

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-27085-2021 (O&M)
Date of decision: 26.07.2024

Pushplata

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Gurpreet Singh, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana

AMAN CHAUDHARY, J.

1. The prayer made in the present petition is for directing the respondents to grant ex-gratia amount of Rs.10 lakh to the petitioner in terms of policy dated 15.06.2001, Annexure P-9 on account of death of her husband, declared as 'battle casualty', as also to give compassionate appoint to any member of his family in terms of policy dated 28.09.2018, Annexure P-8.

2. The facts that remain undisputed as stated in para 2 of the petition and admitted being matter of record in the written statement, are that the husband of the petitioner, late Cfn Ashok Kumar, enrolled in the Indian Army on 19.03.2001, was posted in Operation Area in Jammu and Kashmir ('Op Rakshak'). On 24.05.2006 at 9.15 hours, while on sentry duty at Sitni Firing Range, Nagotra (J&K), he died on account of a gunshot wound (GSW) abdomen, due to accidental discharge of his personal weapon.

3. The husband of the petitioner was classified as a 'battle casualty' by the Integrated Headquarters of MOD (Army) vide order dated 16.11.2006, Annexure P-1. Consequently, the application filed by his wife-the petitioner

herein, before the Armed Forces Tribunal was allowed vide judgment dated 23.11.2017, Annexure P-2 and liberalized family pension was granted, by referring to the finding of Court of Inquiry in the matter, whereby his death was declared as 'battle casualty'.

4. The request of the petitioner made through serving a legal notice dated 08.09.2021, to grant the ex-gratia amount, was rejected by Welfare Officer, District Sainik and Ardh Sainik Welfare Department, Jind-respondent No.3 vide reply dated 12.10.2021, Annexure P-7, on the premise that the terms and conditions of the policies for ex-gratia were not fulfilled, as also no application for compassionate appointment was submitted. Further, the same was only given to the family members of those martyrs whose death occurred during active operational duties, whereas that of her husband was due to accidental discharge of weapon, while being on guard duty.

5. This Court in **Smt.Santosh vs. Union of India and others**¹, wherein the Army personnel posted in State of Jammu & Kashmir as Havaldar, died of a heart attack, held his wife entitled for ex-gratia compensation, relevant paras whereof read thus:

“3. The sole question which needs to be considered is whether the death of the husband of the petitioner falls in any of the categories notified by the Government whereunder the petitioner is entitled to any other benefit. The petitioner has relied upon three Government policies (Annexure P-3, P-4 and P-5). Annexure P-3 is the policy dated 30.9.99 issued by the Government of Haryana. The relevant portion of the aforesaid policy reads as under :-

"...Haryana Govt. has decided that with effect from 1.4.1999 the Exgratia grant/compensation to the families of the Defence Services Personnel and of Para Military Forces who lie in harness in the performance of their bonafide official duties while serving in operations like Kargil and other sectors shall be Rs. 10 lacs for all categories namely Officers, Junior Commissioned Officers and other ranks and to the disabled as explained under for all categories depending upon the percentage

¹ (2010) 1 SCT 518.

of disability as assessed by concerned authorities irrespective of the fact whether they are retained as welfare measure or boarded out...."

4. The aforesaid policy was followed by policy dated 15.6.2001 (Annexure P-4) which reads as under:-

"1. XX XXX XXX

(a) A Reward Money of Rs. Ten lac in recognition of acts of bravery, gallantry and sacrifice would be paid to the families of those who Die during an enemy action in International War or such war like engagements, which are specifically notified by the Ministry of defence, Govt. of India. This would be in addition to whatever exgratia relief is admissible under Govt. of India instructions.

(b) Exgratia will be admissible to the families of those defence personnel who hail from Haryana and get killed in militant encounters and declare as battle casualties as per amounts given in Annexure-A and conditions of eligibility given in Annexure B...."

5. In the first policy, it is provided that exgratia compensation be paid to the families of the defence service personnel and para military forces who died in harness in performance of their bonafide official duties while serving in operations like Kargil and other sectors. In the subsequent policy letter, such benefits are payable to such of the officials who earned recognition of acts of bravery, gallantry and sacrifice and who died during an enemy action in International War or such war like engagements, which are specifically notified by the Ministry of Defence, Govt. of India. Such ex gratia is also admissible to families of defence personnel who hail from Haryana and get killed in militant encounters and is declared as battle casualties. Similar instruction have been issued by the Government of India vide its letter dated 22.9.1998 wherein a different kind of compensation has been provided under following categories :-

"..... a) Death occurring due to accidents in the course of performance of duties

:5.00 Lakhs

b) Death occurring in the course of performance of duties attributable to acts of violence by terrorists, anti-social elements etc.

