

(2002) 10 MP CK 0068
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6064 of 2001

Bhagwandeem Sharma

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

Madhya Pradesh Swatantrata Sangram Sainik Samman Nidhi Niyam, 1972 — Rule 3

Citation : (2003) 2 MPHT 258

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Mukhtar Ahmed and S.A. Wakeel, for the Appellant; Shashank Shekhar, Panel Lawyer for Respondent Nos. 1 and 3, for the Respondent

Final Decision : Dismissed

Judgement

1. Petitioner in the instant writ petition claims the relief of quashment of order (P-12) passed by the State Government rejecting the application of the petitioner for release of Samman Nidhi admissible to a freedom fighter under the rules framed by the State Government.

2. Petitioner claims that he was employed in the year 1942 in the military police and he meted out sympathetic treatment to the freedom fighters in March, 1942 in the course of Quit India Movement (Bharat Chhodo Aandolan). He was kept in house arrest for about ten days in March, 1942 during Quit India Movement, thus, he is eligible for release of Pension/Samman Nidhi. The State Government as per order (P-12) has rejected the claim of the petitioner on the ground that the fact of meting out the sympathetic treatment and consequent Court-martial and imprisonment for about ten days is not established. The verification was sought from Home Department of Uttar Pradesh; it was notified by the Colonel V.K. Malhotra, Deputy Provost Marshal, Headquarter Central Command, Lucknow that there was no such record available. Supdt. of Police, Balia also certified that no such record was available. The entry is not available in any of the police station also.

3. Rejection is challenged by the petitioner on the ground that there is nothing to disbelieve the certificate (P-6); same ought to have been acted upon. Reliance is also placed on communication (P-9) issued by the Incharge Officer on behalf of Collector, Balia, thus, it is contended that hypertechnical approach has been adopted in rejecting the meritorious claim of the petitioner.

4. In the return filed by respondent Nos. 1 and 3 it is contended that Central Command, Lucknow has refused to verify the certificate (P-6) dated 25-3-1942; reliance is placed on communication (R-1) dated 14th July, 2000 and letter (R-2) issued by Supdt. of Police, Balia; in this background the respondent Nos. 1 and 3 contend that petitioner is not entitled for pension/Samman Nidhi admissible to a freedom fighter.

5. Learned Counsel for petitioner submitted that in the light of the Apex Court's decision in Gurdial Singh Vs. Union of India and Others, , the certificate (P-6) ought to have been accepted; the approach is bad in law; the respondent Nos. 1 and 3 be directed to release the pension; the order (P-12) be quashed.

6. Shri Shashank Shekhar, learned Panel Lawyer for respondent Nos. 1 and 3 contended that it is a case where there is inherent improbability in certificate (P-6); Quit India Movement (Bharat Chhodo Aandolan) was initiated with effect from 9th August, 1942 whereas petitioner claims that he helped in March, 1942 in Quit India Movement (Bharat Chhodo Aandolan); in addition, learned Counsel submits that Supdt. of Police, Balia has certified in R-2 that the unit was not posted in said Janpad where the petitioner is said to have helped in Bharat Chhodo Aandolan.

7. After hearing learned Counsel for parties and perusal of various documents on record, in my opinion, the certificate (P-6) has inherent improbability; the certificate read as under :--

CERTIFICATE

This is to certify that Shri Bhagwandeem Sharma, Constable No. 978 Military Police No. 10 Company on 12th March, 1942 was on deputation duty at Balia at the time of agitation of Bharat Chhodo Aandolan (Movement). He had helped the participants of that Movement of Bharat Chhodo Movement. Hence he was taken for action and was awarded 10 days quarter guard imprisonment under the Military Police Act.

Dated 25 March, 1942.

Sd/- U.P. Military Police Company Commander 10 Coy.

8. It is clear that there is mention of Bharat Chhodo Aandolan which was undisputably commenced with effect from 9th of August, 1942, thus, there is force in the submission raised by Shri Shashank Shekhar, learned Panel Lawyer for respondent Nos. 1 and 3 that certificate suffers with inherent improbability; further dent is caused to the claim of the petitioner by certificate (R-2) issued by

Supdt. of Police, Balia in which it is clearly mentioned that said unit was not posted in the year 1942 to the said Janpad Panchayat coupled with the fact that there is inability expressed by the Central Command, Lucknow and the District Magistrate. Original certificate (P-6) has also been produced by the petitioner and perusal of the same shows that the document is on blank paper; it does not bear even the complete seal. Full name of the authority issuing it has not been mentioned; U.P. Military Police is typed whereas Company Commander 10th Coy. is in the rubber stamp. As the document has not been confirmed and suffers with the inherent improbability coupled with the fact that Supdt. of Police, Balia has mentioned that unit was not posted in the concerned Janpad, I find that the order passed by the State Government is proper. Though in such matter hypertechnical approach is not to be made but when the document is available and is found to be prima facie unreliable, rejection of the case by the State Government cannot be said to be such a patent illegality which calls for an interference in the writ jurisdiction of this Court.

9. Petition is devoid of merit and is dismissed.

10. Costs on parties.