
Chandro Vs UOI and Others

Writ Petition (C) No. 20174 of 2005

Court: Delhi High Court

Date of Decision: May 31, 2007

Citation: (2008) 1 ILR Delhi 63

Hon'ble Judges: T.S. Thakur, J; S.N. Aggarwal, J

Bench: Division Bench

Advocate: K. Digambar Singh, for the Appellant; Rajeev Mehra, for the Respondent

Judgement

T.S. Thakur, J.

Fight against terrorism, insurgency and militancy in the State of Jammu and Kashmir and in the North-eastern region of the

country takes a heavy toll of the armed forces deployed in these regions. The Central Government have framed beneficial schemes for

compensating the next of kin of those killed in action against the anti-national/insurgents/extremists. The ex gratia amount paid by the Ministry of

Defence under these schemes was initially limited to Rs. 1,00,000/- which was subsequently raised to Rs. 2,00,000/ in the case of those killed on

or after 01.05.1995. The same was further raised to Rs. 5,00,000/- in cases where death had occurred due to accidents in the course of

performance of duties or acts of violence of terrorists and anti national elements. In case where death had occurred due to enemy action in

international war or border skirmishes and action against militants/terrorists/extremists, the amount of ex gratia compensation was fixed at Rs. 7.50

lakhs in terms of a policy circular dated 22.09.1998 issued by the Ministry of Defence, Government of India. Late Naik Hoshiar Singh was killed

in an accident that occurred in the course of an action against the militants. The petitioner, who is his widow, has in the present petition prayed for a

mandamus directing the respondents to release an ex gratia compensation of Rs. 7.50 lakhs in terms of the policy formulated by the Government of

India together with interest @ 18% per annum from the date of the demise of her husband till actual payment of the amount to her. The petitioner's

case is that deceased Naik Hoshiar Singh was a member of a Quick Reaction Team (QRT) deputed to liquidate militants in the Kashmir valley,

about whose presence the authorities had specific information. While on the way to the place where the militants were hiding, the vehicle carrying

the members of the team was blasted with the help of an Improvised Explosive Device planted by the militants resulting in the death of her husband

on the spot. The ex gratia payment of Rs. 7.50 lakhs due to the petitioner as the widow of the deceased under the policy formulated by the

Government had not however been released in her favour nor had the other payments due to her, under various other schemes formulated for the

welfare of the war widows, been released. A mandamus directing the respondents to release the said payments with interest has, therefore, been

prayed for.

2. The respondents have filed a counter affidavit to the petition in which it is inter alia pointed out that Late Naik Hoshiar Singh was no doubt a

part of the QRT sent to launch an operation against the militants regarding whose presence the authorities had received reliable information but the

assertion that he had died on account of an IED blast triggered by the militants was not factually correct. According to the respondents when the

QRT traveling in an army vehicle reached near Tengpura crossing, the vehicle skidded off the road and started sliding back towards a pit on the

left of the road. At this stage, the soldiers sitting in the rear part of the vehicle including Naik Hoshiar Singh panicked and jumped out of the vehicle

which was going down towards the embankment. In the process Naik Hoshiar Singh was run over by the vehicle which was uncontrollably sliding

backwards. A Court of inquiry to investigate the circumstances leading to the accident was held which recorded a finding that the death had

occurred on account of an accident and not because of any IED blast triggered by the militants. The counter affidavit goes on to state that the

respondents have already paid a total sum of Rs. 11,41,188/- which includes a sum of Rs. 5,00,000/- on account of ex gratia compensation. It is

further submitted that the respondents have sanctioned a liberalised special pension of Rs. 3860/- per month excluding dearness relief in favour of

the petitioner and that no further amount is due or payable to her towards any statutory or non-statutory service benefit or towards ex gratia

compensation.

