

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

211

CWP-2971-2017

Date of decision: 12.09.2022

JASMER SINGH MALIK

.....Petitioner

VERSUS

STATE OF HARYANA AND ORS.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Navdeep Singh, Advocate
for the petitioner.

Mr. Vivek Chauhan, AAG, Haryana.

Mr. Gaurav Pathak, Senior Panel Counsel
respondent No.4-Union of India.

VINOD S. BHARDWAJ, J. (Oral)

The question which arises for determination in the present writ petition is as to whether the officers and employees posted in Assam Rifles are entitled to the monetary benefits/annuity as is admissible to the defence employees on being conferred the Gallantry awards by the President of India as per Haryana Govt. Policy dated 28.05.2014 or they are to be conferred award as per Haryana Govt. Policy for paramilitary dated 02.08.2010.

2. The present writ petition invokes the jurisdiction of this Court for claiming the benefits at par with the benefits admissible to the defence personnel, which such benefit is being denied to the petitioner by extending an untenable interpretation to the policy dated 28.05.2014 to hold that the employees of Assam Rifles conferred with Army Gallantry Awards cannot be given the annuity and monetary benefits at

par with defence employees.

3. Briefly summarized the facts of the present case are that the petitioner was posted as an Officer of the Assam Rifles and was decorated with Sena Medal/Gallantry (also known as the Army Medal for Gallantry) by the President of India on 15.08.2015 for displaying extreme raw courage and engaging in heavy battle with militants, unmindful of his personal safety and despite coming under heavy fire.

4. The State of Haryana had formulated a policy to provide one time cash award to the Haryana residents who were conferred with Gallantry awards vide policy dated 05.10.2007 which was subsequently modified on certain occasions qua the amount of monetary award. The said policy was applicable as on the date when the petitioner won the Gallantry award dated 15.08.2015. Vide the notification dated 28.05.2014 (Annexure P-3), the monetary benefits and annuity were enhanced in favour of the recipients of Gallantry awards on or after 09.02.2014 to a sum of Rs. 10,00,000/- in the category of Sena Medal-Gallantry alongwith an annuity of Rs. 50,000/- per annum.

5. The petitioner has referred to the information dated 14.08.2015 issued by the Press Information Bureau, Government of India, Ministry of Defence which mentioned that the President and the Supreme Commander of the Armed Forces had approved 67 Gallantry Awards to Armed Forces Personnel and Members of Para Military Forces which include various medals. The name of the petitioner was mentioned at Serial No.1 in the category of Sena Medal (Gallantry) and in the column meant for service it is mentioned "Army". It is note worthy to mention herein that with respect to the employees belonging

to the Para Military i.e. J & K Police as well as CRPF, who were conferred Shaurya Chakkar, a specific mention of service has been made as MHA (Ministry of Home Affairs). The description thus issued by the Ministry of Defence with respect to the officers posted in the Assam Rifles is as personnel of the “Army”.

6. A request was accordingly made by the petitioner for being awarded the monetary compensation/ annuity in terms of the policy and at par with the defence personnel. However, the District Administration sanctioned only a sum of Rs. 3,50,000/- by treating that the petitioner is not defence personnel and that “Assam Rifle” is not a part of the Military Force and is rather a Para Military Force covered under the State Policy of 2010.

7. Aggrieved thereof, the present petition was filed.

8. Upon issuance of notice, written statement on behalf of the respondent State of Haryana was filed wherein the following stand was adopted.

1. That the Petitioner has filed the Present writ Petition in the Hon'ble High Court praying for grant of Rs. 10 lakh for Sena Medal Gallantry award as per Haryana Govt. Policy No.20/28/1985-4DIII dated 28/05/2014 at par with the Defence Forces Personnel. Haryana Govt. has released a sum of Rs. 3.5 lakh to him in accordance with the State Govt. Policy No.6/24/2009-3H(C) dated 02.08.2010. Accordingly, he has requested for issuance of a writ-in the nature of Mandamus praying for grant of complete monetary benefit and Annuity alongwith interest for the award of Sena Medal (Gallantry) conferred upon him by His Excellency the President of India.

2. That the State Govt. framed a Policy vide Home department memo No. 6/24/2009-3H(C) dated 02.08.2010

for grant of one time cash award to the gallantry award winner of Central Para Military Force Personnel. The Petitioner being the CPMF Personnel (Assam Rifles) was entitled for 3.5 lakh only.”

