

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Case: OWP No. 603/2005

Date of order: 08.05.2008

Baij Nath

Vs.

State of J&K and others

Coram:

Hon'ble Mr. Justice Virender Singh, Judge.

Appearing counsel:

For petitioner(s) : Mr. S. K. Puri, Advocate.

For respondent(s) : Mr. B. S. Salathia, Addl. Advocate General.

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| i) | Whether approved for reporting
in Press/Journal/Media | Yes |
| ii) | Whether to be reported in
Digest/Journal | Yes |
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Pursuant to Government Order No. 179-GAD of 1994 dated 17.02.1994, Government of Jammu & Kashmir has been granting ex-gratia relief of Rs.2 lacs to the kin of those who are killed by militants. Vide Government Order No. 805-GAD of 1999 dated 15.07.1999, the said amount of Rs.2 lacs has been enhanced to Rs.5 lacs in respect of next of kin of the security forces including Defence Personnel killed in operations, who are permanent residents of the State. The aforesaid Order of 1999 reads, thus:-

**“Government of Jammu and Kashmir
General Administration Department**

**Subject:- Grant of ex-gratia relief of Rs.5.00 lakhs for the
next of kin of the soldiers killed in operations
who are permanent residents of the State.**

Reference:-Cabinet decision No.85/11 dated 08.07.1999.

**Government Order No. 805-GAD of 1999
Dated: 15.07.1999.**

In partial modification of Government Order No.179-GAD of 1994 dated 17.02.1994, sanctioned is hereby accorded to the enhancement of ex-gratia relief from Rs.2.00 lakhs (Rupees two lakhs) to Rs.5.00 lakhs (Rupees

five lakhs) in respect of next of kin of security forces including defence personnels killed in operations who are permanent residents of the Jammu and Kashmir State.

The increase in the grant of ex-gratia relief shall have effect from Ist of May, 1999.

By order of the Government of Jammu and Kashmir.

Sd/-

**Commr./Secretary to Government,
General Administration Department.”**

Undisputedly, the son of the petitioner namely Sanjwan Kumar was a police personnel and while he was serving in 14 Battalion SOG, lost his life on 27.12.1999 in an encounter with militants. The petitioner was granted and paid Rs.2 lacs as ex-gratia relief on 15.11.2000. He laid claim for payment of Rs.3 lacs more on the strength of aforesaid order No. 805-GAD of 1999. His case was recommended by the Commandant, JKAP 14th BN as is clear from letter No. Acctt/2005/11685-87 dated 23.08.2005, but has not been satisfied. This constrained him to file the instant petition for issuance of writ of mandamus seeking necessary directions.

Pursuant to notice, the respondents have filed objections. The main stand of the respondents as one finds from para 3 of para-wise reply is thus:-

“3. Contents of Para 4 and 5 of the writ petition are vehemently denied. It may be submitted here that it is a fact that ex-gratia relief has been enhanced from Rs.2.00 lacs to Rs.5.00 lacs vide Government Order No:805-GAD of 1999 dated 15.7.1999 in respect of Security Forces including Defence personnel killed in operations who are permanent residents of J&K State retrospectively with effect from 01.05.1999 and not in respect of J&K Police personnel. However, the issue has been taken up with the Government to include all Magistrates and J&K Police Personnel killed on security duties and the matter is still under consideration before the Government.”

At the very outset, Mr. Puri submits that the instant petition calls for decision at the motion stage itself for the reason that the decision on the issue involved herein has far reaching effect with regard to the grant of pecuniary

benefits to the kith and kin of hundreds & hundreds of J&K Police officials, who lost their lives while fighting against militancy in the last two decades. He then submits that, even otherwise, if one goes by the reply filed by the State, they would not be on a better position to controvert the case of the petitioner in the event of its admission and then being taken up in due course on some other date especially when no decision has been taken by the authority concerned with regard to the applicability of order of 1999 (**Government Order No:805-GAD of 1999 dated 15.07.1999**) to the members of the J&K Police Force. Mr. Salathia agrees to the disposal of the instant petition at this stage only. It is, thus, admitted to hearing and being disposed of finally.

The principal question arising for the consideration by this Court is thus:-

Whether the expression ‘Security Forces’ used in Government Order No. 805-GAD of 1999 dated 15.07.1999 would also include Police Force within its ambit?

The expression ‘Security Forces’ has not been defined by the Government either in the Government Order No. 805-GAD of 1999 or by any subsequent order.

In my considered view, the meaning has to be assigned to the expression ‘**Security Forces**’ by keeping in consideration the true intention of the Government which actuated it to pass the order.

We can not just ignore the fact that in the year 1999 the State of Jammu & Kashmir was reeling under militancy. The constitutional obligation of the State to protect liberty and lives of its citizens was seriously being jeopardized by the indiscriminate killings of its people by the militants. It was and it is only the security forces, who were and are bravely facing and putting up a fight with the militants. It is virtually a nation’s fight. It is only because of their efforts and bravery that the militants if not totally eliminated from the State, have been virtually rendered non-functional and pushed to wall. This has, no doubt, brought back the confidence to the people in the State. But one should not forget that this normalcy which we all are experiencing now is at the cost of lives of security personnel. It is not in dispute that various forces of the country

including the defence forces with the active participation & support of police force of the State were and are engaged in the anti-militancy operations. In these operations, each one of them was and is exposed to the equal risk of getting killed at the hands of the militants irrespective of as to which particular force he belongs. During such operations, many security personnel of various forces including the police force of the State have given sacrifices fighting militancy leaving behind their kith and kin in lurch. With a view to come to the rescue of such kith and kin of those brave persons, the State appears to have issued Government Order No:805-GAD of 1999 dated 15.07.1999. Going by this logic and rationale, the State cannot draw any distinction muchless valid distinction between a member of the State police who has laid his life while fighting with militants and the members of other forces for the purpose of granting ex-gratia relief. Perhaps, this being in mind, the Government seems to have deliberately instead of describing any particular force in the Government Order No:805-GAD of 1999 dated 15.07.1999 has used the comprehensive expression ‘Security Forces’ so as to bring all the forces fighting militancy under one umbrella. Therefore, in my considered view, this expression would include the State police force also. The question is answered accordingly.

This being the position, I am surprised that since long, the Government has not taken the decision of its own order with regard to the enhancement of ex-gratia relief, depriving kith and kin of so many brave sons of the soil, who laid down their lives while fighting with the militants. The State owes a pious obligation to come to their rescue at the earliest. The instant case unfortunately depicts apathy of the Government. It really pains this Court. Admittedly, the petitioner’s son being the member of the police force lost his life fighting against militants and, therefore, he is entitled to the payment of enhanced ex-gratia relief at the rate of Rs.5 lacs.

The net result is that the writ petition on hand is allowed with a direction to the respondents to release the balance amount of Rs.3 lacs in favour of the petitioner within two weeks from today.

Since the matter has been delayed from the respondents' end, any further delay on part of the respondents, individually or collectively, shall call for stern action.

Before parting with the judgment, I may observe here that any case of similar nature, if already pending or yet to be presented for the same relief before the authority concerned on the basis of aforesaid Government Order No:805-GAD of 1999 dated 15.07.1999, the same shall be decided expeditiously in the light of the observations made herein so that the affected person is not constrained to resort to any legal recourse for redressal of his grievance as it would not only save the time of the Court, but would also be in the interest of justice as well as in the interest of kith and kin of the departed brave soul(s).

(Virender Singh)
Judge

Jammu
08.05.2008
'Narinder'