

(2007) 04 CAL CK 0044
In the Calcutta High Court
Case No : F. M. A. No. 762 of 2006

Bhim Charan Maity

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-04-2007

Acts Referred:

Citation : 111 CWN 387

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Arunabha Basu, J

Bench : Division Bench

Advocate : Prasanta Mukherjee and Basudeb Bag, Samar Kr. Banerjee and Debjani Ghosal, for the Appellant;Rudrajyoti Bhattacharyya and Debjani Ghosal, for the Respondent

Final Decision : Dismissed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal arises out of the judgment and order dated 26th April, 2005 passed by the learned Single Judge in W. P. No. 14160 (W) of 2000. The appellant herein filed the writ petition claiming pension under the Swatantra Sainik Samman Pension Scheme, 1980 as a Freedom Fighter. The appellant had applied for pension in the prescribed application form. It was submitted on behalf of the appellant that the said appellant was involved in Freedom Struggle Movement and remained underground from 2nd October, 1942 to December, 1945. The prayer for grant of Freedom Fighter's pension was made on behalf of the appellant on the basis of the Personal Knowledge Certificate, which was issued by one Sri Rabindra Nath Giri, a recognised and eligible certifier, under the aforesaid Swatantra Sainik Samman Pension Scheme, 1950 (hereinafter referred to as S.S.S. Pension Scheme).

2. The aforesaid Samman Pension is also available to Freedom Fighters who remained underground for more than six months subject to certain conditions. The relevant provision in respect of grant of Samman Pension in case of underground sufferings under the aforesaid S.S.S. Pension Scheme, 1950 is set out hereunder:

"2.3. Underground: A person who on account of his participation in freedom struggle remained underground for more than six months provided he was;

A. a proclaimed offender; or

B. one on whom an award for arrest was announced; or

C. one for whose detention, order was issued but not served.

Explanation: Voluntary underground suffering or self exile suffering for party work under the command of party leaders, are not covered as eligible sufferings for pension under the Scheme.

The claim of underground suffering is considered subject to furnishing of the following evidence :

(i) Documentary evidence by way of Court's/Govt.'s orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention. OR

(ii) Where records of the relevant period are not available, a nonavailability of records certificate (NARC) from the concerned State/Union territory Administration along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit."

3. The Under Secretary to the Government of India by written communication dated 7th August, 2000 informed the appellant herein that the Personal Knowledge Certificate issued by said Sri Rabindra Nath Giri is not in conformity with the requirement of the S.S.S. Pension Scheme, 1980, due to the following reasons:

a) What has been certified is that you were a bonafide freedom fighter, who remained underground from 02-10-42 to December, 1945. It was further certified that you went underground neither of your own accord nor fear of police torture, but exclusively for continuance of your service to the country under the guidance of the certifier, which is treated as voluntary act and not a suffering for grant of freedom fighter pension.

b) The Scheme does not make a freedom fighter eligible for pension if he remained underground for more than six months "exclusively for the continuance of his service to the country" under the guidance of the certifier unless it is shown that the underground continued for six months from the date of issue of Proclamation of offender announcement of award overhead/arrest for involvement in freedom struggle. Therefore, if a freedom fighter under the guidance of the certifier remains underground for years "for continuance of his service to the country" but not preceded by any order of proclamation or announcement of award on the aforesaid ground, he is not entitled to get pension. The aforesaid certificate merely described that warrant of arrest was issued but did not asseverate that the period of underground was more than six

months from the date of issue of warrant. The certifier after such a long time could remember the date of beginning of the period of abscondence and that of the end but the date of issue of warrant of arrest or the name of the Court which passed such order or the provision of the statute under which the appellant was charged did not find place in the certificate.

c) Moreover, the certifier did not take the responsibility of the statement that you did not secure reprieve on account of any oral or written apology by not certifying the statement as "true to his knowledge". To qualify the certificate as "to the best of my knowledge and belief he did not secure reprieve...." means that the certifier is not prepared to vouch for the veracity of such statement.

d) A certificate is the testimony given in writing to declare or verify the truth of something. Such element is absent in the above certificate in respect of some of the statements as mentioned above.

e) Your statement in the application that you remained absconder till December 1945 but was neither arrested nor was the case dropped is absurd and as such a certificate to that effect cannot be accepted.

f) It is, therefore, clear from above that the certificate given by Shri R. N. Giri does not comply with the requirement of the scheme and is otherwise absurd and as such it is held that the application was not supported by an appropriate certificate in accordance with the scheme.

4. The Personal Knowledge Certificate issued by said Sri Rabindra Nath Giri is reproduced hereinbelow:

"I do hereby certify that Sri Bhim Charan Maity, son of Late Patit Paban Maity, Vill. Ghara-Thakuria, P.O. Gobindapur, P.S. Tamluk, Sub-Divn. Tamluk, Dist. Midnapore, joined the Quit India Movement in the year 1942 and worked under our guidance in Tamluk Thana. For his active participation and his subversive activities, Tamluk Police started the case against Sri Bhim Charan Maity, search warrant and warrant of arrest were issued against him. According to my direction, he went underground and remained underground from 02.10.1942 to December, 1945.

To the best of my knowledge and belief, he did not secure reprieve on account of any oral or written apology tendered by him. He also did not go underground voluntarily or from fear of arrest on account of his patriotic activities."

5. From the aforesaid certificate it does not appear that the appellant herein was a proclaimed offender or one on whom an award for arrest was announced or one for whose detention, order was issued but not served. Therefore, the appellant herein did not fulfill the requisite conditions for enjoying the pensionary benefits under the aforesaid S.S.S. Pension Scheme, 1980.

6. The learned Advocate of the respondent Union of India referred to and relied on a Division Bench judgment of this Hon"ble court in the case of Union of India

and others vs. Smt. Suvadra Bala Pal & Ors. (F.M.A. 337 of 2006), which, in our opinion, is very much applicable in the facts of the present case.

7. Since the appellant herein does not satisfy the requisite conditions mentioned under the S.S.S. Pension Scheme, 1980 for granting the pension, the respondent authorities cannot grant the benefit of pension to the said appellant.

8. For the aforementioned reasons, we do not find any illegality and/ or irregularity in the decision of the respondent authorities as communicated by the under Secretary to the Government of India by the letter dated 7th August, 2000 to the appellant/writ petitioner herein. Therefore, we are of the opinion that the learned Single Judge was justified in refusing to grant any relief to the appellant/writ petitioner herein. Hence, we affirm the decision of the said learned Single Judge and dismiss this appeal being devoid of any merit.

9. There will be, however, no order as to costs. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Arunabha Basu, J.

I agree.