

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On : July 13, 2016*
Judgment Delivered On : July 26, 2016

+ **WP(C) 9357/2014**

RAJESH SHUKLA Petitioner
Represented by: Ms.Rekha Palli, Sr.Advocate
instructed by Ms.Rajeshwari
Nivurattirao Reddy and Mr.Puran
Singh, Advocates

versus

UNION OF INDIA & ORS. Respondents
Represented by: Mr.Manish Moha, CGSC with
Mr.Shivam Chanana and
Ms.Priyanshu Sinha, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The petitioner was enrolled as a Constable with CRPF and in the month of March 19, 1992 was transferred to the 80th Battalion stationed in Batala, in the State of Punjab. Terrorism was at its peak in the State of Punjab. As the sun was setting, information was received that the Deputy Chief of Khalistan Commando Force (Zaffarwal), Khajan Singh s/o Vasan Singh has taken shelter in a farm house in village Satowali. This information was received by the SHO of P.S. Ghuman. A search of the area was organized. Apart from the local police, two platoons of CRPF: E/80 and B/80 were to assist the local police. As the members of the two

platoons crossed village Langiawali and were proceeding towards village Talwandi, just at the outskirts of village Langiawali, from the house of one Mangal Singh, the police personnel and the CRPF personnel came under very heavy fire. The police personnel and CRPF personnel took position and returned the fire. The petitioner sustained life threatening four bullet wounds and Ct.Randhir Singh sustained one bullet wound. These facts are admitted by both sides.

2. But under what circumstances during the combing and flushing operation the petitioner sustained the bullet injuries and whether he exhibited exceptional courage and/or conspicuous devotion to duty is in dispute. The petitioner fights for not only an honour but even a gallantry medal, and if he succeeds, the petitioner would be entitled to a monthly sum, which we were given to understand at the hearing of the petition would be about Rs.4,000/- per month.

3. The policy guideline dated March 01, 1951, as amended on July 28, 2006, envisages a Presidential Police Medal as also a Police Medal to be awarded to those members of the police force or a Central Paramilitary Force who have performed acts contemplated by the two clauses of the policy as per which a Presidential Police Medal or a Police Medal could be awarded.

4. Vide notifications dated June 03, 2010 and May 24, 2011, the Police Medals were awarded even for past acts of gallantry. The petitioner has been in constant communication with the Ministry of Home Affairs pleading that his entitlement to be fairly considered for award of either a Presidential Police Medal or a Police Medal has not been accorded the due appraisal in light of the material gathered by the police personnel in Punjab who investigated the entire incident. The respondents claim that they have performed their duty and after appraising the material gathered have opined

that no case is made out to award the petitioner either a Presidential Police Medal or a Police Medal.

5. Vide the impugned order dated July 15, 2014, the petitioner has been conveyed the decision that he would not be honored with the medal.

6. The impugned order is bereft of reasons and thus we reproduced the reasons given in the counter affidavit. Conceding to the incident and the petitioner suffering four bullet wounds in his abdomen, one of which damaged the spine of the petitioner, during the incident the respondents plead that no act of bravery was exhibited by the petitioner. It is pleaded that the two platoons of CRPF personnel were under the command of Assistant Commandant Mukh Ram Yadav and came under heavy fire. During this heavy exchange of fire the petitioner and one Ct.Randhir Singh tried to cover one terrorist who was trying to escape and in the process suffered injuries. It is pleaded that the FIR lodged after the incident was silent about the role of the CRPF personnel and in what manner the terrorist was neutralized, meaning thereby the petitioner did not exhibit nor perform any act of exceptional courage.

7. Record shows that the petitioner suffered four bullet injuries in his abdomen, of which one hit his spine. Concededly this was during an operation to flush out a dreaded terrorist when the force personnel came under very heavy fire. The claim is under a policy and thus it must be accorded a due appraisal.

8. What are the virtues which are worthy of honour and reward are spelt out in the policy decision dated March 01, 1951 and we reproduce the exact language from the notification. Pertaining to the Presidential Police Medal, the guideline stipulates :-

“The medals shall only be awarded to those who have either performed acts of exceptional courage and skill or

exhibited conspicuous devotion to duty as members of police forces and central police/security organizations within the territory of India.”

9. Pertaining to the Police Medal, the guideline stipulates :-

“The medal shall be awarded to only those members of the recognized police force or central police security organization within the territory of India, who have performed service of conspicuous merit and gallantry.”

10. Two virtues are recognized by the policy for grant of a President’s Police Medal : (i) an act of exceptional courage and skill; and (ii) exhibiting conspicuous devotion to duty as members of the police force. Pertaining to the Police Medal two virtues are recognized : (i) exhibiting conspicuous devotion to duty; and (ii) gallantry.

