



GAHC010019372015

Page No.# 1/11



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4860/2015

SMT. DIPTI BORI
W/O LT. GOLAP BORI, VILL. KALYANPUR, P.O. BOKAKHAT, DIST-
GOLAGHAT, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, ENVIRONMENT and
FORESTS DEPTT., DISPUR, GHY-6

2:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS WL
ASSAM
BASISTHA
GHY-29

3:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS and HEAD OF
FORESTS FORCE
ASSAM
REHABARI
GHY-8

4:THE DIRECTOR
KAZIRANGA NATIONAL PARK
BOKAKHAT
ASSAM
PIN-785612

5:THE DIVISIONAL FOREST OFFICER
EASTERN ASSAM WILDLIFE DIVISION
BOKAKHAT
ASSAM
PIN-785612



6:THE TREASURY OFFICER
GOLAGHAT TREASURY
GOLAGHAT
ASSAM
PIN-785621

7:THE ACCOUNTANT GENERAL AandE
ASSAM
MAIDAMGAON
BELTOLA
GHY-2

Advocate for the Petitioner : MR.M DEKA

Advocate for the Respondent : MR.C BARUAH

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 04-08-2022

Heard Mr. S Hoque, learned counsel for the petitioner, Mr. D Gogoi, learned counsel for the respondents No. 1 to 5 being the authorities in the Environment and Forest Department of the Government of Assam, Mr. A Chaliha, learned counsel for the respondent No. 6 being the Treasury Officer, Golaghat and Ms. N Lohe, learned counsel for the respondent No. 7 being the Accountant General (A&E), Assam.

2. The husband of the petitioner Golap Bori was appointed as a Forest Guard as per the appointment order dated 18.12.1992 and was posted at Dimow Forest Camp under the Eastern Range, Agoratoli of the Kaziranga National Park. All along his career, the husband of the petitioner remained as Forest Guard in the Eastern Range, Agoratoli of the Kaziranga National Park.



3. On 30.10.2003 at about 7.30 a.m., the deceased husband of the petitioner went for anti poaching patrolling duty inside the Eastern Range, Agoratoli of the Kaziranga National Park by riding a departmental elephant in the Dimow area. In course of performing such anti poaching patrolling duty, the husband of the petitioner was attacked by a rhino because of which he was severely injured and was immediately rushed to Bokakhat Rural Hospital for treatment. After preliminary treatment, he was referred to Golaghat Kushal Konwar Civil Hospital and thereafter to the Dibrugarh Medical College and Hospital for better treatment, but he could not survive and died on 23.11.2003 at Dibrugarh Medical College and Hospital because of the injuries sustained while performing the duties.

4. On the death of the husband of the petitioner, the petitioner was sanctioned the regular family pension as per PPO No. BOK/SF/25061 dated 13.09.2004 of the Accountant General (A&E), Assam. As the husband of the petitioner was killed while he was discharging his duties, the petitioner claims for special family pension as per the provisions of the Office Memorandum (in short OM) dated 26.08.1985.

5. The OM bearing No. FMP.40/85/7 dated 26.08.1985 inter-alia provides that the Governor of Assam is pleased to order that the next of kin/relatives of the deceased regular Government servants, whether temporary or permanent, who are killed while being engaged in discharge of duties or for reasons connected with the discharge of duties be entitled to draw a special family pension from the date of death at the rate of full monthly salary including increments, dearness allowance and all other allowances as were admissible to the deceased employee at the time of his death. The special family pension would be equivalent to the last monthly pay and allowances that were drawn by the

deceased employee till the date on which the deceased employee would have normally attained the age of superannuation had he remained alive.

6. It further provides that the special rate of family pension under the said OM dated 26.08.1985 would be in substitution of the normal family pension admissible under Assam Services (Pension) Rules, 1969 (in short Rules of 1969) and not in addition to the normal family pension under such Rules. It also provides that from the date following the notional date of superannuation of the deceased employee, the family pension would be admissible at the rate which normally would have been admissible under the provisions of the Rules of 1969. Amongst others, the OM dated 26.08.1985 provides that the special family pension would be admissible to the widow in case of a male officer till her death or remarriage, whichever is earlier. The relevant portion of the OM dated 26.08.1985 is extracted as below:-

*“**No. FMP.40/85/7.** The question of providing adequate financial benefits to the relatives/ next of kin State Government servants killed in discharge of his/her duties has been engaging the attention of the Government. After careful consideration the Governor of Assam is pleased to order that the next kin/ relatives of the deceased regular govt. servants, whether permanent or temporary, who is killed while engaged in discharge of duties or for reasons connected with the discharge of duties, will entitled to draw a special family pension from the date following date of death of the govt. servant at the rate of full monthly salary including the increment, dearness allowances and all other allowances as were admissible to the deceased employee at the time of his/her death. This special family pension equivalent to last monthly pay and allowances shall be admissible and allowed to be drawn till the date on which the deceased employee would have normally attained the superannuation age had he remained in service. The special rate of family pension under this O.M. will be in substitution of the normal family pension admissible under the Assam Service (Pension) Rules, 1969 and not in addition to the normal family pension admissible there under. From the date following the notional rate of superannuation of the deceased employee the family pension would be admissible at the rates and under conditions at which it would have normally been admissible under the provisions of the A.S.(P) Rules 1969. No extraordinary family of the deceased employee in such a case.*

The special family pension under the O.M. will be admissible until the date on



which deceased would have attained the age of superannuation to the following relatives, as many applicable, according to the order of priority and conditions mentioned below:

- 1. Widow, in case of male officer, till her death or re-marriage whichever is earlier.*

.....”

