

2024:PHHC:110070



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

207

CWP-23956-2018 (O&M).
Date of Decision: 27.08.2024.

SMT. JAGROSHNI DEVI

.. Petitioner

Versus

UNION OF INDIA AND OTHERS

... Respondents

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

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

Mr. Pankaj Mulwani, DAG, Haryana,
for respondents No.4, 6 and 7.

None for the remaining respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition has been confined to the order dated 24.03.2017 bearing Memo No.27/2/2003-4D-III dated 04.10.2002) passed by the Secretary, Rajya Sainik Board, Haryana, whereby the claim of the petitioner for grant of ex-gratia financial assistance has been declined by the respondents.

2 Learned counsel appearing on behalf of the petitioner contends that the Late Naik Bhagirath (husband of petitioner), who was serving in the

2024:PHHC:110070



8 Maratha Light Infantry died on 23.10.2000 while returning from the Gaurichen Summit to Camp. His death was ordered to be treated as a battle casualty in Operation Falcon and attributable to 'military service in field' in accordance with the Court of Inquiry proceedings investigating the circumstances under which a soldier loses his life. He refers to the certificate of cause of death issued by the respondents which certifies that Bhagirath was killed in action on 25.10.2000. The relevant extract of death certificate reads thus:-

*“Certified that (Name) **BHAGIRATH SINGH** Service No.2784479F (Rank/Trade) Nk/GD (Unit/Ship) 8 MLI C/o 99 APO was **killed in action on 25.10.2000 at 0830 hrs.**”*

(emphasis supplied)

3 The certificate issued by the Commanding Officer also reiterated that death of Late Naik Bhagirath took place while serving in Operational Area (OP Falcon). The Commanding Officer also certified that the casualty of deceased husband of the petitioner was to be treated as battle casualty for financial purpose in relation to death attributable to Military Service in field area (Operation Falcon). The relevant part of the communication sent by the Commanding Officer is extracted as under:-

“3. No.2784479F Naik Bhagirath died on 23 Oct 2000 at approx. 1430 hours during mountaineering expedition to Gorichen Peak (6448 Meter) under Operation FALCON.

2024:PHHC:110070



4. The casualty in respect of 2784479F Late Naik Bhagirath in purview falls under Note No.XII of para 4 of SAO 8/S/85 and para 9 of Govt. of India, Ministry of Defence letter No.A/67804/Gen-2000- 2005/GS/MT AAW dated 05 Apr 2000 and be treated as battle casualty for financial purpose. The death is attributable to Military Service in field area (OPERATION FALCON).”

(emphasis supplied)

4 Reference is also made to the proceedings ordered to investigate the circumstances under which deceased husband of petitioner died. The General Officer Commanding agreed with the recommendations of the Officiating Commander and recorded as under:-

“3. The death of No.2784479F Nk Bhagirath and No.2792385Y Sep Patil Purander Shankar of 8 MARATHA LI be treated as battle casualty in OP FALCON' and be attributed to mil service in fd. I also direct that all financial benefits be given to the NOKs of Late Nk Bhagirath and Sep Patil Purander Shankar.”

(emphasis supplied)

5 It is contended that in compliance thereto, all financial benefits were released by the Additional Director General of Manpower and Planning. The Classification of the casualty as undertaken by the Union of India/Military and reflected from the Memo dated 22.05.2001 (Annexure P-10) reads thus:-

2024:PHHC:110070



“In this connection please refer to Notes to para 4(a)(xii) of SAO 8/S/85 which is very explicit and reproduced below :-

(i) Casualties taking place while carrying out battle inoculation/ training will be treated as physical casualties for statistical purposes and battle casualties for financial purposes.”

6 He further makes a reference to the policy issued by the State of Haryana for grant of financial benefits attached as Annexure P-2 with the present writ petition. The relevant part of the said policy is extracted as under:-

“Subject: EX GRATIA AND CHILDREN EDUCATION GRANTS TO THE FAMILIES OF ARMED FORCES PERSONNEL KILLED/ MISSING/ PRISONERS OR WAR/ DISABLED IN KARGIL AND OTHER SECTOR

I AM DIRECTED TO REFER TO Haryana Government Memorandum No 13/8/92-4D-III dated 1st July 1992. Memorandum No 13/8/92-4D-III dated 1st April 94, Memorandum No 13/8/92-4D-III dated 17.6.99, 23.6.1999, 2.7.1999 and 25.7.99 and to say that this memorandum will supersede the last four memorandums No. 13/8/92/4D-III dated 17.6.99, 23.6.1999, 2.7.99 and 25.7.99.