11. Whereas exceptional courage and gallantry could be treated as synonyms and thus the language used as a virtue for the President’s Police Medal or the Police Medal may be different, but one can safely say that one virtue recognized is valour and a distinct virtue recognized is exhibiting conspicuous devotion to duty.

12. Since we do not have any reasons for the decision denying either a Presidential Police Medal or a Police Medal to the petitioner, the only clue we have is from the counter affidavit, and we find that the reason is that the FIR registered soon after the incident is silent upon the role played by the petitioner.

13. It is trite that information recorded in an FIR is always treated as a brief narration of the facts and is not treated as the last document on the subject. That apart, the FIR records that while searching the area, the police party and CRPF personnel came under heavy fire from the farmhouse of one Mangal Singh of village Langiawali, at which the police personnel and CRPF personnel took position and returned the fire.

Meaning thereby there was no casualty suffered when the initial burst of firing by the terrorists took place. The FIR records that after the force personnel came under heavy fire the members took position. Two terrorists were seen running towards village Sathowali. Due to the firing by the terrorists ASI Jagdev Singh, Ct.Randhir Singh and Ct.Rajesh Shukla i.e. the petitioner were injured. The terrorists entered the house of one Mahender Kaur and took position in a bunker constructed there. In the exchange of fire the terrorists were killed. During the operations the Sr.Superintendent of Police, Batala and Superintendent of Police (Operations) also reached the spot. The gunman of the Senior Superintendent of Police : ASI Rajvir Singh also lobbed grenades. After the firing from the opposite side was over the dead body of terrorist, who was identified as Khajan Singh, was recovered. He was clutching on to a loaded AK-47 rifle having 12 rounds therein. A stock bomb and 18 live rounds were recovered. Some youth managed to escape.

14. But concededly, immediately after the FIR was registered a case diary of the incident was also recorded and it would be profitable to quote exactly from the case diary as to what happened :-

“They also started advancing forward to engage the terrorists. While the parties were moving ahead No.900800167 Ct.Rajesh Shukla saw one terrorist entering into the sugarcane fields. In order to stop the terrorist from escaping he ran and tried to cover the terrorist to prevent him from escaping. The terrorist fired at Ct. Rajesh Shukla who received four bullet injuries in his stomach. In spite of being injured Ct.Rajesh Shukla returned fire and injured the terrorist. One more member of the platoon received a bullet injury in his left arm. Not caring about the injuries sustained, Ct.Rajesh Shukla and Ct.Randhir Singh stopped the terrorists from escaping by covering from the front. The terrorist was thus forced to enter into the house of one Mahinder Kaur.”

15. The FIR, inspite of being cryptic, highlights that the petitioner : Ct.Rajesh Shukla was not injured when he was moving with the members of the platoon i.e. he sustained the bullet injuries when the terrorists suddenly opened the fire. The FIR records very clearly that as the terrorists opened fire, the police personnel and CRPF personnel took position and returned the fire. It further records that the police personnel and CRPF personnel started advancing forward to engage the terrorists. But the case diary records facts with clarity, in that, it records that while moving ahead the petitioner saw one terrorist enter the sugarcane fields. If left unchallenged the terrorist would have escaped. The petitioner engaged the terrorist and it was at this point of time that the petitioner received four bullet injuries. The case diary records that notwithstanding the injuries received, the petitioner continued to engage the terrorist and was assisted by Ct.Randhir Singh who was also injured and the result was that the terrorist had to retreat and find a safe haven in the house of one Mahinder Kaur, in which he was trapped by the members of the force and killed.

16. The only blurring of the fact in the FIR is : whether after the petitioner, on seeing the terrorist trying to escape, engaged him in the fight and in the process got injured or had no further role to play in the ongoing operation. But the entry in the case diary clearly records that the petitioner had played an ongoing role in the operation inasmuch as it records that notwithstanding the injuries received by him the petitioner continued to engage the terrorist and was assisted by Ct.Randhir Singh who was also injured and the result was that the terrorist had to retreat and find a safe haven in the house of one Mahinder Kaur, in which he was trapped by the members of the force and killed. A letter dated August 07, 1993 written by the Senior Superintendent of the Police, Batala brings out that

notwithstanding sustaining life threatening bullet injuries, the petitioner actively advanced towards the terrorist, and so did Ct.Randhir. The letter records that undaunted by the injury, the petitioner continued to bravely fight the terrorist. As noted hereinabove the case diary records that the continued engagement by the petitioner and Ct.Randhir forced the terrorist to retreat into the house of Mahinder Kaur, where he was cornered and shot dead.

17. Now, what the Senior Superintendent of Police wrote on August 07, 1993 is not what he learnt from others much after the incident. His knowledge is virtually contemporaneous, inasmuch as the FIR records that when the terrorist had been pinned in the house of Mahinder Kaur, the SP Operations and the Senior Superintendent of Police, Batala also reached the spot and ASI Rajbir Singh and the Gun man of the Senior Superintendent of Police lobbed grenades inside the house of Mahinder Kaur. Thereupon firing stopped from the other side and during search the body of Khazan Singh, a dreaded terrorist was recovered. One AK-47 rifle having 12 live rounds, lose ammunition being 18 live rounds and one stock bomb was recovered from near the dead body of the slain terrorist.