3. Appearing for the petitioner Mr. K. Digambar Singh made a two fold submission before us. In the first place he submitted that even if the

findings recorded by the court of inquiry regarding the genesis of the accident resulting in the death of Naik Hoshiar Singh were accepted, the

petitioner was entitled to receive an ex gratia payment of Rs. 7.50 lakhs and not Rs. 5,00,000/- only released by the respondents in her favour. He

submitted that the policy circular relied upon by the respondents in support of that payment itself justified the release of a higher amount, keeping in

view the admitted fact that the vehicle in which the petitioner's husband was traveling at the time of the accident was commissioned to carry out an

anti terrorists/insurgents operation. Just because the deceased had not died on account of any IED exploded by the militants or bullets fired by

them did not, argued Mr. Singh, make any material difference so long as the deceased was a part of the team charged with the duty of eliminating

the terrorists holed up in their area of operation. There was, according to the learned counsel, no real justification for making a distinction between

a case where a member of an action group dies in the course of an action against the militants because of the bullets fired by the terrorists/extremists on the one hand and another where the member of such a group dies on account of an accident that occurs in the course of the action.

4. Secondly, it was argued by Mr. Singh that the petitioner had received only a sum of Rs. 50,000/- as against a sum of Rs. 1,00,000/- payable to

her in terms of SOP letter no. B/46981/NDF/AG/CW-7 dated 3rd September 1999. The balance payment could therefore be directed to be

released with interest at the current bank rate.

5. On behalf of the respondents it was argued by Mr. Rajeev Mehra that the policy formulated by the Government for payment of ex gratia

compensation classifies cases depending upon the hardships and risks involved in the assignments held by the victims and the intensity and

magnitude of the deprivation that the family members of the armed personnel killed in action experience on the demise of the breadwinner. He

submitted that the petitioner's case fell in category "b" of policy letter dated 22.09.1998 according to which the family of any personnel dying in

the course of performance of duties attributable to acts of violence by terrorists/anti social elements etc. would be entitled to a sum of Rs.

5,00,000/- only. The petitioner's claim for payment of a higher amount by bringing her case under category "c" of the said policy letter was not

tenable as, according to Mr. Mehra, the death in the instant case had not occurred because of any injury sustained in the course of action against

the militants but on account of an accident that had taken place no matter the deceased was, at the time of the accident, deployed in an action

against the militants. It was further contended that ex gratia payment of compensation could not be claimed by the next of kins of the deceased

army personnel as a matter of right and that the policy for granting compensation was only humanitarian in nature and spirit. So long as there was

no discrimination in the implementation of the said policy, there was no room for interference by this court. It was further argued by Mr. Mehra that

payments in terms of the policy circular relied upon by the petitioner namely SOP letter no. B/46981/NDF/AG/CW-7 dated 3rd September 1999

stood made to the petitioner was limited to a sum of Rs. 50,000/- only, which had been reimbursed to her.

6. We have carefully considered the submission made at the bar and perused the record. An ex gratia payment towards compensation for the

death of an armed personnel may not be claimed as a matter of right, for there is no juristic basis for holding such a payment to be implicit in any

fundamental, statutory or legal right vested either in the deceased or the family left behind by him. Even so, nothing prevents the State from

formulating a policy that envisages making of such payment not only because the State is under an obligation towards those who have sacrificed

their lives for the sake of the integrity of this country but also because of the human aspect which inevitably arises from such casualties leaving

behind families forlorn penury. It is in that spirit that the National Human Rights Commission had, in a complaint filed by the members of the

deceased security/armed forces personnel, recommended to the Central Government to consider a suitable enhancement of the ex gratia payment

from Rs. 2,00,000/- to Rs. 7.50 lakhs and to work out a pragmatic scheme to provide other facilities to the dependents of the security/armed

forces personnel. Government of India policy circular dated 22nd September 1998 coming soon after the recommendation of the National Human

Rights Commission made in 1998 appears to have addressed the problem of providing a workable scheme of payment of ex gratia compensation

to the families of the defence service personnel who die while performing their bonafide official duties. The relevant portion of the said circular

reads:

I am directed to refer to Government of India, Ministry of Personnel, Public Grievances & Pension, Department of Pension and Pensioners"

Welfare O.M. No. 45/55/97-P&PW(C) dated 11-9-98 and state that the President is pleased to decide that the families of Defence Service

personnel who die in harness in the performance of their bona fide official duties shall be paid the follow ex gratia lump sum compensation:-

2. The graded structure of ex gratia lump sum compensation takes into account the hardships and risks involved in certain assignments, the intensity

and magnitude of the tragedy and deprivation that families of government servants experience on the demise of the breadwinner in different

circumstance, the expectations of the employer from the employees to function in extreme circumstances, etc. The compensation is intended to

provide an additional insurance and security to employees who are required to function under trying circumstances and are exposed to different

kinds of risks in the performance of their duties.