:5.00 Lakhs

c) Death occurring during (i) enemy action in international war or border skirmishes and (ii) action against militants, terrorists extremists etc.

:7.50 Lakhs"

6. I have heard learned counsel for the parties. No doubt, the petitioner's husband was posted at Border in a remote area and was member of the Operation Karma, but he died on account of heart failure while discharging his duty in Gore Sector which is known as a coldest place. At the time of his death, the petitioner was not engaged in any military action, though part

of the Operation Karma and posted at the Morcha. The entire stand of the respondents that he died of heart attack. The fact that he was part of the Operational Unit and was posted at the Line of Control in a Morcha is not disputed. Though he did not die in an encounter or in the battle, but he was in the battlefield. His case is, however, not covered by the Government instructions, issued by the Ministry of Defence (Annexure P-5) whereby the ex gratia is attributable to acts of violence by the terrorists and anti-national elements and during enemy action in international war or border skirmishes and action against militants/terrorists/extremists. The case of the husband of the petitioner also does not fall under the Government instructions dated 15.6.2001. However, the Government instructions dated 30.9.1999 provides for exgratia compensation to the families of defence personnel who died in harness in the performance of their bonafide official duties while serving in operation like Operation Karma and was posted at the Line of Control in a Morcha. He was performing a bona official duty and died in harness while performing such duty. It is also admitted position that he died due to severe cold in the area. Such a situation cannot be divorced from the performance of the bonafide duty. It is not necessary that he should die by a bullet of the enemy or on account of any injury or other factor. Another aspect of the matter which cannot be ignored is that the Government of India instructions even provides for payment of compensation where death occurs due to accident in course of performance of duty. The accident does not mean only vehicular accident but has wider connotation. It can be of any kind of accident. The petitioner's husband suffered on account of severe cold while discharging his duty and thus his case falls within the put purview of Government instructions dated 30.9.1999.

7. In view of the above, this petition is disposed of with a direction to the respondents that the petitioner be paid exgratia compensation in terms of the Government instructions dated 30.9.1999 (Annexure P-3) within a period of three months from the date of receipt of a certified copy of this order.”

6. In the case of **Major Arvind Kumar Suhag (retired) vs. State of Haryana through the Secretary in Charge, Defence Services Welfare Branch, and others²**, the petitioner, who had suffered 100% disability in a motor transport accident while posted in Kargil area, was declared a battle casualty and this Court allowed the petition, despite the rejection to grant ex-gratia being negligence on his part. The observations in this regard read thus:

“3. The learned counsel states that the casualty taking place in

² 2010 (4) SCT 395.

an operational area itself shall not enable a person to obtain the benefit. The clear expressions are that no type of casualty except the battle casualties or battle accidents are covered under the policy of the year 1999. If we must give the expression battle casualty any meaning, I would understand it to mean to a situation where a person while actively involved in the military service in an area, which is a battle zone suffers an injury, then it shall be a battle casualty. In fact, the certificate issued by the Additional Directorate General characteristic the injury suffered by the petitioner as a battle casualty. If an entitlement to a benefit under ex gratia policy has to be applied, the Government ought not to be looking for any certification more than how the army itself has treated the injury as having arisen. If there is, therefore, a certificate that the petitioner has suffered a battle casualty (see para 1 above), to take a different view and stonewall the claim of the petitioner from obtaining a benefit of the policy will make meaningless the beneficent and lofty objective which the policy prefers. A State cannot drive a person, who claims a benefit under the policy for a fulfilled adjudication in a Civil Court to ascertain the nature of injury, so long as the policy statement itself does not require any specific mode of proof. There could be no better proof than how the Army has itself perceived the injury as having resulted and that ought to be sufficient for the State to apply its Policy. The claim of the petitioner is perfectly justified and the statement in defence refusing to extend the benefit on a specious plea that the petitioner was negligent in his conduct that led to his injuries and that again the injury was not a battle casualty, are meaningless defenses that have to be only discarded as unworthy of acceptance.

4. The writ petition is, therefore, allowed as prayed for. The amount which is granted under the policy shall be disbursed within six weeks from the date of receipt of copy of this order, failing which the amount shall bear interest @ 9% from the date of his claim.”