7. According to the respondents, the provisions of the OM dated 26.08.1985 was abused by certain employees, who were killed in motor accidents or other kind of accidents including drowning etc. In the circumstance, a clarificatory OM dated 13.03.1989 was issued under the signature of the Commissioner and Secretary to the Government of Assam in the Finance Department, wherein the word 'killed' appearing in the OM dated 26.05.1985 was clarified. Accordingly, by the OM dated 13.03.1989, it was clarified that cases of death, injury, disablement caused due to accidents or otherwise covered by Assam Services (Extra Ordinary) Pension Rules, 1963 (in short Rules of 1963) are not entitled to special family pension in terms of the OM dated 26.08.1985. It was further clarified that only the families of the Government servants, who died while performing duties or in connection with discharge of duties as a result of attack by extremists, antisocial elements, etc., or during action against dacoits, smugglers, hostile or other antisocial elements would be entitled to the special family pension as per the OM dated 26.08.1985. The relevant portion of the OM dated 13.03.1989 is extracted herein below:-

“A reference is invited to this Department’s Office Memorandum No. FMP. 40/85/7 dt. 26.08.85 on the subject noted above, according to which special family pension at the rate of full monthly salary including increments, dearness allowances and all other allowances as was admissible to the deceased Government employee who is killed while engaged in discharge of his duties or for reasons connected with discharge of his duties was admissible. However, the word “killed” having not been defined clearly in the aforesaid O.M., a number of cases of death due to Motor accident/ other accidents/ drowning have been referred to Finance Department for sanction of Special Family Pension in terms

of the aforesaid O.M.

2. *It is now clarified that cases of death, injury, disablement caused due to accident or otherwise are covered by disablement caused due to accident or otherwise are covered by the Assam Services (Extra Ordinary) Pension Rule 1963 and are therefore not entitled to special family pension in terms of the aforesaid O.M. Only the families of Government servants who die, while performing duties or in connection with discharge of duties, as a result of attack by extremists, antisocial elements etc. or during action against dacoits, smugglers, hostiles or other antisocial elements will be entitled to the Special Family Pension in terms of the O.M. No. FMP.40/85/7 et. 26.8.85."*

8. In the instant case, the application of the petitioner claiming for special family pension stood rejected as per the communication dated 19.12.2014 of the Joint Secretary to the Government of Assam in the Environment and Forest Department made to the Principal Chief Conservator of Forest and Head of Forest Force, Assam wherein it has been provided that the petitioner Smti Dipti Bori, widow of deceased Golap Bori, ex Forest Guard is not entitled to special family pension as she is already drawing normal family pension. Pursuant to such communication dated 19.12.2014, the Additional Chief Conservator of Forest, ADM and Vigilance of Assam informed the Principal Chief Conservator of Forest, Assam that as per the letter dated 19.12.2014 of the Joint Secretary to the Government of Assam in the Environment and Forest Department, the petitioner would not be entitled to the special family pension. Being aggrieved, this writ petition is instituted.

9. A reading of the communication dated 19.12.2014 of the Joint Secretary to the Government of Assam in the Environment and Forest Department makes it discernible that the claim of the petitioner for special family pension had been rejected by providing the reason that she is already drawing normal family pension.

10. The said reasoning in the view of the Court is arbitrary, unreasonable and

an absolute non-application of mind, inasmuch as, entitlement to special family pension is subjected to the satisfaction of the conditions precedent for the purpose and not related to whether or not the person concerned is receiving the normal family pension. The OM referred above dated 26.08.1985 clearly provides that the next of kin or relatives of a deceased regular employee, whether permanent or temporary, who is killed while engaged in discharge of duties or for reasons connected with discharge of duties will be entitled to a special family pension and further the special rate of family pension under the said OM will be in substitution of the normal family pension payable under the Rules of 1969. As the OM dated 26.08.1985 itself provides that the special family pension will be in substitution of the regular family pension under the Rules of 1969, the reasoning provided by the Joint Secretary that the petitioner will be disentitled to special family pension as she is already receiving regular family pension would, therefore, have to be construed to be arbitrary, unreasonable and a non-application of mind.

11. Now, as regards the other issue as to whether the petitioner would be entitled to the special family pension, we refer to the provisions of the OM dated 26.08.1985, which provides that the next of kin or relatives of a deceased regular Government servant, whether permanent or temporary, who is killed while engaged in discharge of duties or for reasons connected with the discharge of duties would be entitled to a special family pension from the date following the date of death of the Government servant at a full monthly salary including increments, dearness allowance and all other allowances as were admissible to the deceased employee at the time of his death till the notional date on which the deceased would have otherwise retired from service had he been alive.



