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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2684/2017**

RANJU DEVI

..... Petitioner

Through: Mr.Virender Singh Kadian, Advocate
versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms.Anju Gupta, Advocate with
Mr.Roshan Lal Goel, Advocate.
Mr.Vivek Kumar Singh, (DC LAW,
CRPF)
Mr.Deepak Kumar, SI CRPF

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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10.04.2019

Dr. S. Muralidhar, J.:

1. The present petition has been filed by the widow of late Assistant Sub Inspector ('ASI') (Ministerial) Shri Rakesh Kumar who served in the Central Reserve Police Force ('CRPF'). He died in a motor accident while on Casual Leave for one day on 16th February 2015. The prayer in the present petition is for a direction to the Respondents to grant the Petitioner Extra Ordinary Family Pension and Ex-Gratia lump-sum compensation.

2. The facts of the case are set out in the findings of the 'Court of Inquiry' ('COI') which had assembled between 28th February and 3rd March 2015 after visiting the place of incident.

3. The late ASI Rakesh Kumar was initially attached with the J & K Zone Hqr. CRPF. He was taken on the paper strength of Group Centre CRPF,

Srinagar with effect from 10th September 2014 and physically attached with the J & K Zone Hqr., CRPF Jammu. He was granted one days' Casual Leave on 16th February 2015 with permission to avail 15th February 2015 (as Sunday) and 17th February 2015 being a Government holiday.

4. Rakesh Kumar reached his home at Narnaul in Haryana in the forenoon of 15th February 2015. He informed his wife that although he had been sanctioned one days' casual leave on 16th February 2015 with permission to avail 17th February 2015 being a Government Holiday, he planned to return to duty one day in advance because of fog and trains running late on those days. On 16th February 2015 on his way to join duty, Rakesh Kumar called his younger brother, who insisted that he should attend a marriage function at village Khatoli Ahir. There was no bus service from Narnaul village Khatoli Ahir. Therefore Rakesh Kumar drove his own motorcycle. With his father-in-law sitting on the pillion, he proceeded on motor cycle to village Khatoli Ahir. This was as a part of the journey from Narnaul to Jammu via Delhi to join duty. This is because there were no train services from Rewari which was the closest railway station to Narnaul, to Jammu. Invariably passengers preferred to travel to Delhi to reach Jammu.

5. This much is clear that Rakesh Kumar was undertaking the journey as part of the journey to join his duty back in Jammu. The accident happened while he was on his motorcycle on 16th February 2015 and when a truck hit the motorcycle from behind at around 4.30 pm. Rakesh Kumar expired at the spot and the truck driver fled leaving the truck behind.

6. In the above scenario, the COI came to the conclusion that Rakesh Kumar should be treated as being on duty as the accident occurred when he was returning for duty from his leave station at public expense. Accordingly the COI recommended that the Petitioner's wife should be granted extraordinary family pension in addition to the other pensionary/financial benefits applicable to Government servants. However when the proposal was sent to the Department of Pension & Pensioners' Welfare, it was rejected on the ground that the death was not attributable to 'active service'. In other words the view taken was that the Petitioner had met with the fatal accident while he was on 'casual leave' and not on 'actual/active duty'.

7. The legal position in this regard is no longer *res integra*. In ***Madan Singh Shekhawat v. Union of India AIR 1999 SC 3378*** the Supreme Court was considering the grant of disability pension to a Sawar/Horse Rider attached to the Indian Army who met with an accident while alighting from a train in Rajasthan. The Appellant had been travelling from his station in Jodhpur to his home station on authorized Casual Leave granted to him. The Supreme Court liberally interpreted the words 'at public expense' and held as under:

"16. We, therefore, construe the words "at public expense" used in the relevant part of the rule to mean travel which is undertaken authorisedly. Even an army personnel entitled to casual leave may not be entitled to leave his station of posting without permission. Generally, when authorised to avail the leave for leaving the station of posting, an army personnel uses what is known as "travel warrant" which is issued at public expense, same will not be issued if person concerned is travelling unauthorisedly. In this context, we are of the opinion, the words, namely, "at public expense" are used rather loosely for the purpose of connoting the necessity of proceeding or returning

from such journey authorisedly. Meaning thereby if such journey is undertaken even on casual leave but without authorisation to leave the place of posting, the person concerned will not be entitled to the benefit of the disability pension since his act of undertaking the journey would be unauthorised.”

8. What weighed to the Court was that there was no allegation “that the Appellant while travelling to leave his station on the fateful day was travelling unauthorisedly.”

9. In the present case also, the COI has clearly found that the husband of the Petitioner met with the fatal accident while returning from his village to join duty at Jammu. Consequently, it cannot be said that he was not “on duty”. Even this expression has been liberally interpreted by the other Courts. In ***Union of India and another v. Ex-Naik Surendra Pandey 2015 (13) SCC 625*** the question was regarding the grant of disability pension to a Sepoy in the Indian Army’s Air Defence Corps who had been posted in the field area in J & K and was authorised to go on annual leave for a period of two months.

10. The Petitioner then started his homeward journey from Jammu, travelled to Hajipur by train. He boarded a bus from Hajipur to reach Patna to join his family and in that journey he met with an accident that resulted in a 20% disability. There the COI had written a finding that the accident and the resultant injury “was not attributable to military service.” Disagreeing with the above finding the Supreme Court held that “The proximity in point of time between the homeward journey that started from Jammu and the date when he met with the accident as also the distance between the place from

where the journey was started and the place to which he was travelling would give rise to a reasonable inference that the authorised journey had not ended when he met with the incident.” In that process the Supreme Court referred to the decisions in *Union of India v. Jujhar Singh (2011) 7 SCC 735*, *Madan Singh Shekhawat v. Union of India (supra)* and *Sukhwant Singh v. Union of India (2012) 12 SCC 228*.

11. In the considered view of the Court as far as the present case is concerned, since the husband of the Petitioner was proceeding from his hometown to Jammu to join duty and met with an accident in that journey, the accident should be held to be while he was ‘on duty’. In other words the denial to his legal representative of the extra ordinary family pension and ex-gratia amount on the ground that he was not on ‘active duty’ is unjustified.

12. In that view of the matter the impugned communication dated 29th May 2015 of the Department of Pension declining relief to the Petitioner is hereby set aside. A direction is issued to the Respondents to grant the Petitioner the Extraordinary Family Pension and Ex-Gratia lump-sum compensation within a period of 12 weeks from today but on the clear understanding that the Respondents will pay Simple Interest @ 12% per annum on the above amount due to the Petitioner from the date it was due till the date of payment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 10, 2019/sr