
(2000) 05 P&H CK 0172

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10349 of 1997

Charan Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 18-05-2000

Acts Referred:

Citation : (2000) 4 SCT 908

Hon'ble Judges : V.K.Jhanji, J

Advocate : Mr. S.K. Bhanot, D.A.G., Punjab., Mr. S.C. Sibal, Addl. A.G. Punjab, Mr. G.S. Viridi, Advocate, Mr. H.S. Giani, Sr. Advocate, Mr. S.S. Kanwal Advocate, Advocates for appearing Parties

Judgement

V.K. Jhanji, J.—In this writ petition, petitioner is seeking a writ in the nature of certiorari for quashing order dated 28.1.1997, Annexure P1, whereby the claim of the petitioner for grant of pension under the Swatantrata Sainik Samman Pension Scheme, 1980 (hereinafter referred to as 1980 Scheme) has been rejected by Union of India, respondent No. 1.

2. It is the case of the petitioner that from 9.3.1924 to 23.7.1925 he had undergone imprisonment in Nabha Beer Jail in connection with freedom struggle of Indian National Movement under Jaito Morcha (Akali Morcha). According to the petitioner, the Government introduced a scheme known as Swatantrata Sainik Samman Pension Scheme, 1980. This scheme was formerly known as Freedom Fighters Sainani Pension Scheme, 1972. Petitioner applied to the Government of India for grant of pension under the 1980 Scheme. The Government of India vide letter dated 31.1.1983 took a decision to consider the claim of the applicants in respect of their jail sufferings in case the applicant submits a certificate of coprisonership from any two renowned freedom fighters who themselves had undergone imprisonment for not less than one year in connection with the freedom struggle and are recipients to Tamra Patras and pension from the Central revenue. The claim which the petitioner had put in to respondent No. 1 was sent to respondent No. 2 for verification. After verification, respondent No. 2

duly recommended the case of the petitioner. The grievance of the petitioner is that despite the recommendation made by respondent No. 2, vide order dated 28.1.1997, the claim of the petitioner under the Scheme has been rejected on the ground that Jail record for the period from 9.3.1924 to 23.7.1925 is not available and also the certificates of coprisoners, namely, S/Sh. Hira Singh Bhathal, ExMLA, Joginder Singh and Manorath Singh cannot be considered because the sufferings of the said coprisoners have also not been proved on the basis of official documentary evidence.

3. Learned counsel appearing on behalf of petitioner has contended that co prisoners, Joginder Singh and Manorath Singh are not only recipients of Tamra Patras but are also drawing pension under the 1980 Scheme. In this regard, reference has been made to the Central Freedom Fighters Pension under Ministry of HQ Affairs Order No. 127/L/347/81FFPb.1615 II dated 30.5.1988 and P.P.O. No. 13834FF Cent. dated 31.3.1986. On the other hand, Mr. H.S. Giani, Sr. Advocate, counsel appearing on behalf of Union of India has contended that Joginder Singh and Manorath Singh were awarded pension on the basis of co prisoners' certificates submitted by them. It is contended that their cases too were not supported by official documentary evidence but based on co prisoners' certificates and thus, they are not competent to further give the certificates. Mr. Giani has submitted that petitioner's representation dated 19.3.1997 was never received in the Ministry and in fact, no mention of the same was made in legal notice dated 30.4.1997 sent to the Ministry by the petitioner's counsel. It is contended that in case the petitioner makes a representation along with necessary proof, respondent No. 1 has no objection to consider his case sympathetically.

4. After hearing the learned counsel and going through the record, I find that the case of the petitioner was rejected vide order dated 28.1.1997 on two counts: namely (1) that no jail record was available for the period from 9.3.1924 to 23.7.1925 during which petitioner claims to have suffered imprisonment; and (2) that the secondary evidence sent by petitioner to the Ministry could not be taken into consideration because their cases too were not proved on the basis of the same. The impugned order nowhere indicates as to an what basis Hira Singh Bhathal, Joginder Singh and Manorath Singh were granted pension. It nowhere indicate that they were granted pension on the basis of coprisoners certificates. Mr. Giani has not been able to cite a judgment whereby the case of a freedom fighter for grant of pension was rejected on the ground that the certificate issued by the coprisoners was not taken into consideration because the said coprisoner had got pension on the basis of another coprisoner's certificate. It is true that as regard the sufficiency of proof, it is for the Government to consider and not for this Court to scrutinise the documents and pronounce upon their genuineness. But at the same time, it is expected that the Authority considering the claim of the freedom fighter is to take into consideration the entire material placed before it. One of the materials placed before the Union of India was the recommendation of the State Government who on verification had duly

recommended the case of the petitioner. The State Government has also granted Punjab State Swatantrata Samman pension to the petitioner. The impugned order, Annexure P1, does not show that on what consideration, the Authority had rejected the recommendation of the State Government who on verification, had found the claim of the petitioner to be genuine. On this score alone, order dated 28.1.1997, Annexure P1, is liable to be quashed.

5. For the reasons recorded above, the writ petition is allowed and order dated 28.1.1997, Annexure P1, quashed. Respondent No. 1 is directed to consider the case of the petitioner for grant freedom fighters' pension under the 1980 scheme on the basis of recommendations made by the Government of Punjab, within three months from the date of receipt of copy of this order. I have no manner of doubt that petitioner's case would be decided within the aforesaid period as petitioner is nearly 90 years of age. Final order passed in petitioner's case shall be communicated to him within one month thereafter. No costs.