12. In the instant case, the deceased husband of the petitioner Gopal Bori was a Forest Guard who was discharging the duties inside the Kaziranga National Park and in course of his discharging the duties, was killed due to an attack by a rhino. Definitely, the manner in which the deceased husband of the petitioner died, would have to be accepted that he died while discharging his duties. But again, the OM dated 13.03.1989 clarifies the expression 'killed' to exclude such kind of death which may be caused by motor accidents or other accidents or drowning or who are covered by the Rules of 1963.

13. Definitely, on the facts of this case, the deceased husband of the petitioner had not died either due to a motor accident or other accident or drowning nor was he subjected to the Rules of 1963. The OM dated 13.03.1989 further provides that the entitlement of special family pension would be in respect of those Government servants, who died while performing duties or in connection with discharge of duties as a result of attack by extremists, antisocial elements, etc or during action against dacoits, smugglers, hostiles or other antisocial elements.

14. It is the stand of the respondents in the Environment and Forest Department that as because the deceased husband of the petitioner was killed in an attack by a rhino, therefore, he does not come within the purview of being killed as a result of an attack by extremists, antisocial elements nor he had died during action against the dacoits, smugglers, hostiles or other antisocial elements and therefore, the respondents are of the view that the petitioner would not be entitled to a special family pension.

15. We have noticed the provisions of the OM dated 13.03.1989, which already is extracted herein above and which provides for special family pension to Government servants, who died while performing duties or in connection with

discharge of duties as a result of attack by extremists, antisocial elements, etc. The said provision itself is an inclusive provision and not an exhaustive provision that death caused only by an attack of extremists or antisocial elements is included for special family pension and not a death caused by an attack by some other element although it may be in course of discharge of duties.

16. The expression 'etc' succeeding the expression 'attack by extremists and antisocial elements' makes it discernible that it is inclusive of other similar circumstances wherein a Government employee may be killed while performing his duties.

17. The dominant purpose of the provisions of the OM dated 13.03.1989 is that those Government servants who in course of discharge of their duties are subjected to being exposed to such extra risk which may result in getting killed in an attack while performing the high risk duties would be entitled for the special family pension and the instances provided in the OM dated 13.03.1989 are only indicative in nature and not exhaustive or limited to itself. A Government employee, who has to tackle the extremists or the antisocial elements, definitely faces an extra risk of their life in discharge of the duties. Similarly, a Forest Guard, who goes deep inside the wildlife sanctuaries and are exposed of being attacked by wild animals in course of their duties also face an equal extra risk of their life in course of discharge of their duties, if not more.

18. From such point of view, even going by the concept of Article 14 of the Constitution of India, a Forest Guard who face the extra risk of his life while discharging the duties deep inside the wildlife sanctuaries cannot be put in a different classification from that of other employees who in course of discharging their duties are subjected to face the extremists or the antisocial elements.



19. From the point of view of Article 14 also, it would be against the constitutional provisions of equality and also inappropriate not to include the risk that the Forest Guards take while discharging their duties deep inside the wildlife sanctuaries and get subjected to the risk of an attack by the wild animals, to be not included for the purpose of entitlement of special family pension under the OM dated 13.03.1989.

20. Accordingly, the provisions of the OM dated 13.03.1989 is interpreted to also include such cases where a Forest Guard or as a matter any other official of the wildlife department who may be killed in an attack by the wild animals while discharging their duties deep inside the wildlife sanctuaries.

21. In view of the above, the communication dated 19.12.2014 of the Joint Secretary to the Government of Assam, Environment and Forest Department declining the special family pension to the petitioner and the consequential communication of the Additional Chief Conservator of Forest, ADM and Vigilance, Assam dated 08.01.2015 are set aside.

22. The respondents in the Government of Assam in the Environment and Forest Department through the Commissioner and Secretary is directed to process the payment of special family pension to the petitioner from the date of death of her deceased husband Golap Bori in terms of the provisions of the OMs dated 26.08.1985 and 13.03.1989. The payment of special family pension be made effective from 01.10.2022.

23. The Supreme Court in its pronouncement O.P. Gupta vs- Union of India and others, reported in (1987) 4 SCC 328, in paragraph 24, it had been held as extracted:-

“Normally, this Court, as a settled practice, has been making direction for



payment of interest at 12 per cent on delayed payment of pension. There is no reason for us to depart from that practice in the facts of the present case."

24. In view of the aforesaid pronouncement of the Supreme Court, we further direct that in respect of the arrear family pension from the date of death of her husband up to September, 2022, the respondents to calculate the interest @ 12% per annum that the petitioner would be entitled for the denial of the special family pension.

25. The aforesaid exercise for payment of the arrear special pension be completed by the respondents within a period of three months from the date of receipt of a certified copy of this order.

The writ petition is allowed as indicated above.

JUDGE

Comparing Assistant