Haryana Government has decided that with effect from 1st April 99, the Ex-gratia grant/compensation to the families of the Defence Service Personnel and of the Para-Military Forces who die in harness in the performance of their bond fide official duties while serving in operations in Kargil or other Sector shall be Rs 10 Lacs for all categories namely officers. Junior Commissioned Officers and other ranks and to

2024:PHHC:110070



the disabled as explained under for all categories depending upon the percentage of disability as assessed by the concerned authorities irrespective of the fact whether they are retained as welfare measure or boarded out.”

(emphasis supplied)

7 A reference is also made to the subsequent amendment carried out in the above said policy vide memo No.13/8/92-4D-III dated 07.11.2001, the relevant extract whereof reads as under:-

“3 It is clarified and reiterated that the aim and motive of the said ex-gratia grants policy of the state Govt. is that the benefit of ex-gratia grant is to be released to NOK 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 (during the period 1.4.99 to 14.6.2001) depending upon the percentage of permanent disability as assessed for life of the individual by the concerned medical authorities irrespective of the fact whether they are retained in service as welfare measure or boarded out. The Haryana State Govt. has decided to provide ex- gratia grant only to the casualties taking place in or during operations in order to recognize the acts of bravery and sacrifice of the war Heroes. It pertinent to mention here that any causality taking place in operational area but not in operations i.e. where actual battle taking place/ fighting etc. is not covered under the said Ex-gratia grant policy of the state Govt. No other type of casualties except Battle casualties and Battle accidents are covered under the laid policy dated 30.9.99.”

(emphasis supplied)

2024:PHHC:110070



8 Referring to the above it is contended by the counsel for the petitioner that as per the initial policy for ex-gratia financial assistance notified by the State on 30.09.1999, which was in force as on 23.10.2000, when Bhagirath died in performance of his bona fide operational duty while serving in an operational area, he was entitled to the financial assistance. An amendment was subsequently carried out vide memo No.13/8/92-4D-III dated 07.11.2001 even though the same is clarificatory. The said explanation rather excludes all other types of casualties except battle casualties and battle accidents from the policy of 30.09.1999. Such a policy/decision cannot be labelled as a clarificatory memo and is rather a substantive amendment which can be enforced only prospectively. He contends that the respondents have denied the benefits to the petitioner by placing reliance on the subsequent policy. The operative part of the impugned order dated 24.03.2017 reads thus:-

“Whereas State Govt. Haryana is granting Ex-gratia benefits to the family of Armed Forces Personnel killed during operation in order to recognized the fact of bravery and scarifies of the war heroes as per Haryana Govt. instruction dated 30.09.1999 and clarification dated 07.11.2001. The case of the husband of the petitioner is not covered under Haryana Govt. Policy as his death has occurred due to fall from the Gorichen Peak at Arunachal Pradesh while returning from Gorichen Summit to camp-II as a member of Gorichen Mountaineering Expedition team only, and not in a military operation.”

2024:PHHC:110070



9 He submits that the reasoning given by the respondent State for denial of the benefit is in the nature of a retrospective application of the subsequent amendment in the Government Instructions dated 30.09.1999 vide Memo dated 07.11.2001. He contends that such an issue has already been examined by a Division Bench of this Court in the **Letters Patent Appeal No.1291 of 2012 titled 'Smt. Krishna Devi Vs. Union of India and others' decided on 09.12.2013.** The Division Bench of this Court has already held that the said instructions are not retrospective and are only prospective in nature. The operative part of the aforesaid Division Bench judgment of this Court is extracted as under:-