9. Mr. Gaurav Pathak, Senior Panel Counsel appears on behalf of respondent No.4- Union of India and contends that no relief in the present case is claimed against the Union of India and as such, the Union of India is not a necessary party. However, on a pointed query, learned counsel has informed that so far as salary and other perks in relation to the employees of the Assam Rifles is concerned, the same is released by the Ministry of Home Affairs, however, the entire control i.e. the transfer/posting and deployment of Assam Rifles etc. are under the domain of the Ministry of Defence.

10. Learned counsel appearing on behalf of the petitioner has argued that the case of the petitioner is covered by judgment of this Court passed in CWP-19133 of 2009 decided on 19.03.2010 in the matter of “*Commando Jasbir Singh versus State of Haryana*” who was also a member of the Assam Rifles. The relevant extract of the said judgment reads thus:

4. In the ultimate bargain, the non-payment of the benefit to the petitioner has occasioned on account of the unusual quibbling on the expression of "Defence Personnel", which the policy recognizes as a person, who would be entitled to the monetary benefit. The contention on behalf of the respondents, therefore, was to show that the persons in the Assam Rifles are not in any way really a part of the Defence Personnel and it is irrelevant that Assam Rifles is termed as Para Military Forces. The learned counsel appearing for the petitioner refers to a Ministry of Defence Notification issued on 06.12.1962, which states

that every unit of the Assam Rifles, being a force raised and maintained in India under the authority of the Central Government is governed by all the provisions of the Army Act, except those specified in part A of the Schedule annexed hereto, subject to the modifications set forth in Part B of that Schedule. A further notification of the Ministry of Defence dated 29.09.1975 directs that all classes of persons mentioned in the Schedule of the Army Act shall also be subject to the class of persons mentioned in the corresponding entry in the second column of the said Schedule. It is seen from the Schedule that all other Government servants whose current monthly basic pay excluding of allowances, which is less than Rs.460/- per month but not less than Rs.260.00 per month would be termed as Non-Commissioned Officers. The counsel refers to the identity cards issued to him as a member of the Assam Rifles that has been issued by the Eastern Command, Kolkata. His endeavour is to show that any other Army Personnel who is not in Assam Rifles is also issued with the same types of identity cards. With persistent doubt or reluctance expressed by the Government of Haryana, there has been a letter of communication from the Directorate General, NSG referring to the fact that Assam Rifles is an Armed Force of Union of India and that such a person would be entitled to the monetary benefits made for Defence Personnel. The Directorate General in his communication dated 02.09.2009 espouses the cause of the petitioner.

5. *Learned counsel appearing for respondent Nos.1 to 3 states that the Government is sensitive to immediate need for consideration of claim from persons like the petitioner and they are, therefore, formulating a policy to include the Para Military Force as beneficiaries of the monetary benefits for recipients of gallantry awards and therefore, would seek for an adjournment for*

consideration of the petitioner's claim after a few months. If it is only for framing a specific policy, so it be. In my view, however that need not deter or delay the petitioner from securing a benefit because the contemplated action is to quell prevarication on the part of the Government itself. A recipient of a gallantry award to be rewarded with monetary benefit is a method of recognition of an act of bravery in the cause of defence of the State. Persons in the Armed Forces, who have performed gallant acts of valour are required to be honoured immediately, for a material benefit that is promised is just not a method of acknowledging the valour of such persons only. It is to set an example for even ordinary people to emulate. Persons, such as the petitioner, who is on a deputation to NSG, lives on a razor's edge, as it were and he shall not be forced to go hunting for securing what is justly due to him. Even a day's delay to what the State promises is an insult to his honour and valour. There shall be a direction in the manner, which the petitioner seeks for in the writ petition and the respondent No. 1 is directed to release the monetary benefit within a period of four weeks from the date of receipt of copy of this order.”

11. He contends that the aforesaid judgment has already become final and the respondent-State of Haryana has implemented the aforesaid judgment. He argues that the case of the petitioner is squarely covered by the ratio of the aforesaid judgment. He further refers that the specific averment raised by the petitioner in reference to the aforesaid judgment has been admitted and is not denied.

12. Learned counsel appearing on behalf of the respondent state has reiterated the stand taken by the State in its written statement and has urged that since the salary, perks and other allowances of the petitioner are released by the Ministry of Home Affairs and not by the

Ministry of Defence, hence, merely by administrative command, the petitioner would not fall under the Ministry of Defence to claim himself as “Defence Personnel”.

