
(2007) 01 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 37599 of 2001

M. Munirajappa

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-01-2007

Acts Referred:

Citation : (2007) 4 KarLJ 710 : (2007) 2 KCCR 1094

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Bhupinder Singh, for the Appellant; C. Shashikanth, CGSC for R1-5, for the Respondent

Judgement

N.K. Patil, J.—The petitioner herein questioning the legality and validity of the impugned communication cum order dated 12th February 2001 bearing No. PAD.118.9267/PN III/STC BSF YEL/BSF 2001 issued by second respondent vide Annexure F, has presented the instant writ petition. Further, petitioner has sought for a direction, directing the respondents 1 and 2 to grant immediate ex-gratia grant of Rs.7.5 lakhs along with 18 per cent interest with effect from 13 July 1999, the date of death of the wife of the petitioner and to direct the respondents 1 and 2 to obtain Rs.01 lakh from the J & K Government and allot the said money to the petitioner. Further, petitioner has sought for a direction to fifth respondent to give money collected by the school children during Kargil operation to the children of the petitioner.

2. The grievance of the petitioner in the instant writ petition is that, petitioner was serving as "Constable" in the Border Security Force of India and presently serving under the fifth respondent. Petitioner has an unblemished and outstanding record of service in his entire sixteen years of service, in various fields and peace assignments. Most of the petitioner's service has been in the far flung areas of Jammu & Kashmir and Punjab Border in the forward most posts. Petitioner was enrolled in the Border Security Force on 20* July 1985. When petitioner was posted in the forward post of Bandipur Jammu & Kashmir Sector

during February 1994, he was permitted to take his wife late Smt Bharathi along with him in the said post under the orders of third respondent. The third respondent had allotted petitioner a married accommodation. Petitioner was living along with other families numbering about one hundred in the same married residential complex. The petitioner was given a rent free house but he was paying the electricity and water charges. When things stood thus, on the fateful night of 12th /13th July 1999 at about 02:00 hrs, while petitioner was putting up with his wife and children in the Government House and was performing his duties at the disturbed area of the Bandipur, few Pakistani army militants duly armed with lethal weapons raided the BSF camp located on the east side of the family quarters. The BSF on duty did not retaliate the fire of the enemy. Seeing no reaction by the BSF persons on duty, the militants entered the Family campus. The militants after entering the said campus started firing indiscriminately through the window of the house where the petitioner along with his family was sleeping. The petitioner suddenly woke up with a shock. The late wife of the petitioner also woke up. At that time, the son and daughter of the petitioner got bullet injury in the neck/chest and abdomen respectively. The late wife of the petitioner after realizing the gravity of the situation with an intention to save her children and the petitioner, immediately rolled over the children for the sake of saving their life. The militants on the other hand were very cunning, crafty, shrewd, and sly and aimed fire on her from the window of the house. In the melee, the late wife of the petitioner was killed due to the bullet injury sustained and petitioner was also injured in the said firing including the son and the daughter. After about 12:30 hrs. on 13th July 1999, petitioner along with his daughter and five BSF persons was evacuated to 92 Base Hospital located at Srinagar about seventy kmts. away by an Air Force Helicopter. At this Hospital, the petitioner was operated twice on the night of 13th /14th July 1999 and 16th July 1999. The daughter of the petitioner was also operated for abdominal injuries and a bullet piece was taken out from her body. Petitioner's late wife's dead body was brought by the Indian Airlines flight and was cremated at Bangalore on 15th July 1999 with military honour. It is the further case of petitioner that, after this episode, petitioner started a prolonged correspondence with the respondents for grant of ex- gratia monetary grant on account of the sad demise of his wife for the cause of nation and the injury including the mental injury and trauma to his children. He made further correspondence to the concerned jurisdictional Officers and hierarchy between 20th August 1999 and 2nd June 2001 vide Annexures E, E1 to E4. On the basis of his representations, the concerned immediate jurisdictional Officer has sent a recommendation on 24th November 1999 vide Annexure J for grant of ex-gratia payment from Central Government payable to the family of braved serving BSF personal as his wife was killed by the militants action. Thereafter, the Deputy Commandant / Administration, HQ "B" FTR.BSF also by his letter dated 31st March 2000 vide Annexure K forwarded the recommendation with reference to the relevant letter of the Accounts Officer (Pension -III) PAD BSF, New Delhi bearing No.PAD/EX-GR/T-154/BSF dated 3/2000. On the basis of the said recommendations forwarded

by the competent authority vide Annexures J and K, the matter was referred to the Ministry of Home Affairs, Government of India, BSF Head Quarters and in pursuance of the appeal made by the petitioner and his representation dated 26th December 2000 seeking ex-gratia grant of compensation, the concerned jurisdictional delegated authority of the Ministry of Home Affairs, BSF Head quarters has issued the impugned communication cum order dated 12th February 2001 vide Annexure F, rejecting the request of the petitioner, in one line, stating that, the Government of India, Ministry of Home Affairs did not consider the petitioner's request for grant of ex-gratia amount as the same cannot be given to the family member and that, the rules regarding ex-gratia grant are only applicable to the members of the force. Therefore, as per rules, since the death of the wife of the petitioner was due to the attack by the militants, the Central Government is not liable to pay the ex-gratia amount. Being aggrieved by the impugned communication cum order dated 12th February 2001 vide Annexure F, and seeking appropriate reliefs, as stated supra, petitioner herein felt necessitated to present the instant writ petition.

