for grant of compassionate appointment. It is well settled that compassionate appointment can be granted only in accordance with the scheme of the compassionate appointment and not dehors the scheme of the compassionate appointment. Even before this Court, respondent No.1-widow failed to demonstrate by placing before the court relevant rules and regulations as also circulars that even if, the widow of the deceased is eligible for compassionate appointment, she has the option to keep her right to compassionate appointment reserved till her son attains age of majority. In the absence of any such provision, no relief could be granted to the respondent No.1-widow as claimed by her. The claim of compassionate appointment was raised way back in the year 2007. Therefore, as on today, no such benefit could be awarded as claimed by the respondent No.1-widow.

39. Though, this Court also noticed that respondent-State vide communication dated 18.09.2007 (Annexure-5) had offered the widow to take up employment for herself as she was eligible.

40. In view of the above consideration and analysis, we are unable to uphold the order passed by the learned Single Judge. The order is, therefore, set aside and the writ petition is dismissed.

41. Accordingly, the appeal is allowed.

(VINOD KUMAR BHARWANI),J

(MANINDRA MOHAN SHRIVASTAVA),ACTING CJ

Sanjay Kumawat-57