

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 22275 of 2014 (O&M)

Date of Decision: June 02, 2017

Rita Saikia

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Arun Singla, Advocate for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

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M.M.S. BEDI, J.

Petitioner, claiming herself to be unfortunate widow of Dfr/
Ash Dilip Saikia, who while being deployed in 898 At Bn Unit in Operation
Rakshak in Jammu and Kashmir near international border from April 22,
2008 till August 11, 2010 died. The area of his deployment was notified as
counter-insurgency area under operation Rakshak promulgated by the
Government of India. On August 11, 2010 at 2140 hours, when the husband
of the petitioner was on patrol duty near the counter insurgency operation in
field area, the bunker in which he was performing the duty collapsed due to
mud slide from the roof due to incessant heavy rains As such he was buried
in the debris. The death of the husband of the petitioner was considered as

battle casualty. The official report pertaining to his death as per annexure P-1 reads as follows:-

“The individual was on Ptl (Patrol) duty near in counter insurgency operation in Fd (Field) Area. While on active duty at 2140 hours the bunker collapsed due to mud slide from roof due to incessant hy (heavy) rain. The indl (individual) could not escape/ take any action as the bunker collapsed suddenly under the hy (heavy) wt (weight) of wet landslides and was buried in debris resulting in fatal casualty.”

The petitioner claims that the State of Haryana as per policy dated June 17, 1999 had announced the ex-gratia grant of Rs.1 lac for the personnel who died during various operations vide annexure P-4. The said amount was later on increased to Rs.10 lacs vide an amended policy dated September 30, 1999. Copy of the policy has been appended with the petition as annexure P-5. Government of Haryana vide clarification dated November 7, 2011 has further clarified the policy dated September 30, 1999 and the rules were relaxed to provide ex-gratia grant to the casualty taking place in operational area which were declared as Battle casualty and Battle accident. Copy of the clarification issued by Government of Haryana has been appended with the petition as annexure P-6. Petitioner claims that the death of the husband of the petitioner was declared as battle casualty as such she made a representation to respondent No.2 for release of ex-gratia grant, annexure P-7. The petitioner was issued a communication dated July 6, 2014 which reads as follows:-

*“From
The Secretary,
Zila Sainik Board, Ambala.*

To

Smt.Rita Saikia, W/o 6384542W DFR/Ash Dalip Singh. # 52, Mahesh Nagar, Amb. Cantt.

Memo No. ZSBA/2-20/WESM/Amb/13 dated 6 Jul,2014

Sub:- Ex-gratia Grant.

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- 1. Please refer to your letter addressed to Secretary Rajya Sainik Board, Haryana, Sector 12, Panchkula.*
- 2. As per policy on the subject the families of Defence Force Personal belonging to Haryana and killed notified in Battle casualty/ Battle Accident by defence authorities when the death is due to:--*
 - a) Militant/ terrorist encounter in operational area or due to border sacrifices.*
 - b) IED Blast.”*

Aggrieved by the above said order, the petitioner has filed the present writ petition for release of ex-gratia grant.

On notice having been issued to the respondents, the claim has been contested mainly on the following grounds which have been taken up in the preliminary submissions and the same are reproduced for ready reference:-

“That the State Government has framed a policy vide Memo. No.13/8/92-4DIII dated 1st July 1992 for grant of ex-gratia to family of Armed Forces Personnel killed/ missing/ prison of war/ disabled in various operations. After that the State Government has modified the policy vide memo No. 13/8/92-4D-III dated 23rd June, 1999, 30th Sept. 1999 and memo No. 21/1/97-4DIII dated 15 June 2001. The modified policy dated 15 June 2001 is

annexed herewith as (annexure R-1). As per the above policies the Ex-gratia grant is applicable only to those who hail from Haryana with State domicile but the petitioner's husband had died on 11 Aug. 2010 in counter insurgency in field area hence she neither falls under the policy dated 15 June 2001 and nor under policy of 1999. It is submitted that the aim and motive of the said ex-gratia grants policy of the State Govt. is that the benefits of ex-gratia grant is to be released to next of kin of the 'War Heroes' only belonging to Haryana who die a heroic death in or during operations and to the disabled personnel belonging to Haryana. As per policy dated 15 June 2001 the ex-gratia grant is applicable only to those personnel who hail from Haryana with State domicile but the petitioner's husband was permanent resident of Vill. Khongia, Post Office Dohotia, Tehsil and District Jorhat, State Assam at the time of enrollment in service and at the time of casualty (annexure P-1 and R-2) and the petitioner in her affidavit dated 10 Nov. 2011 (annexure R-3) has declared that I am permanent resident of Vill. Khongia PO Dohotia, Tehsil and Distt. Jorhat (Assam), at present resident of H.No. 52, Mahesh Nagar, Ambala Cantt. It is pertinent to mention here that (annexure P-1) has been prepared as per Part II order of record which is declared by concerned individual. As per that record the deceased husband of the petitioner was resident of Assam and not of Haryana. So the petitioner is not entitled to relief claimed as prayed for."

A perusal of the above said plea of the State indicates that the reason disclosed before this Court is that the petitioner is not permanent resident of Haryana but is a resident of Assam. A perusal of the reply indicates that the plea of respondents being not a resident of Haryana is a

fresh plea which has come up before this Court for the first time. The order annexure P-8 which is reproduced hereinabove, indicates that the ex-gratia grant had been declined to the petitioner for the reason that the death was not due to militant/ terrorist encounter in operational areas or due to border sacrifices or IED blast. The reason of petitioner being not a resident of Haryana was not a specific cause for denial of the relief.

In order to establish that the petitioner has been a resident of Haryana she has placed on record certain additional documents by filing misc. application. The documents are as follows:-

- i) Annexure P-10 order passed by the AFT Chandigarh Bench at Chandimandir, indicating that the petitioner is resident of Ambala Cantt.. Vide said order she was granted liberalized special family pension.
- ii) Annexure P-11 is a letter issued by Quarter Master General Branch, New Delhi to the petitioner on May 6, 2014 at her address at Ambala Cantt. Similar is the letter annexure P-12.
- iii) Annexure P-13 is the Aadhar Card showing the petitioner and her family members as residents of Ambala Cantt.
- iv) Annexure P-14 is the contributory Health Scheme Card issued to her at her husband's address. Similar are the documents produced to her for her children.

Taking into consideration all the above said documents, it is apparent that the petitioner is resident of Ambala but a fresh ground has been wrongly taken that she being not a resident of Haryana is not entitled to the benefit of ex-gratia grant. It is a settled proposition of law that when a statutory functionary makes an order based on certain ground its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In this context reference can be made to the judgment of Supreme Court in **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others**, AIR 1978 SC 851, laying down the parameters as to how to judge an order passed by the statutory authority.

In view of the above, the petition is allowed. The order annexure P-8 being illegal, arbitrary, unreasonable and discriminatory, is hereby quashed and it is ordered that the State of Haryana will release the benefit of ex-gratia grant to the petitioner within a period of three months after the receipt of certified copy of the order. In case the amount is not paid within a period of three months, the petitioner would be entitled to the interest at the rate of 6% per annum w.e.f. the date of this order.

June 02, 2017
sanjay

(M.M.S.BEDI)
JUDGE

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