

(2013) 07 DEL CK 0216
In the Delhi High Court
Case No : Writ Petition (C) 7794 of 2012

Rita Singh

APPELLANT

Vs

Govt. of India and Another

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Border Security Force Act, 1968 — Section 2(j)

Citation : (2013) 07 DEL CK 0216

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Sumi Anand, for the Appellant; Sachin Datta, CGSC, Mr. Vikram Aditya, Adv for R-1, Ms. Manika Tripathi and Mr. Ashutosh Kaushik, Advs, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—Shri Ugrasen Singh, husband of the petitioner, before this Court was employed in Border Security Forces (BSF). He died on 16.08.1992 due to militants attack while his battalion was on internal security duty in Kashmir. The learned counsel for the petitioner states that at the time the husband of the petitioner was killed by the militants, his battalion was operating in the J & K under the Command of Indian Army. In the year 2010, DDA came out with a scheme for allotment of residential flats in Delhi known as DDA Housing Scheme, 2010. The said scheme had certain reservation in allotment, inter alia, for the "war widows". The petitioner, claiming to be a war widow applied for allotment of a residential flat under the said scheme and an LIG flat No. 330 at D-6, Vasant Kunj, New Delhi was allotted to her. The petitioner also visited the DDA officer for the purpose of verification of her documents, but no demand letter was sent to her. Vide notice dated 19.10.2011, she was asked to appear in DDA office along with the documents specified in the said letter. One of the documents required from her was original certificate of being a war widow, from the Competent Authority. In response to the said notice, the petitioner appeared in DDA office,

but was told that since her case did not fall in the defence category, the allotment would be cancelled. The petitioner sought information from various authorities with respect to definition of the expression "war widow". The Border Security Force vide letter dated 12.06.2012 informed DDA that the husband of the petitioner had sacrificed his life in a militant attack on 16.08.1992, while deployed in Kashmir Valley. BSF strongly recommended that the allotment made to the petitioner may be continued since her husband had sacrificed his life for the nation. Since the possession of the flat allotted to her was not given to the petitioner, despite the aforesaid letter from BSF, she is before this Court by way of this writ petition, seeking the following directions:-

a. pass a writ, order or direction in nature of a writ of certiorari thereby quashing the communication dated 20.09.2012 of Respondent no. 1 in relation to the definition of the term war-widows.

b. pass a writ, order or direction in the nature of a writ of mandamus thereby directing the respondent No. 1 to consider the Petitioner as a war-widow.

c. pass a writ, order or direction in the nature of a writ of mandamus thereby directing the respondent no. 2 to consider and confirm the allotment of the Petitioner under the reserved category of the War-Widow

d. pass a writ, order or direction in the nature of a writ of mandamus thereby directing the respondent no. 2 to allot LIG flat bearing No. 330, D-6, Vasant Kunj, New Delhi to the petitioner.

2. Relying upon the definition of "enemy" given in Section 2(j) of the Border Security Force Act, 1968, which defines "enemy" to include all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to this Act to take action, the learned counsel for the petitioner submits that the militants being enemies to the nation, if a person serving a para military force such as BSF is killed while engaged in fight with militants, his widow should certainly be considered to be a "war widow" since the fight with the militants is nothing, but a proxy war initiated by another nation, in which our Army and para-military forces are engaged in Jammu & Kashmir. According to her, it is not only the open war at the border, but also a proxy war being fought within our territory with the enemy country through the militants sent by the said country, which should qualify to be a war for the purpose of identifying the war widows.

3. Admittedly, Delhi Development Authority did not define the expression "war widow" in its Housing Scheme, 2010. The said expression has not been defined in any other statute or statutory Rule and regulation. The expression "war" is defined in Shorter Oxford English Dictionary to include the employment of armed forces against a foreign power or against an opposing party in the State, any active hostility or struggle between living beings, conflict between opposing forces or principles, and a hostile attack or invasion. Primarily, it was for Delhi Development Authority which came out with the aforesaid scheme to decide it as

to who would be considered to be "war widows" for the purpose of allotment under the said Scheme. That however was not done. The exercise will therefore have to be undertaken now; instead of shifting the onus to the Govt. or some other Authority. It goes without saying that while taking a view in this regard, Delhi Development Authority should not lose sight of the fact that the officers and jawans of para-military forces such as Border Security Force are constantly engaged in an important duty in the security of the nation, at tremendous risk to their life and, therefore, attempt should be to give an interpretation which is compassionate, benevolent and large hearted and does not discourage the persons who are engaged in rendering such valuable services to the nation. In these circumstances, the writ petition is disposed of with a direction to the Vice-Chairman of Delhi Development Authority to consider the writ petition as a representation from the petitioner, in the light of the observations made in this order and take an appropriate decision in the matter, within four weeks from today. The decision so taken shall be conveyed to the petitioner within one week thereafter.

If the petitioner is aggrieved from the decision, so taken, by the Vice-Chairman of DDA, it shall be open to her to avail such remedy as are available to her in accordance with law. The petitioner is permitted to submit additional documents/material to the Vice-Chairman of DDA, within one week from today. She will also be given a personal hearing before an appropriate decision in terms of this order is taken by Vice-Chairman of DDA. The allotment made to the petitioner shall not be cancelled till an appropriate decision in terms of this order is taken by the Vice-Chairman of DDA. The writ petition and CMs stand disposed of.