7. It is manifest from the above that in the case of death occurring due to accidents in the course of performance of duties, the scheme envisages a

payment of Rs. 5.00 lakhs. In the case of deaths occurring in the course of performance of duties attributable to the acts of violence by terrorists,

antisocial elements etc. falling in category "b" also, the compensation payable is Rs. 5 lakhs. In the case of casualties falling under category "c"

extracted above, the compensation payable is Rs. 7.5 lakhs. It embraces two distinct subcategories, one relating to enemy action in international

war or border skirmishes and the other relating to action against militants/terrorists/extremists etc. We are not in the present case concerned with

the category "c-i", for it is common ground that the accident resulting in the death of the deceased Naik Hoshiar Singh did not take place in any

international war or border skirmish. The petitioner has tried to bring her case under category "c(ii)" which covers deaths arising out of action

against militants/terrorists/extremists etc. The question is whether the case really falls in category c-ii on a true and correct interpretation of the

scheme and policy formulated by the Government and the classification made in the same cannot be read or interpreted as a statute. An attempt

has, all the same, to be made to place a rational interpretation on the terms thereof to avoid any part of the scheme or any provision thereof

becoming redundant or being rendered otis. While doing so we shall have to constantly keep in mind the fact that the scheme meant to be a

benevolent scheme for payments to the families of the armed personnel who lay down their lives in the course of their duties. With the above

prefatory remarks, one can safely say that the petitioner's case would not come under category "a" in as much as that category is limited to those

who lose their lives in accidents in the course of the performance of their duties regardless of the fact that those who do so, are working in a peace

area or engaged in antiterrorists/anti-social operations. Category, in our view, covers only such cases where an armed force personnel dies in an

accident while performing his duties unrelated to any militants or terrorists or extremists activities whatsoever.

8. In the case of category "b" death of the armed personnel has to be in the course of the performance of duties but the same must be attributable

to any act of violence by the terrorists or anti-social elements. What is significant is that in this category of cases, death is attributable to violence by

the terrorists/anti-social elements while the person who dies was performing his ordinary duties. Cases like grenade attacks on armed personnel

posted on duty may be covered in this category where the person is discharging his duties but dies on account of the violence by the terrorists/anti-

social elements. That too is not the position in the instant case, for it is not on account of any violence by the terrorists/anti-social elements, in the

course of the duty being performed by the deceased, that he died.

9. We are then left with category "c" only which, as noticed earlier, has two sub-categories, one dealing with international war or border

skirmishes which does not apply in the instant case and the other dealing with the cases where the personnel dies on account of action against

militants/terrorists/extremists etc. The question is whether the deceased in the present case had died while in action against the

militants/terrorists/extremists. It is only if the answer is in the affirmative that the petitioner can be held entitled to an ex gratia payment of Rs. 7.50

lakhs and not otherwise. The answer is, however, not far to seek. It is common ground that the deceased Naik Hoshiar Singh was a part of the

QRT which consisted of 1 JCO and 18 Ors. in and 3 x 3 ton army vehicle. At about 1835 hours on 26th September 1997, while the QRT was

located in unit lines, a radio message was received from the Adjutant Captain Karan Singh by Subedar Diwakar Singh, JCO of Head Quarter

company, 25 Rajput that he had to carry out a specific search of suspected militants in general area Gorteng MT 6705. According to the

deposition of Subedar Diwakar Singh in the course of the summary of evidence, on receipt of the message he got the QRT together and started off

to do the assigned task by around 1900 hours on the same day. The deposition of the said witness, however, shows that while the QRT was

moving between Zenakot and Tengpura, the vehicle in which the team of personnel was traveling started skidding down the embankment at the

edge of which was a wire fencing that was not at that time visible as it was dark. It was at this stage that the deceased Naik Hoshiar Singh and