“8. Firstly, we review the Govt. of India instructions dated 22.9.1998 to find as to whether the petitioner is entitled to ex-gratia lump sum compensation under these instructions. The main condition to be satisfied for payment of ex-gratia compensation under these instructions is that death of the employee concerned should have occurred in the actual performance of bona-fide official duties. The instructions lay down a number of instances under which the benefit of ex-gratia lump-sum compensation can be allowed. Death of the husband of the petitioner took place due to a disease named “Acute Circulatory Failure-428.3, Brain (Cerebral) Anoxia 435”. The instructions of the Govt. of India dated 22.9.1998 provide for grant of ex-gratia compensation in the matter of battle casualties and do not cover the cases where an army personnel dies while deputed in an operational area because of some disease. It cannot be disputed that death of the husband of appellant took place during the performance of bona-fide military duties and the appellant has been allowed special family pension for the same. Learned Single Judge has

2024:PHHC:110070



elaborately discussed the provisions of the policy dated 22.9.1998, the illustrations given therein and has rightly reached the conclusion that the claim of the appellant cannot be accepted under these instructions. We find no infirmity, factual or legal, in the observations of the learned Single Judge so as to form a different opinion.

9. The Government of Haryana also issued instructions dated 30.9.1999 for grant of ex-gratia grant/compensation to the families of the defence personnels and all paramilitary forces who died in harness in the performance of bona-fide official duties while serving in operations like Kargil and other sectors.

10. The State of Haryana came up with a clarification regarding its policy vide instructions dated 7.11.2001, wherein it clarified as follows :-

“The Haryana State Govt. has decided to provide ex-gratia grant only to the casualties taking place in or during operations in order to recognise the acts of bravery and sacrifice of the War Heroes. It pertinent to mention here that any casualty taking place in operational area but not in operations i.e. where actual battle taking place/ fighting etc. is not covered under the said ex-gratia grant policy of the state Govt. No other type of casualties except Battle casualties and Battle accidents are covered under the ibid policy dated 30.9.99.”

11. Learned Single Judge has taken this clarification into account while declining the benefit of ex-gratia compensation to the appellant under the instructions of the Haryana Govt. dated 30.9.1999.

2024:PHHC:110070



12. The instructions dated 30.9.1999 (Annexure P-6) cover all the cases for grant of ex-gratia compensation where a defence service personnel had died in harness in performance of his bona-fide official duties while serving in operations like Kargil and other sectors. Admittedly, the husband of appellant was posted in an 'operational area' and had died during the performance of his bona-fide official duties. The case of the appellant is squarely covered by the above instructions.

13. Vide subsequent memo dated 7.11.2001 (Annexure R-2) Chief Secretary to Govt. of Haryana issued certain clarifications with regard to the instructions dated 30.9.1999. These clarifications have virtually laid down a new policy, which the State Govt. was competent to promulgate, but from the date this memo was issued. These clarifications are not applicable to the case of the appellant. As per the policy of the Haryana Govt. prevailing at the time of death of Suresh Pal, the appellant is entitled to ex-gratia grant/compensation.”

10 It is thus submitted that the Division Bench has already held that the decision to decline ex gratia compensation under the Instructions dated 30.09.1999, by placing reliance on the subsequent Memo dated 07.11.2001 was misplaced and the said clarification was not applicable to the incidents that had already taken place prior to issuance of the said instructions by the Government of Haryana.

11 A feeble attempt has been made by the learned State counsel to defend the order passed by the respondents by an emphatic reliance on the Government of Haryana Memo dated 07.11.2001 and the same being clarificatory in nature. He is, however, not in a position to refute that the

2024:PHHC:110070



Division Bench Judgment in **Smt. Krishna Devi (supra)**, squarely deals with the said issue against the respondent State.

12 Having heard the learned counsel appearing for the parties and having gone through the judgment of the Division Bench in the matter of **Letters Patent Appeal No.1291 of 2012 titled ‘Smt. Krishna Devi (supra)’**, I find that the order passed by the respondents suffers from an illegality and applies substantive amendment retrospectively, under the garb of being a clarificatory procedural requirement. The above said judgment of the Division Bench of this Court is squarely applicable to the facts of the present case, since the death in the present case took place on 23.10.2000, in a bona fide operation being undertaken by the deceased.

13 The present writ petition is accordingly allowed in terms of judgment dated 09.12.2013 passed in **Smt. Krishna Devi** (supra).

14 All the admissible benefits under the policy of 30.09.1999 shall be released in favour of the petitioner within a period of 03 months of the receipt of a certified copy of this order.

15 Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

August 27, 2024.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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