

NATIONAL HUMAN RIGHTS COMMISSION
(LAW DIVISION)
MANAV ADHIKAR BHAWAN, BLOCK-C, G.P.O. COMPLEX,
INA, NEW DELHI- 110023

Dated 18/02/2015

Case No. 177/9/8/08-09-AF

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SHRI SUHAS CHAKMA, DIRECTOR
NATIONAL CAMPAIGN FOR PREVENTION OF
TORTURE, C-3/441-C, JANAKPURI, NEW DELHI,
WEST DELHI, DELHI.

13 MAR 2015

Sir/Madam,

With reference to your complaint dated 04/02/2009, I am directed to say that the matter was considered by the Commission on 14/01/2015. The Commission has made the following directions.

The documents forwarded along with a communication dated 12.11.2011 from District Magistrate, Kupwara show that the compensation amount of Rs.five lakhs was paid to the NoK of the deceased Fayaz Ahmad Mir.

Since the Government of Jammu & Kashmir has paid an amount of Rs.one lakh gratia relief and Rs.four lakhs in lieu of appointment to government service to the NoK of the deceased, no further action in the matter is required. The case is, therefore, closed.

This is for your information.

Yours faithfully,

DEPUTY REGISTRAR(LAW)

JAMMU AND KASHMIR
STATE HUMAN RIGHTS COMMISSION
DASH BUILDING BOULEVARD, SRINAGAR.

- 1 The Secretary Ministry of Defence
Government of India, New Delhi.
- 2 The Director General of Police
J&K State, Srinagar.
- 3 The Senior Superintendent of Police
District Kupwara.

No:-SHRC/2009/42/2270 Date:- 15-10-2010;

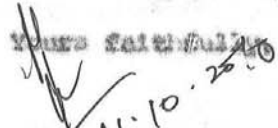
Subject:- Complaint titled Subas Chasma Director
National Campaign of Protection of Torture

Sir,

The J&K State Human Rights Commission has made recommendations in the above titled case on 22-08-2010.

A copy of the recommendation is forwarded herewith for further necessary action, at your end please. As envisaged under the J&K Protection of Human Rights Act, 1997 action taken report may kindly be intimated to this commission within a period of one month positively.

Yours faithfully,


11.10.2010
Administrative Officer,
J&K SHRC, Srinagar.

✓
Copy to: The Complainant namely Subas Chasma
Director National Campaign of Protection
Torture C/o C-3/441-C, Janakpuri New Delhi
110058 INHA for information alongwith
a copy of Judgement.

**BEFORE J&K STATE HUMAN RIGHTS COMMISSION
DAWN BUILDING BOULEVARD ROAD DALGATE SRINAGAR**

Present: Hon'ble Justice Syed Bashir-ud-Din, Chairperson

File No. Date of Institution Date of Decision

SHRC/42/2009 19-02-2009 25-08-2010

Complaint from Suhas Chakma, Director National
Campaign of Protection of torture.

V/S

State of J&K
and Others.

JUDGEMENT

None for the complainant.

Mr. Gh. Qadir POC

Mr. Riyaz Ahmad CPO

One Fayaz Ahmad Mir S/O Ab. Rashid Mir R/O Khurhama Kupwara, a tailor by profession was shot at under mistaken identity on 01-02-2009 by 18 RR persons. Resultantly Fayaz Ahmad Mir sustained grievous bullet injuries and succumbed to the injuries in Hospital at Srinagar. The brother of the subject one Gh. Rasool Mir alleges that he has filed FIR in P/S Lalpora. However, neither challan is produced before the court of law nor accused are brought to justice. He has prayed for just orders in the matter.

Regarding the occurrence another complaint bearing No.(SHRC/73/2009) was filed by Suhas Chakma shown as Director national Campaign for prevention of torture, an NGO working in the field of Human Rights. The said Suhas Chakma apart from mentioning the occurrences in terms as above has prayed that the Ministry of Defence should order a probe in the matter and take action against the accused personnel and bring to book the guilty and pay compensation to the NOK's of the deceased namely Fayaz Ahmad Mir.

In the case for last one and a half year, report was sought from MoD of Central Government and also POC and SP Kupwara of the State Government. The MoD has not responded so far. However, the DGP has conducted an enquiry into the matter and submitted his report on 02-06-2010.

In the light of report the Commission need not wait for the other reports to reach the Commission, in as much as the matter can be disposed off on the material available on record. Neither the complainant nor any one else on his behalf or on behalf of the NGO is appearing ab-initio to pursue the matter.

Mr. Riyaz Ahmad CPO is heard. Record perused.

The enquiry conducted through DGP as reported to the Commission has concluded that Fayaz Ahmad Mir (subject) was killed under mistaken identity by the personnel of 18-RR when they opened fire towards him. Initially the subject sustained

*Verified
Supr (CM)*

*State Human Rights Commission
Srinagar*

previous bullet injuries. This happened when the subject was out of his house for passing urine. The house is located close to the forest area and ill-luck as it seem to be this hapless fellow came out exactly at the point of time when a patrol party of 18 RR had laid an ambush in the area to track/confont terrorists reportedly moving in the area. FIR 03/2009 is registered against the troopers of the Army personnel at P/S Lalpora Kupwara and the investigation is going on. The deceased is stated to be innocent and not involved in any kind of militancy activities. It is also stated that NOK's/family members of the deceased has received Rs.1.00 lac as exgratia relief.

It is, manifest that the matter is under investigation with police station Lalpora. SIT is constituted and the investigation is carried out. The matter is taken up by police with MoD and with concerned Army officers. However, response is awaited. The postmortem report and as also medical report is on the CD file available to the investigation team. MoD is not supposed to have autopsy/postmortem report of the subject. Therefore, calling such reports from MoD appears, on submission in the facts and circumstances of the case, not taneble. However, the fact remains that the matter is lingering on only because there is silence on the part of the Army/MoD. The information fed to this Commission by District Police Kupwara is that FIR is under investigation. Mr. Riyaz Ahmad submits that the information which he has received is that the case is being vigorously investigated by SIT headed by Dy. SP. The matter is not making swift headway as issues as also identity of the personnel of the Army(18 RR) has been taken with MoD and the response is not as quick as one expects, it is to be. No sooner information is received by the SIT, the investigation will be taken to its logical end. A copy of FIR is also available on record. The MoD/Army authorities are expected to cooperate with the investigative team and take all necessary steps which may be required to carry forward the investigation to logical end in due course of law. The MoD will also do well to issue instructions and pass orders in the matter and all concerned connected with the case to fully cooperate with the investigative team and take required steps for early finalization of the case. DGP (and as also SSP Kupwara under him) to pursue the matter and ensure that the investigation is completed in quick-time and in a fair, objective and transparent manner. The NOK's/ dependents of the subject have/has been already paid Rs.1.00 lac as exgratia relief under SRO 723 of 1990 as amended from time to time, yet if the Government finds a suitable and just cause, it may in its discretion hike the payment of compensation on merits of the case. In result on afore-said analysis and evaluation the case is disposed off in terms of direction/recommendation as above. ATR/PATR to be endorse/submit within a period of one month, unless this time priod is extended in terms of Section 19 of J&K Protection of Human Rights Act. Inform concerned of this order. Sarishtahdar to take necessary follow-up action(s).

Announced.
25-08-2010.

(Justice Syed Bashir-ud-Din)
Chairperson
J&K State Human Rights
Commission, Srinagar

Verified
Sub (M)

A. P. Singh
Secretary
J&K State Human Rights Commission