18. Members of the Armed Forces, when committed to a task, cannot compromise and thus merely participating in an anti-terrorist activity and getting injured may not be enough for a member of an Armed Force to claim that he had acted with valour or shown exemplary devotion to duty. But where the unrelenting devotion to the standard of duty evinces an absolute loyalty to the cause i.e. the force personnel not letting the task go until it has been accomplished in spite of being grievously injured would take the acts away from merely performing ones duty and lead the acts towards valour or devotion to duty. Such commitment by an armed officer who displays unwavering readiness in the hour of the need and who

remains undeterred by the fear of losing his life while defending the nation against enemies is truly representative of a conspicuous devotion to duty. Engaging in warfare with precision is a skill acquired through training, but dedication to duty, resilience and courage in the face of death are critical traits of an honourable officer. Such officers remain bound to the nation's call to duty both in war and peace, making significance sacrifices and unselfish commitments. Even amidst uncertainty and doubts of whether they would live to see a new day, their respect for service and commitment to willingly support their comrades, should duty call is truly exemplary and distinguishes such officers from the ordinary. It is these officers who are indeed worthy of the highest regard, respect and honour and their brave and relentless efforts should never be forgotten.

19. Devotion to duty is a virtue of great importance. Devotion to duty may be exemplified even in small actions. One need not be a hero to do brave deeds. A duty is what is due from a person with reference to the position held and the legal obligation cast. By virtue of the position held a person is bound to do certain things. Thus merely performing ones duty would not entitle a person to a higher credit. But where there is a devotion in the duty, the person discharging the duty would be entitled to a higher credit. A strong attachment akin to a religious devotion with complete detachment from the loss which a person may personally suffer would take the performance of the duty towards performing the duty with devotion.

20. Understanding valour and exhibiting conspicuous devotion to duty, with reference to the facts of the instant case we find that the respondents have not kept in mind the distinction between performing acts of exceptional courage and exhibiting conspicuous devotion to duty. The respondents had treated as if the entitlement was only if the acts performed evinced an exceptional courage. Even this evaluation is premised only on

the contents of the FIR, overlooking the entry made in the case diary as also the recommendations made by the Senior Superintendent of Police, Batala who had joined the operation when the terrorists had not been silenced. The respondents had treated as if the petitioner was injured when the terrorist indiscriminately fired. This is not so. The petitioner was injured when he engaged the terrorist whom the petitioner saw fleeing into the sugarcane fields. As the petitioner fired at the terrorist, the terrorist returned the fire. The petitioner suffered four bullet injuries. He did not relent. He continued to inch forward and fire at the terrorist who was forced to retreat. This aspect has been completely overlooked. The result was that the terrorist could not escape and was shot dead by the other members of the force.

21. It is settled law that while exercising a discretionary power all relevant facts necessary to take the decision have to be noted and properly weighed. If the discretion is exercised in a casual manner it would vitiate the decision. In the instant case the discretion to be exercised has civil consequences; a financial benefit which shall enure to the petitioner for all his life. It is not a medal alone. That apart, society owes a debt of gratitude to the brave. A nation which honours the sacrifice and bravery honours itself. By acknowledging and endorsing acts of bravery, sacrifice and exemplary devotion to duty a nation fosters and encourages similar acts from its citizens and sets high standards of conduct in public affairs. A brave soldier needs to be recognized for his commitment to serve the nation with dignity and honour. It would indeed be a betrayal by the society if a soldier deserving a gallantry is denied the same. A right created must require its due redemption.

22. We dispose of the petition quashing the impugned communication dated July 15, 2014 and direct the competent authority to take benefit of

our present decision and observations made herein. Relevant facts to be kept in mind while taking the decision have been succinctly brought out by us. The competent authority would take into account not only the FIR, but the fact that it records that the ongoing operations were witnessed by the Senior Superintendent of Police, Batala. It would also take into account the entry made in the case diary and the personal recommendations made by the Senior Superintendent of Police who had witnessed the petitioner's continued engagement with the terrorist in spite of the petitioner being grievously injured forcing the terrorist to retreat, thereby preventing his escape; ultimately leading to the terrorist being liquidated. It would be separately considered whether the acts of the petitioner evinced exceptional courage/gallantry or disjunctively, exhibited conspicuous devotion to duty. The reasoned decision would be conveyed to the petitioner and if either or both are found the petitioner would be recommended for either a Presidential Police Medal or a Police Medal. Necessary financial benefits shall then be accorded to the petitioner.

23. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JULY 26, 2016
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