

(2001) 06 KAR CK 0066
In the Karnataka High Court
Case No : Writ Petition No. 13658 of 2000

B.K. Narasimha Murthy

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 18-06-2001

Acts Referred:

Citation : AIR 2001 Kar 392 : (2001) ILR (Kar) 5679 : (2001) 4 KarLJ 391 : (2001) 3 KCCR 1837

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Sri Murthy Rao, for the Appellant; Sri Venkata Reddy, for the Respondent

Judgement

1. An old man of 80 years with cancer is knocking at the doors of this Court with regard to freedom fighter pension payable to him by the Central Government. The facts in brief are as under:

2. The petitioner claiming to be a freedom fighter having participated in the freedom movement, made an application in the year 1982 through proper channel seeking for freedom pension. According to him, he is eligible and entitled for the same in terms of the scheme framed by the respondent. The petitioner further says that in the year 1990 itself the application of the petitioner was forwarded by the State Government recommending the award of the pension in terms of a letter bearing No. DPAR 681 PFC 89. The petitioner was pursuing the matter and nothing happened. The petitioner further says that the Government sought for a Jail Certificate and the same was complied with by the petitioner in the year November 1998. Clarification was sought from the petitioner and the clarification was also made available by the petitioner. The State Government later confirmed to the Central Government with regard to the genuineness of the Jail Certificate in terms of Annexure-3. The petitioner further says that he wrote a letter to the Hon'ble Chief Justice of India with regard to inaction on the part of respondent and with regard to non-settlement of his pension. The petitioner

thereafter received an endorsement in the light of the representation to the Hon'ble Chief Justice in terms of Annexure-D rejecting his request. The petitioner in the light of these facts is before me seeking for relief. Notice was ordered and the respondents are represented. The Counsel for the petitioner has sought for early disposal on the ground of advanced age of the petitioner and hence this petition is taken out of turn for final disposal.

3. Heard Sri Murthy Rao, learned Counsel appearing for the petitioner and Sri Venkata Reddy, learned Counsel appearing for the respondents. The respondents have filed statement of objections.

4. The learned Counsel for the petitioner, Mr. Rao, took me through the pleadings including Annexure-C, a confirmative letter regarding Jail suffering. According to the Counsel, the reasons given in Annexure-D is wholly unsustainable.

5. Per contra, Sri Reddy contended that the petitioner is supposed to have participated in the Quit India Movement of 1942. The petitioner, according to the petition averments has suffered Jail from 6-9-1941 to 7-9-1942. Therefore, the claim of suffering of the petitioner is highly doubtful in character. He further says that no documentary evidence was produced and hence the endorsement issued by the Union Government requires to be confirmed by this Court. He also made available to me the Swatantrata Sainik Samman Pension Scheme of 1980 issued by the Ministry of Home Affairs, Government of India.

6. After hearing the Counsel this order is passed.

7. The Swatantrata Sainik Samman Pension Scheme (for short, the "Pension Scheme") is introduced during the Silver Jubilee year of Independence by the Central Government. The said scheme is a liberalized one compared to the earlier one. In terms of the scheme, all persons who participated in the freedom movement in some way or the other are not eligible for Samman pension. Only a few category of freedom fighters are alone eligible. The claim of suffering is considered by the Government subject to certain evidence being made available in terms of the scheme. In the light of the above salient features of the scheme, let me see as to whether the petitioner has made out a case for an interference in this petition.

8. It is not in dispute that the petitioner did make an application in the matter of payment of pension to him by the Government of India. The said application has been forwarded by the State Government to the Central Government in terms of a letter bearing No. DPAR 682 PFC 89 in the year 1990. While forwarding the said letter, the State Government has stated that the claim of the petitioner is verified with the Deputy Commissioner, Bangalore, and on the basis of the verification, the State Government in Annexure-A has given the details of imprisonment suffered by the petitioner reading as under:

"The applicant has suffered imprisonment during the year 1942 in "Quit India Movement" and suffered imprisonment for one year from 6-9-1941 to 7-9-1942

and furnished Jail Certificate (copy enclosed)".

9. The State Government also has recommended for grant of Samman pension in view of the Jail Certificate furnished by him. Thereafter, it appears the Central Government by letter dated 18-6-1993 bearing No. 124/6156/90-FF(WZ) wanted certain clarifications in the matter of pension. In reply, the State Government again by letter dated 31-10-1998 has stated that the information called for by the Central Government under reference in regard to issuance of Jail Certificate got confirmed and it intimated to the Central Government that the matter was examined in consultation with the Superintendent of the Central Jail, Bangalore. The State Government again confirmed the issuance of the Certificate by the Central Jail, Bangalore. Even after this, nothing has been done in the matter. The petitioner thereafter has moved this Court.