3. I have heard learned counsel appearing for petitioner and learned Counsel appearing for respondents for considerable length of time on 11th January 2007 and today.

4. Learned Counsel appearing for respondents, at the outset submitted that, so far as the second prayer sought for by petitioner to direct respondents 1 and 2 to obtain a sum of Rs.One Lakh from the Jammu and Kashmir Government and allot the said money to the petitioner, is concerned, the same does not survive for consideration on the ground that, during the pendency of the instant writ petition, the said amount has been deposited with the Deputy Commissioner, Baramula. Accordingly, placing the submission of the learned counsel on record, the said prayer is dismissed as having become infructuous.

5. So far as the other prayers sought in the writ petition are concerned, after careful evaluation of the entire material available on record, including the recommendations sent by the jurisdictional authorities vide Annexures J and K, the impugned order cum communication vide Annexure F and the stand taken by respondents in their statement of objections, it is manifest on the face of the impugned communication cum order that, the said delegated authority of the BSF has committed grave error and material illegality in proceeding to pass the impugned non speaking order based on the rejection letter received from the Ministry of Home Affairs, Government of India. The impugned order cum communication is a non speaking order for the reason that, the same does not contain any discussion, reasoning or finding regarding the impugned decision taken by them, rejecting the grant of ex-gratia payment to the petitioner, in the impugned communication cum order, it is only referred that, the Ministry of Home Affairs, Government of India did not consider the request of the petitioner for grant of ex-gratia amount for the reason that, the ex-gratia amount cannot be given to the family member and the rules regarding ex-gratia grant are only

applicable to the members of the force the therefore, as per rules, since the death of the wife of the petitioner is due to the attack by the militants, the Central Government is not liable to pay ex-gratia grant.

6. It is significant to note here itself that, the respondents have not disputed either orally or in their statement of objections that, the death of the wife of petitioner is due to militants" attack. The jurisdictional Officers namely the Deputy Inspector General (DIG)SHQ BSF, NG Sector Care of 56 A.P.O. and The Inspector General, Border Security Force "B" Frontier (Baramula) Care of 56 A.P.O. have specifically recommended the case of petitioner by their communications dated 24th November 1999 and 31st March 2000 respectively vide Annexures J and K for grant of ex-gratia amount. But, after perusal of the entire material available on file, it is seen that, there is no consideration or reference of the said recommendations in the impugned order cum communication nor there is a reference of the relevant Official Memorandum dated 11th September 1998 bearing O.M.No.45/55797-P &PW(C) wherein paragraph 8 says that, the families of Central Government civilian employees killed after being kidnapped by the militants, terrorists and extremists etc. because of their official position or with a view to spreading terror will also be entitled to the ex-grate compensation specified in Clause 5 (C) of the said Official Memorandum. This aspect of the matter has neither been considered nor whispered in the impugned communication cum order issued by second respondent. Therefore, in view of non conduct of proper enquiry and for not passing a speaking order, the impugned communication cum order cannot be sustained and the matter requires reconsideration by the competent jurisdictional authority for passing a speaking order with reference to the recommendations forwarded by the competent authority of the force vide Annexures J and K and with reference to the Official Memorandum referred above, as expeditiously as possible.

7. In the light of the facts and circumstances of the case, as stated above, the writ petition filed by petitioner is disposed of with the following directions:

- i] The writ petition filed by petitioner is allowed in part;
- ii] The impugned order cum communication dated 12th February 2001 bearing No.PAD.118/9267/PN III/ STC/BSF YEL/BSF/2001 vide Annexure F issued by second respondent is hereby set aside and the matter stands remitted back to first respondent to reconsider the matter and pass appropriate order, as expeditiously as possible, at any rata, within four months from the date of receipt of a copy of this order.
- iii] Further, petitioner herein is permitted to submit his written submission to the first respondent within three weeks from the date of receipt of a copy of this order.
- iv] in such an event, the first respondent is hereby directed to receive the written submission to be filed by petitioner and proceed with the matter and dispose of

the same, as expeditiously as possible, within the reasonable time in compliance of the directions issued above.

8. With these observations, the writ petition filed by petitioner stands disposed of.