
(2006) 03 DEL CK 0138

In the Delhi High Court

Case No : Writ Petition (C) 516 of 2002

Ashwani Kumar Mishra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-03-2006

Acts Referred:

Defence of India Rules, 1962 — Rule 38(1), 38(5)

Citation : (2006) 88 DRJ 643

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Rakesh Upadhyay, for the Appellant; Suresh Kait, for the Respondent

Final Decision : Allowed

Judgement

Vikramajit Sen, J.—The Petitioner claims Pension under the Swatantrata Sainik Samman Pension Scheme on the grounds that he had undergone imprisonment for a cumulative period of at least six months, in the following manner : 15.8.1942-18.9.1942 (35 days), 2.10.1942-3.1.1943 (94 days) and 20.2.1943-10.5.1943 (80 days).

2. In Gurdial Singh Vs. Union of India and Others, , in the context of veracity of evidence, it has been observed as follows:

7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases

of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of beyond reasonable doubt . Once on the basis of the evidence it is probabalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favor unless the same is rebutted by cogent, reasonable and reliable evidence.

3. The Supreme Court had followed and reiterated the approach earlier recommended by it in *Mukund Lal Bhandari and others Vs. Union of India and others*, in the following words :

7. ... In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependants and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes. The Scheme has rightly been renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its object. We, Therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus otherwise qualified to receive the benefit. We are, Therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims, should be regarded more as a matter of administrative convenience than as a rigid time-limit.

4. The Supreme Court has poignantly observed that since this Scheme was in the nature of a Samman, it was for the Administration to reach out to freedom fighters and give them this benefit as an acknowledgment of their selfless sacrifice. It is well-nigh impossible for freedom fighters to have retained irrefutable full-proof and unambiguous evidence of their incarceration, as their intentions at that point in the annals of our nation were for working towards the freedom of the country, and not gathering and preserving evidence in anticipation of the promulgation of the Swatantra Sainik Samman Scheme.

5. In the present case, there is more than adequate evidence that the Petitioner was imprisoned owing to political activities calculated to farce freedom for his fraternity. The attitude of the Respondents in insisting upon the exact date of imprisonment as well as the exact date of discharge is not only not in sync with the statute or the Scheme, but is also most unrealistic and unreasonable. The Petitioner has been granted a `Freedom Fighters Certificate" by the Government of Madhya Pradesh as far back as on 24.10.1984. In respect of the first period of incarceration a Certificate has been furnished by Shri Abdul Rauf, who is undisputably a freedom fighter and appears to have been imprisoned for two years under Rules 38 (1) and 38(5) of the defense of India Rules. A person of this repute has certified that the Petitioner had been imprisoned in Hoshangabad

Jail prior to Shri Rauf's incarceration on 17.8.1942. There is, Therefore, evidence to show that at least in August, 1942 the Petitioner had been imprisoned. There is no reason either for me or for the State to disbelieve the Petitioner's assertions that he was imprisoned in this period, from 15.8.1942 to 18.9.1942. In respect of three periods another acknowledged freedom fighter, namely, Shri Girija Shankar Shukla, has also certified in favor of the Petitioner. There is also available on record a Certificate issued by the Office of the Collector, Hoshangabad dated 17.5.2001 which reads as follows:

OFFICE OF THE COLLECTOR, HOSHANGABAD

CERTIFICATE

No./7898/O L12/2001 Hoshangabad, Dated: 17/05/2001

Certified that Sri Ashwini Kumar Mishra S/o Shambhu Dayal Mishra, Freedom Fighter, R/o Hoshangabad, has been registered bearing No.176 in the records of District Office, Hoshangabad.

2. Renowned Freedom Fighters Sri Girijashankar Shukla and Sri Abdul Rauf have certified in the record books of District Hoshangabad that they Along with Sri Ashwini Kumar Mishra had suffered the following terms in prison during the course of freedom struggle:

(I)15.8.1942 to 19.9.1942

(II)2.10.1942 to 3.1.1943

(III)20.2.1943 to 10.5.1943 Signed

Collector

Hoshangabad

6. The fact that the Government of Madhya Pradesh in terms of its letter 20.11.1986 has recommended the Petitioner's name to the Government of India appears to have been totally ignored. Further and other evidence indicating the Petitioner's political activities during the period 1942-43 is present in that the Headmaster of the Government High School, Hoshangabad had addressed a letter to the Divisional Superintendent of Education, Jabalpur Division, Hoshangabad inquiring what should be done in the case of Petitioner who had been arrested by the Police on 15th August (presumably 1942). The Director Public Instructions Central Provinces and Berar, had in letter dated 20.10.1942, recommended the rustication of the Petitioner in the light of his nationalist activities.

7. In Writ Petition No.8481/2004 titled Indumati Bai v. Union of India decided on 11.1.2005 I had occasion to consider a similar claim for grant of Samman Pension which I had allowed. Therein I had expressed the view that the decisions of the Hon'ble Supreme Court in Mukund Lal Bhandari and others Vs. Union of India and others, in which it has been held that Samman/Pension should be

sanctioned from the date of the application. Even earlier thereto in Duli Chand and others Vs. Union of India and others, , the Apex Court had made the Samman payable from the date of the Scheme itself. It has already been noted that no reply has been sent to the letter of late Shri Gupta in which he had requested for payment with effect from the date of his application. In the Counter-Affidavit reliance has been placed on two judgments of the Hon''ble Supreme Court in Union of India and Others v. Ganesh Chandra Dolai and Others, (1997) 10 SCC 289 and Union of India v. M.R. Chelliah Thevar Civil Appeal No.7762 decided on 30th April, 1996, but neither of these judgments apply to the present case. What the Court was confronted with in the two latter judgments was the grant of a Samman by giving the benefit of doubt to the Applicant. More recently in Government of India represented by the Secretary Vs. K.V. Swaminathan, , the distinction between unconditional grant of Samman and its bestowal by extension of benefit doubt in favor of the Applicant had been spelt out. Since the Applicant in that case had been granted pension on the basis of benefit of doubt, it was made applicable from the date of the decision .

8. In WP(C) No. 7917/2003 titled Bhargava Dutt Chaturvedi v. Union of India decided on 31.1.2006 I had declined to reverse the findings of the Central Government to the effect that Mr. Chaturvedi had not proved his case. In the present Petition, however, it appears to me that the Respondents have adopted a wholly negative attitude towards the Petitioner and have not acted in consonance with the Samman Scheme.

9. At the commencement of the hearing learned Counsel for the Petitioner had, on instructions from the Petitioner, stated that the main purpose and objective behind the Petition was the vindication of the Petitioner's honour as a selfless freedom fighter. The law is well-established that the Petitioner would be entitled to the Pension from the date of the application which in this case would be 30.6.1985, if not 19.6.1982. In keeping with the sacrifices which senior citizens such as the Petitioner have exemplified in their life-times, learned Counsel for the Petitioner has stated that the Petitioner would be satisfied if the Pension is granted for the last seven years so that he could tide over some of his financial difficulties. It is submitted that the period prior thereto may be donated to the Prime Minister Relief Fund.

10. In these circumstances the Petition is allowed. I am of the opinion that the Petitioner has sufficiently proved that he had undergone imprisonment for six months over three periods. The Petitioner shall be entitled to Pension as per the Scheme with effect from 1.1.1998. This payment be made within four weeks from today, failing which the Petitioner shall be entitled to Pension with effect from 30.6.1985, the date on which he had filed the application together with costs quantified at Rupees ten thousand.

11. dusty.