

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP No.425/2004
CMP Nos. 254/2006 & 447/2004

Date of Decision: 19.05.2010

Bhagwati Parshad Dangwal Vs. Union of India and ors.

CORAM:

Mr. Justice J.P.Singh, Judge.

Appearing counsel:

For the Petitioner (s) : Mr. M.P.Sharma, Advocate.

For the Respondent(s) : Mr. K.K.Pangotra, ASGI.

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| i) | Whether approved for reporting in Press/Journal/Media | : Yes |
| ii) | Whether to be reported in Digest/Journal | : Yes |

Operation SHIKAR led by Kundan Prasad, Assistant Commandant of ITB Police was carried out from February 21, 2002 to February 23, 2002 in General Area Sunthwar village of Ganderbal, Srinagar -Jammu & Kashmir in two phases. In the first phase of the Search in the village, suspicious persons were found running away from the village. Two civilians bearing *Pherans* were, accordingly, challenged and in the ensuing gunfight, one militant named Fayaz Ahmed Reshi of HM group was killed whereas the second injured militant namely Manjoor Ahmed Bhat, succeeded in escaping towards the village.

To apprehend the second militant, Kundan Prasad, Assistant Commandant planned to cordon off the area and sent re-enforcement for tactically moving on foot. This party was led by the petitioner -Inspector GD Bhagwati Prasad Dangwal.

While the party was moving tactically in pitch darkness, the scout of the party CT/GD Netra Singh suddenly encountered the militant at a colliding distance. The militant fired from his weapon whereupon CT/GD Netra Singh, without caring for his personal safety, pounced upon the militant laying him on the ground and ultimately shot him dead in the scuffle. He was assisted in this by CT/GD Sushil Kumar.

In the first action, Kundan Prasad, Assistant Commandant and HC/GD Surjit Singh were recommended for President's Police Medal for Gallantry and awarded the Police Medal for Gallantry. Whereas for the second action, CT/GD Netra Singh and CT/GD Sushil Kumar were recommended and CT/GD Netra Singh was awarded Police Medal for Gallantry.

It appears that the petitioner, who was also involved in the operation, too, had been recommended by the Unit Commandant for Gallantry Award. These recommendations were examined by the Designated Board at the Directorate General in accordance with the instructions issued in this behalf by the Government of India. The recommendations were, however, returned by the Directorate General with the directions for recommendation of only those personnel, who were directly involved in killing of the two hard core militants on the basis of the ground realities.

Mr. I.S.Duhan, the then Commandant (CCD), 8th Bn, accordingly, heard all the parties of the Operation,

Re-enforcement group of operation SHIKAR and recommended fresh citation for decorating seven persons. These recommendations were again examined by the Screening Committee for the Award of President's Police Medal/ Medal for Gallantry. After going through the recommendations and citation in detail and keeping in view the brave and courageous act and their conspicuous achievement during operation, three persons namely Kundan Prasad, Surjit Singh and Netra Singh were recommended by the Directorate for the Award of President's Police Medal for Gallantry, which was awarded to them.

The petitioner, who was also involved in Operation SHIKAR has filed this Writ Petition seeking a command to the respondents to decorate him with the gallantry Award besides seeking quashing of Memorandum dated July 03, 2003 questioning adverse entries appearing therein against him.

At the hearing of the Petition, the petitioner's learned counsel restricted the petitioner's relief in the Writ Petition only to seek command against the respondents to award him President's Police Medal for Gallantry.

Learned counsel for the petitioner submitted that the petitioner, who was also Incharge of one of the groups which had been deputed to eliminate escaped militants, was entitled to be awarded as was done in case of Kundan Prasad, Assistant Commandant, who was situated similarly with him by the respondents and that a command was required to be issued to

the respondents to accord the petitioner same treatment which was given by them to Kundan Prasad in awarding him with the President's Police Medal. Learned counsel was critical of the recommendations made by Mr. I.S.Duhan in urging that he had not recommended the petitioner's name for the Gallantry Award for his bias against the petitioner and his recommendations, suffering from bias, were not required to be considered by the respondents in considering the petitioner for the Gallantry Award.

Referring to the details of the operation SHIKAR, the respondents' learned counsel contested the petitioner's claim to the Gallantry Award on the ground that though recommended by Mr. Duhan for the Award, the petitioner had not been found entitled thereto, according to the guidelines of the Ministry and the recommendations of the Screening Committee at the Directorate level, because under the guidelines, only those, who were directly involved in the killing of the militants were entitled to be decorated.

I have considered the submissions of the learned counsel for the parties and perused the records made available by the respondents.

Petitioner's plea that Mr. I.S.Duhan had not recommended him for Gallantry Award for his bias against him is found without any basis and merit, in that, the records indicate Mr. Duhan to

have recommended seven persons for the President's Police Medal, which included the petitioner too.

The records further indicate that the recommendations made by Mr. I.S.Duhan, Commandant (CCD) were examined by the Screening Committee in the Directorate in accordance with the guidelines and only two persons namely HC/GD Surjit Singh and CT/GD Netra Singh, who had actually killed the militants, were found entitled to the Gallantry Award, besides Kundan Prasad, Assistant Commandant, who had controlled the whole operation besides being the leader of one of the groups which had eliminated one of the two militants.

Petitioner's plea that he was similarly situated with Kundan Prasad, Assistant Commandant and was entitled to the Gallantry Award as was given to Kundan Prasad, cannot be examined by this Court, in that, the issue as to whether or not the petitioner was situated similarly with Kundan Prasad, Assistant Commandant, during the course of the Operation, is a question of fact, in the realm of appreciation of role played by the two in the operation, which is required to be done only by the experts in the field and in accordance with the instructions and guidelines issued by the Ministry.

The records produced by the respondents do not bring out any such act of gallantry performed by the petitioner warranting a Gallantry Award.

The role played by Kundan Prasad in planning, initiating, carrying out and concluding with success the operation SHIKAR, which resulted in the killing of two militants, is decidedly on a much higher pedestal than the role played by the petitioner being Incharge of one of the two groups functioning under the direct control and supervision of Kundan Prasad, Assistant Commandant and in this view of the matter, the decision of the respondents refusing Gallantry Award to the petitioner cannot be faulted because in the given facts, the petitioner cannot equate his role in the operation with that of Kundan Prasad, Assistant Commandant.

Thus, finding the role played by the petitioner in operation SHIKAR not similar to the role of Kundan Prasad, Assistant Commandant, he is not found entitled to seek issuance of directions against the respondents for decorating him with the Gallantry Award as was done in the case of Kundan Prasad, Assistant Commandant.

Found to be without merit, this Writ Petition is, accordingly, dismissed.

Records be returned.

(J. P. Singh)
Judge

JAMMU
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Vinod.