Lance Naik Shiv Kumar both jumped out of the 3 ton vehicle while it was still sliding down with the result that they got crushed under the rear

wheels. That being the factual genesis of the incident, it is difficult to see how the cause of death can remain isolated from the performance of duty

in the pursuit whereof the deceased personnel was traveling in the vehicle. The expression ""death occurring during the action against

militants/terrorists/extremists etc."" is, in our opinion, wide enough to include not only cases where death occurs on account of any cross firing or

firing by the militants upon the action group of the army/security forces but also those in which the action group suffers casualties on account of an

accident while it is still pursuing the militants/terrorists/extremists or proceeding to encounter them. ""Action against militants/terrorists/extremists

must in such situation be taken to have started the moment the QRT leaves the unit lines to carry out the task assigned to it. Anything that happens

from the time the QRT leaves the unit lines till the time it returns to the camp must fall within the expression "action against the

militants/terrorists/extremists" appearing in category "c" of the policy letter extracted above. It is only when the Court leans in favour of a wider

interpretation that we can avoid anomalies that may otherwise arise out of a restricted interpretation of the policy. We cannot forget that the spirit

and the purpose underlying the policy envisaging payment of a relatively higher amount of compensation is to pay a higher amount in case the

person dies in action while they are pursuing, confronting, fighting or eliminating militants/terrorists/extremists. There is no gain saying that the

element of risk to the lives of those comprising QRT was considerably higher since the time the QRT left the unit lines in discharge or pursuit of the

specific task assigned to it. That is indeed the spirit with which the Government appeared to have formulated the policy and graded the payments

towards compensation. Para 2 of the policy letter itself recognizes that risks involved in certain assignments forms the basis for awarding a higher

compensation. That risk, there is no manner of doubt, was incurred by the QRT the moment it set out to take action against the militants. We have,

therefore, no difficulty in holding that on a true and correct interpretation of the policy, the petitioner was entitled to a higher payment of Rs. 7.5

lakhs for the death of her husband fell in category "c" of the policy letter referred to above. This is evident even from the interpretation of the policy

which the army has issued under the title ""Sainikon Ke Liye"" produced by the petitioner as Annexure P/4 to the petition. Ex gratia compensation of

7.5 lakhs has been made payable in the case of casualties in all operations other than Operation Vijay. In the case of ""Operation Vijay"" a higher

compensation of Rs. 10 lakhs was awarded which the petitioner is not admittedly claiming or otherwise entitled to. The expression ""all operations

other than Operation Vijay (Kargil)"" clearly shows that if the casualties take place in an operation it would entitle a family left behind by the

deceased to the higher amount of Rs. 7.5 lakhs. The certificate issued to the petitioner as next of kin of the deceased clearly shows that the

deceased had died on 26th September 1999 in the course of operation "Rakshak". Judged from any angle, therefore, the claim for payment of a

higher amount to the widow can not in our opinion be disallowed nor even grudged by the respondents.

10. That leaves with the only other question whether the petitioner has received the entire amount due to her from the Ministry of Defence even in

terms of Army Head Quarters SOP letter no. B/46981/NDF/AG/CW-7 dated 3rd September 1999. The respondents have filed a copy of the

said letter in terms whereof the government have released Rs. 45 crore from the National Defence Fund ""OP Vijay"" battle casualties and

constituted the AG's Branch (CW) Directorate as a nodal agency for implementing the welfare packages out of the fund released from the

National Defence Fund by the government and the Army Central Welfare Fund. The respondents contended and in our view rightly so that the

amount released in terms of the above letter was to be disbursed to battle casualties of those who had participated in ""OP Vijay"" and not other

operation including "Operation Rakshak". There is nothing in the letter relied upon by the petitioner to suggest that the ex gratia payment in terms

of the package envisaged by the same was ever extended to battle casualties of other operations also. On the contrary, the letter itself makes it

abundantly clear that the same applies only to battle casualties of ""OP Vijay"". Such being the position, the petitioner's prayer for release of any

amount in terms of the above letter does not appear to us to be justified. This may not, however, prevent the petitioner from making a proper

representation to the Competent Authority for release of any further benefit admissible to her under any other scheme formulated by the

government envisaging ex gratia payment or other rehabilitation benefits. In the result this petition succeeds but only in part and to the extent that

the respondents shall pay ex gratia compensation of Rs. 7.5 lacs to the petitioner less the amount already paid to her within a period of three

months from today failing which the said amount shall start earning interest at the rate of 10% per annum from the date the period of three months

expires till actual payment of the amount to her. The petitioner shall also be free to make a representation to the Competent Authority for the grant

of any ex gratia payment or other benefit under any other scheme applicable to her. Should such representation be made giving particulars of the

scheme, the Competent Authority is expected to examine the same and pass appropriate orders in accordance with law.

No Costs.