7. The Division Bench in **Smt.Daljit Kaur vs. Union of India**³, wherein the son of the petitioner had died due to accidental discharge of his rifle while he was on duty in Counter Insurgency Field and Operation area (Operation Rakshak), held her entitled to ex-gratia amount, relevant paras whereof read thus:

“13. Even otherwise, a perusal of the instructions clearly shows that the compensation is intended to provide an additional insurance and security to the employees who are required to function under trying circumstances and are exposed to different kinds of risk in the performance of their duties. The provisions being beneficent in nature, were required to be

³ 2003 SCC Online P&H 513.

liberally construed by respondent No. 2. Even if there was a default or contributory negligence on the part of the deceased, the same was required to be ignored as it is specifically so provided in the instructions in condition No. 3. The impugned order smacks of arbitrariness and total non application of men. It is cryptic in nature. The quasi judicial authorities exercising powers with far reaching consequences, are required by law to pass well reasoned speaking orders in support of their decisions. We are constrained to observe that the order passed by respondent No. 2 is woefully lacking any cogent reason in support thereof.

14. On facts, it deserves to be noticed that both the inquest report and the Court of inquiry, have held that the death has occurred due to accident. It has been held that the death has occurred whilst Amandeep was on duty. It has also been held Amandeep was performing duty in insurgency Area popularly known as “Operation Rakshak”. It has been categorically held that his death is attributable to military service. These findings have been confirmed by the Competent Military Authority in the field, Brig. Harendra Mohan, Such being the position, we are unable to comprehend how the grant of ex-gratia lump sum compensation could have been declined to the petitioner.”

8. A beneficial provision must be meaningfully and liberally construed, so as to advance its object, being the intention of the rule making authority, to give its full effect and not to restrict or to deprive.

9. This Court in **Sharanjit Kaur (Dr.) vs. State of Punjab**⁴, wherein the petitioner was declined the benefits of the policy on the ground that her husband had died in a road accident on his way back from Mamun after attending a conference, thus his death was termed as ‘physical casualty’ and not ‘battle casualty’, held there being no distinction between the two as per Rules, granted her an amount of Rs. 5 lakhs or she would be allotted residential plot in a colony set up by PUDA at the reserved price and the said amount shall be paid towards the price of the plot out of the relief fund, along with an amount of Rs. 2 lakhs by way of ex gratia as contemplated under the rules.

10. The additional objection taken in the written statement filed to the present petition, that since her husband belonged to the State of Punjab at the time

⁴ 2001 SCC OnLine P&H 621

of recruitment, was not entitled to any benefit under the policies of Haryana Government, is not only in the teeth of law laid down in **Mohinder Singh Gill vs. Chief Election Commr.**⁵, but even if considered, is untenable in the wake of the averments made by the petitioner in paras 12 to 14, having been duly admitted in corresponding paras of the written statement as a matter of record, that related to he hailing from State of Haryana, which stood substantiated by Annexures P-10 to P-12, being the communication from Secretary, Haryana Vidhan Sabha conveying that his demise was condoled, as he belonged to District Jind and eligibility of his son for scholarship, etc.

11. The harsh realities faced by soldiers posted at regions not only of high-altitude but where there is lurking danger to life, being operational field infested with insurgency, cannot be lost sight of. When the Courts found it unfathomable as to how while implementing the policy, logic was being stretched to illogical limits, just to deny benefits regarding men in uniform, it extended relief thereof to the families of soldiers who died in notified operations even though due to falls or accidents or cardiac arrests. Incidents of such a nature are not far and few but just a tip of the iceberg. In an intense atmosphere prevailing in these areas, a death that occurs even due to an accidental discharge of a weapon is way different than an incident of that kind that may have occurred in a peace location. The above coupled with the fact of the death of the husband of the petitioner, having been classified as ‘battle casualty’, by the competent authority, tilts the scales of justice in her favour for due consideration of the claim.

12. On a conspectus evaluation of the matter, the present petition deserves to be and is hereby allowed. The respondents are directed to grant the ex-gratia amount in terms of the policy dated 15.06.2001, Annexure P-9 to the petitioner, with further directions to consider the case for compassionate

⁵ (1978) 1 SCC 405.

appointment in terms of policy dated 28.09.2018, Annexure P-8. Needful be done within a period of two months from the date of receipt of a certified copy of this judgment.

13. Pending applications, if any, stand disposed of.

(AMAN CHAUDHARY)
JUDGE

26.07.2024
dinesh/ashok

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No