10. It may not be out of place to mention that the petitioner also made a representation to Hon"ble Chief Justice of Supreme Court. In response to the said representation, the petitioner has now received an endorsement rejecting his case. The reason for rejection is that the "Quit India Movement" started from 8/9th August, 1942. Therefore, the claim of suffering prior to August 1942 cannot be attributed to Quit India Movement. The second reasoning given by the Central Government is that the Certificate issued by the Central Jail is not in the prescribed form. So also, the Certificate issued by Mr. Nagaraj is not in the prescribed form. The reasons given in the endorsement in the light of the scheme in my view are wholly unsustainable in law. The scheme provides for eligibility of pension. There is no denial of the petitioner's having made an application and there is also no denial of the petitioner's suffering jail as seen from the material on record. In Annexure-A, the State Government after being satisfied with the verification by the Deputy Commissioner has recommended his case as early in the year 1990 for grant of pension. Again in the year 1998, the State Government again confirmed with regard to genuineness of the Jail Certificate. In the light of these two documents, the rejection on the ground of non-participation in the year August, 1942 is unsustainable in law. The scheme nowhere states that the jail suffering must be only after 8/9th August 1942. The object of the scheme is to provide certain sustenance to these freedom fighters who suffered jail for the sake of the country. The scheme is a liberalised one, as I see from the salient features made available to me by the Government. Insofar as documentary evidence is concerned, the same is not doubted, When a document of suffering is not doubted the mere format does not by itself disentitle the petitioner for grant of pension. If that was the reason, nothing prevented the Government in requesting the petitioner to send the same in prescribed form. But on the other hand, their query as seen from the material was only with regard to the genuineness of the certificate. When the genuineness of the certificate cannot be doubted on the fact of this case, the mere violation of the format does not by itself again disentitle the petitioner. After all, it is not an act of illegality or any ineligibility in terms of the scheme. Even the stand of contradictory statement cannot be accepted in the light of the documents placed

before this Court and in the absence of challenging the genuineness of the certificate. At the most, it may be an irregular procedure. Taking into consideration, the object of the scheme and its liberalisation, I am of the view that the Central Government has rejected the case of the petitioner without properly appreciating the material on record and without proper application of mind. An old man of 80 years is knocking for sanction of pension for the past 10 years. He has to move this Court at this old age for his pension. It is seen from the material that he has to approach the Hon'ble Chief Justice by way of representation. It is only then the Central Government has woken up from its slumber and has issued this endorsement. In my view, the reasoning in the endorsement is wholly unsustainable and it requires my interference. In these circumstances, I have no hesitation in setting aside the endorsement at Annexure-D. In the normal circumstances, I would have directed the Government to reconsider the matter. But here is a case where an old man of 82 years with acute suffering is before me. This Court on the peculiar facts of this case, taking into consideration the advanced age and the recent exit from Kidwai Memorial Institute of Oncology, deem it proper to direct the Central Government to grant the freedom fighters pension to the petitioner forthwith.

11. Before concluding, I am deeply distressed the way in which the Government agencies deal with these cases. The very object of the scheme of the Government is frustrated on account of delay and unnecessary cross-checking by the Implementing Agency. Any laudable scheme introduced by a Government is frustrated by the implementing agency, as I see in this case. There cannot be any better case than this with regard to defeating the object by way of delay and by unsustainable stand in the matter. Time has come for this Court to remind the implementing agencies to take action immediately in these matters, in the light of the laudable object of grant of pension to the freedom fighters. Today, the air of freedom is breathed by us only on account of the suffering of these helpless freedom fighters like the petitioner. It is these people who have brought freedom to this great country. In these circumstances, I deem it proper to direct the authorities to consider the pleas of the person like the petitioner with a human touch and deal with the same at the earliest possible time.

12. In the result, this petition stands allowed, The impugned Endorsement "D" is set aside. A writ of mandamus is issued to the respondent 1 to immediately settle the pension. I am told that the petitioner has recently been admitted in the Kidwai Memorial Institute of Oncology, Bangalore, and has been recently discharged. In these circumstances, the Registry is directed to provide the operative portion of my order for immediate settlement of the pension to the petitioner. The Counsel for the Central Government is also directed to send the operative portion of this order by Fax to the Ministry for immediate settlement in the light of the advanced age of the petitioner and his recent suffering in the Kidwai Memorial Institute of Oncology. Compliance is one week from today. The petitioner is also entitled for costs quantified at Rs. 2,500/- payable by the first respondent within two weeks. Since the petitioner is an old man suffering from

Cancer, I deem it proper to direct the Registry also to Fax the operative portion of the order in the interest of justice.