13. He, however, could not dispute the fact that the judgment in the matter of *Commando Jasbir Singh (supra)* has already attained finality. It is also not argued that any fact noticed therein is incorrect. There is no dispute as regards the defence notification of 06.12.1962 noticed therein & issued by Ministry of Defence extending all provisions of Army Act to members of Assam Rifles. Notification issued by Ministry of Defence dated 29.09.1975 directing all classes of person mentioned in the schedule of Army Act to be subject to corresponding entry in column of the schedule has also not been disputed or denied. It is also not denied that the said judgment has been implemented. He also could not indicate to any distinguishing feature of the claim, vis-a-vis the judgment of the petitioner in the case of *Commando Jasbir Singh (supra)* and how the same is not applicable to the facts of the present case.

14. I have heard learned counsel appearing on behalf of the respective parties and have gone through the responses filed by them.

15. It is not in dispute that the judgment passed in CWP-19133 of 2019 titled as *Commando Jasbir Singh (supra)* has already become final. Furthermore, insofar as the Assam Rifles is concerned, the same is under the operational control of the Army and the Ministry of Defence. It is rather a force which is under the purview of the Army Act, 1950 which is also clear from the notification issued by the Ministry of Defence on 16.12.1962 by exercising the powers vested in

under Section 4 (1) of the Army Act, 1950. By virtue of the said notification, the Central Government applied the provisions of the Army Act, 1950 to the subjects of the Assam Rifles. The relevant part of the said notification is extracted hereinbelow:-

“Ministry of Defence

Notification

S.R.O. 318 dated 16th December, 1962 (as amended by S.R.O. No. 325 dated 31st August, 1977)-In exercise of the powers conferred by Sub-Section (1) of Section 4 of the Army Act, 1950 (46 of 1950) and in supersession of the notification of the Government of India in the late External Affairs Department No. 93 dated 25th June, 1942, as subsequently amended, the Central Government hereby:-

- i) applies to every unit of the Assam Rifles, being a force raised and maintained in India under the authority of the Central Government, all the provisions of the said Act, except those specified in part A of the Scheduled annexed hereto, subject to the modifications set forth in Part B of that Schedule, when attached to or acting with any body of the regular army and;*
- ii) suspends, while this notification remains in force in operation of sections 6, 7, 8 and 9 of the Assam Rifles Act, 1941 (5 of the 1941).”*

16. The aforesaid notification has not been repealed or withdrawn by the Government of India. Moreover, a subsequent notification by the Ministry of Defence was issued on 29.09.1975 directing that all classes of persons mentioned in the Schedule of the Army Act, 1950 shall be also be subject to the class of persons mentioned in the corresponding entry in the second column of the said Schedule. Still further, a reference was also made to the communication

from the Director General of the NSG referring to the fact that Assam Rifles is an Armed Force of the Union of India and such a person would be entitled to the monetary benefits made for the defence personnel in terms of his communication dated 02.09.2019.

17. The aforesaid documents cannot be completely ignored. Moreover, there can be no reason as to why the petitioner who is a winner of the Sena Medal-Gallantry awards be deprived of the benefits that had already been disbursed by the Government of Haryana to similarly placed Commando Jasbir Singh. No reasons for discriminating the case with that of Jasbir Singh had been set out. The stand taken by the respondent-State in its written statement is not substantiated or corroborated by any communication/notifications issued by the Govt. of India-Ministry of Defence. Once the Government of India has been treating the personnel of Assam Rifles at par with the defence personnel, it would not be open to the State of Haryana to assign any other classification that would run contrary to the treatment accorded by the Union of India. Besides, the policy of grant is a scheme to honour people for display of raw courage in the discharge of duty & protecting the State. Such scheme requires a liberal construction.

18. In view of the aforesaid facts and noticing that similarly placed person has already been granted such benefit and the judgment has attained finality, coupled with the notifications/communications addressed on various occasions by the Ministry of Defence as well as the Director General of the National Security Guards himself, there is no tangible material or objective communication on the basis whereof this Court may come to any different conclusion than the conclusion

already arrived at by the Co-ordinate Bench.

19. The present petition is thus allowed. The petitioner is thus held entitled to the benefits admissible to the defence personnel in terms of its policy dated 28.05.2014.

(VINOD S. BHARDWAJ)
JUDGE

SEPTEMBER 12, 2022

Vishal sharma

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