

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19915 of 2008 (O&M)

Date of Decision: 04.05.2016

Smt. Manjit Kaur

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

Mr. Inder Pal Goyat, 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, the State of Punjab blinds its vision to Annex P-1 which was an initial Army Signal dated March 14, 2000 recording a fatal accident in which L/Nk Harinder Singh, the husband of the petitioner, died while serving the Indian Armed Forces in its mission to crackdown on revolutionary ULFA militants in Operation Rhino working to form a Socialist Assam in what was viewed by Government of India and dealt with as a separatist movement. The death occurred during exchange of guard duty between late L/Nk Harinder Singh and another Guard. The rifle went off accidentally killing the petitioner's husband. After investigation of the episode, the Indian Army classified the accident as a "Battle Casualty" vide documents Annex P-16 to P-18.

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 (iv) 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”. The enumeration is exhaustive and covers a wide range of instances of death and injury while serving the defence forces of the country. For the purposes of financial benefits, the petitioner's case has been treated by the Punjab Government as one falling under “Battle Casualty” 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 widow in civil service. It is for this relief that the petitioner has approached this Court for a mandamus to the

respondents to provide her 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 husband death qualifies as a Battle Casualty and falls within the provisions of the Special Army Order 8/S of 85.

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-18 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 were 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 her husband 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 her of an opportunity of consideration for appointment to a post in civil service which she is capable of discharging duties of commensurate with the prescribed educational qualifications. Merely because the petitioner 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 her 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 her case for appointment by treating the death of her husband as “Battle Casualty” and not just “Battle Accident”. The impugned order has been passed on bad reasoning and on an irrelevant consideration while relevant considerations have been ignored in the decision making process vitiating the order.

7. For the above reasons the writ petition is allowed. The impugned order dated August 14, 2008 (Annex P-11) 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 her case personally or through an authorized representative, as then 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.

(RAJIV NARAIN RAINA)
JUDGE

04.05.2016
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