

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

CWP No.6815 of 2003 (O&M)

Date of decision:24.09.2016

Jagroshni Devi

....Petitioner

Versus

Union of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Anant Goyal, Advocate,
for the petitioner.

Mr. Sunil Kumar Sharma, Advocate,
for the Union of India.

Mr. Anil Mehta, DAG, Haryana.

P.B. BAJANTHRI, J. (Oral)

CM No. 12066 of 2016

This application under Section 151 CPC has been filed on behalf of the applicant-respondent No. 1 for modifying order dated 14.09.2016 and to waive off the cost imposed.

Heard. Matter is of the year 2003 and it relates to grant of ex-gratia amount to legal representatives of deceased army person and there was no assistance in the matter on the last occasion. In fact on 02.09.2016, it was made clear that matter would not be adjourned on the fixed date. Despite that none appeared on 14.09.2016.No ground is made out for modification of order dated 14.09.2016 and for waiving off the cost. Accordingly, the CM stands dismissed.

CWP No. 6815 of 2003

In the instant writ petition, the petitioner is seeking a writ of mandamus directing the Central Government as well as State of Haryana to grant financial benefits by way of ex-gratia as permissible

under the Central Government to the tune of ₹ 7.50 lakh instead of ₹ 5 lakh from the Central Government and further direction to the State of Haryana to grant ₹ 10 lakh from the Haryana Government as ex-gratia.

The petitioner's husband is stated to have died on 23.10.2000, while he was in operation FALCON.

The learned counsel for the respondent-UOI submitted that the petitioner has been paid a sum of ₹ 5 lakh as ex-gratia amount, having regard to the nature of the petitioner's husband death on the ground that deceased army person did not died in enemy action in international war or border skirmishes and action against militants, terrorists and extremists etc so as to grant him ₹ 7.5 lakh. He is entitled to only ₹ 5 lakh as ex-gratia with reference to the fact that deceased army person died in an accident.

The learned State counsel resisted the claim of the petitioner contending that the deceased army person is not entitled for ₹ 10 lakh ex-gratia since the scheme as on that date do not provide for ex-gratia of ₹ 10 lakh to an army person, who died in an accident. Ex-gratia of ₹10 lakh would be extended or granted only under circumstances where the army person died in enemy action. Therefore, the petitioner is not entitled to ex-gratia amount of ₹ 10 lakh from the State of Haryana.

Learned counsel for the petitioner submitted that as per Regulation 520 of the Defence Services Regulations, the competent authority to declare nature of death of army person, whether

disability or death was attributable to military service and whether it occurred on filed service vests with the Commanding Officer. The deceased army person Naik Bhagirath died on 23.10.2000 under operation of FALCON and with reference to note No. XII of para 4 of SAO 8/S/85 and para 9 of the Government of India, Ministry of defence letter No. A/67804/Gen- 2000-2005/GS/MT AAW dated 5.4.2000 held that deceased army person be treated as battle causality for financial purposes. The same was certified by the Major General, GOC that deceased army person be treated as battle casualty "OP FALCON and be attributed to military service in filed". Special army order 8/S/85 vide Annexure A note No. 4 and 12 reads as follows:-

"(4) Accidental injuries and deaths occurring in action in an operational area will be treated as battle casualties.

(12) Casualties taking place while carrying out battle inoculation/training will be treated as physical casualties for statistical purposes and battle casualties for financial purposed (Added vide corrigendum to SAO 8/S/85 on 15 May 1991)."

Learned counsel for the petitioner further submitted that the State of Haryana revised the policy instructions regarding payment of ex-gratia grant to the families of the armed forces personnel belonging to Haryana State in which para 3 reads as follows:-

*"The grant of ex-gratia admissible under the Policy/instructions shall be given in all cases of "**Battle Casualty**", as declared by the Defence Authorities, irrespective of any operation or any specified area of operation, including contingencies like motor transport accident, heart attack, air crash, accident at sea and natural calamities etc, under circumstances which demand exceptional courage and decisions, towards performance of their duties which are declared Battle Casualty by the Army Authorities."*

Even though it is prospective in nature, however, he contends under what circumstances ex-gratia can be granted has been stated. In view of these facts and circumstances the learned counsel for the petitioner submitted that the petitioner is entitled to ₹ 7.5 lakh from the Union of India and ₹ 10 lakh from the State of Haryana as ex-gratia amount along with the interest.

The respondent-UOI is directed to re-consider the claim of the petitioner with reference to Annexure P-4 and P-6 read with regulation No. 520 (D) of Defence Services Regulations, which empowered Commanding Officer to declare an army person who died, as to death of such person is attributable to military service in field area or not. Since Commanding Officer has already given his opinion that death of the deceased army person be treated as battle casualty for financial purpose as he died in Operation FALCON. If the UOI found that deceased army person is entitled to ₹ 7.5 lakh, the remaining ₹ 2.5 lakh be released. If UOI come to conclusion that the petitioner is entitled to ₹ 7.5 lakh as ex-gratia total amount then the State of Haryana is directed to reconsider the matter relating to grant of ₹ 10 lakh with reference to the decision taken by the UOI and the policy existing at the relevant point of time. The above action be taken within a period of 6 months from today.

The petition stands, accordingly, disposed of.

24.09.2016

PA

(P.B. BAJANTHRI)
JUDGE

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