

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

Date of decision: 17.05.2016

CWP No.19913 of 2008

Jaswant Singh

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rajesh Sehgal, Advocate, for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

1. *To be referred to the Reporters or not?*
2. *Whether the judgment should be reported in the Digest?*

RAJIV NARAIN RAINA, J.

1. To deny ex-gratia appointment to the petitioner, the State of Punjab blinds its vision myopically to Annex P-1 which was an initial Army Signal dated 11.04.2003 recording a fatal accident in which GNR (GD) Gurmeet Singh, the brother of the petitioner, died while serving in the Indian Armed Forces in its mission to crackdown on extremists in J & K in Counter Insurgency Operations i.e. Operation Peration Parakaram (RAKSHAK III). The death of the brother of the petitioner occurred while his unit was deployed for ROP (Road Opening Party) duties on NH-1A guarding roads while on bona fide military duty patrolling the National Highway in Counter Insurgency Operational Area. The facts: the petitioner' brother and five other soldiers were detailed for mobile patrol duties on 10.04.2003, on a

road stretch from Nachlana to Digdaul when their vehicle 2.5 ton Tata rolled down into Bichleri River at 0120 hrs near KM stone 165.7 in a Gorge 500 mts deep. Four soldiers died including the brother of the petitioner and his dead body was recovered from the river bed of the Bichleri River. After investigation of the episode, the Indian Army classified the accident as a "Battle Casualty" and granted the benefits to the mother of the petitioner which is given in the case of Battle Casualty including the Liberalised Family Pension as well as the Ex-gratia compensation vide PPO No.F/BC/450/2003 wherein the acronym 'BC' denotes as Battle Casualty vide documents Annex P-16 to P-17.

2. The expression Battle Casualty has been defined in terms of policy instructions SAO 8/S/85 Annex R-3 to mean one of several situations enumerated therein. The classification reads- Battle Casualties are those sustained in action against enemy forces or whilst repelling enemy air attacks. Death may occur by wounds or injuries other than self-inflicted. Clause (d) prescribes that accidental injuries and deaths which occur in action in an operational area will be treated as "battle casualties". There is even a provision in sub-clause (ii) of the policy which prescribes that casualties in fighting against armed hostiles and those whilst in aid of civil power to maintain internal security are classified as 'Physical' for statistical purposes, but are treated as "Battle Casualties" for financial benefits. Still further, saboteurs as per sub-clause (vi), even of own country, will be treated as enemy for the purpose of classifying their actions as enemy action and encounters against them as encounters against the enemy. Sub-clause (vii) lays down that all casualties during peace time as a result of fighting in war like operations or border skirmishes with a neighbouring country will

be classified as "Battle Casualties". However, as in this case, the death occurred on 10.04.2003, the policy instructions AO 1/2003 would be applicable as they apply to deaths occurring after 2003, which document is appended as Annex P-19 at Page 102 of the file. Clause (L) provides for "Casualties due to vehicle accidents while performing bonafide military duties in war/border skirmishes with neighbouring countries including action on line of control and in counter insurgency operations". The enumeration is exhaustive and covers a wide range of instances of death and injury while serving the defence forces of the country. Even Snake bite/Electrocution/drowning are also included as Battle Casualty. For the purposes of financial benefits, the petitioner's case has been treated by the Punjab Government as one falling under "Battle Casualty" as the dependents of the deceased were given two lakhs as Ex-Gratia as well as Five Lakhs for residential Plot and thus the petitioner has been given the pecuniary benefits of the schemes of the Punjab Government in terms of the Rules for the Administration of the Punjab War Heroes Families Relief Fund, 1999. However, the benefit has not been translated to the request for compassionate appointment of the brother [the present petitioner] in civil service. It is for this relief that the petitioner has approached this Court for a mandamus to the respondents to provide him ex gratia employment.

3. Learned counsel for the petitioner submits that the petitioner has a right of consideration for appointment under the ex-gratia scheme on compassionate basis since the brother's death qualifies as a Battle Casualty and falls within the provisions of the Special Army Order 8/S/85 read with AO 1/2003 (P-19).

4. Learned counsel implores that the State has needlessly remained obsessed by the word "accident" and not a "Battle casualty" by limiting its consideration to the subject matter of Annex P-1 when it refers to the term "accident" in the Head Note forgetting the existence of the documents that followed the first signal informing the Army of the occurrence. The State of Punjab was bound by the interpretation of the term Battle Casualty which the Army described the incident as in Annex P-16 to P-17 and it was not open to the State Government to dissect the expression and break it up in two parts, one in favour of the petitioner so far as pecuniary benefits are concerned, while the other diametrically opposite, to deny appointment to the petitioner under the Honours & Gratitude Policy of the Punjab Government framed in September 2000. In terms of this policy, the request made by the petitioner on the death of his brother for providing compassionate appointment ought to have been considered by the Punjab Government.

5. I have, therefore, no doubt in my mind that the petitioner has been wronged by the Punjab Government in depriving him of an opportunity of consideration for appointment to a post in civil service which he is capable of discharging duties of commensurate with the prescribed educational qualifications. Merely because the petitioner's family has been paid a sum of Rs.2 lacs and Rs.5 lacs respectively by the Punjab Government in terms of its 1999 Rules does not foreclose his right to claim compassionate appointment.

6. Having heard the learned counsel at sufficient length, I would accept the prayer of the petitioner for issuance of a writ of mandamus to the respondent State to consider his case for appointment by treating the death

of his brother as "Battle Casualty" and not just "Battle Accident". The impugned order has been passed on perverse reasoning and on an irrelevant consideration while relevant considerations have been ignored in the decision-making process which is wide enough to admit error tending to vitiate the entire order.

7. For the above reasons, the writ petition is allowed. The impugned order dated August 14, 2008 (Annex P-10) and the reasoning adopted therein is set aside. Accordingly, a fresh reasoned order is directed to be passed in accordance with law within two months from the date of supply of a certified copy of this order. In case the petitioner wants to present his case personally or through an authorized representative, as the case may be, the request shall be granted. In case the petitioner succeeds before the competent authority then the further process of appointment be expedited at any time before but preferably not later than another two months.

17.05.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE