
(1999) 05 P&H CK 0115

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 404 of 1998 (O and M) and Civil Misc No's. 1041, 1042, 1043 and 1044 of 1998 and 35, 36 and 450 of 1999

Choor Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1999) 123 PLR 324 : (1999) 4 RCR(Civil) 698

Hon'ble Judges : N.C. Khichi, J;G.C. Garg, J

Bench : Division Bench

Advocate : K.S. Kaushal, for the Appellant; H.S. Giani and S.K. Sharma, for Respondent Nos. 2 and 3 and S.K. Bishnoi, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Garg, J.—Applicant claims to have joined the Army on 25.6.1941 during the second world war. While serving in Burma, he was taken as a Prisoner of War (for short "POW" w.e.f. 15.2.1944 to 5.5.1945. Appellant further claims to have joined the Indian National Army (for short "INA"). The appellant was recovered on 5.5.1945 and was dismissed from service w.e.f. 27.2.1946 with character assessed "Bad" and after independence he was discharged with character assessed "Good" and was paid full pay and allowances. The appellant was re-enrolled in the Army on 13.9.1948 and ultimately retired. Appellant applied for grant of pension under the Freedom Fighters Pension Scheme, 1972 (for short "the scheme") on the ground that he joined the INA during the second world war and thus he was entitled to pension under the above said scheme. Relief was not granted to the appellant. He filed a writ petition under Articles 226/227 of the Constitution of India seeking issuance of a writ of mandamus directing the respondents to grant Freedom Fighters Pension to him from the date of receipt of his original application i.e. 22.3.1975.

2. Claim of the appellant was contested by the respondents by filing a written

statement. It was stated that the appellant was granted pension prospectively by giving him the benefit of doubt and keeping in view the judgment of the Supreme court in Mukund Lal Bhandari and others Vs. Union of India and others, . it was specifically stated that the appellant who has already been granted pension from 18.11.1989, was seeking pension from an ante date on the basis of the decision of the Supreme court noticed above. It was further stated that since the appellant was granted pension by giving the benefit of doubt, he could not see, pension from a retrospective date.

3. Learned Single Judge on a consideration of the matter came to the conclusion that though admittedly, the appellant served the Indian Army under the British Rule and was taken as POW by the Japanese and was detained, but there was no acceptable material on record to prove that he joined the INA while in detention as POW. The petitioner was granted pension with effect from 18.11.1989 by giving him the benefit of doubt and he thus cannot claim pension with retrospective effect i.e. from the date he made an application. In support of his conclusion, learned Single Judge relied upon the observations of the Supreme court in S.L.P.(C) No. 25053 of 1995 Union of India v. M.R. Chelliah Theyar, . Learned Single Judge concluded that the appellant had been rightly granted pension w.e.f. 18.11.1989 and he is not entitled to pension from the date of the scheme or from the date of filing of the application i.e. 22.3.1975. The writ petition was consequently dismissed by order dated 6.8.1998. Hence this Letters Patent Appeal at the instance of Roor Singh.

4. Learned counsel for the appellant submitted that by an interim order dated 7.11.1996, respondents were directed to produce the record showing that the freedom fighter pension was given to the appellant on the basis of benefit of doubt. The respondents did not produce the record despite many adjournments and this renders the conclusion of granting the pension by giving the "benefit of doubt", as based on imagination. Counsel submitted that the learned Single Judge erred in ignoring the letter, Annexure P-3 whereby it was confirmed by the authorities that the appellant was an INA personnel as per the records. Learned counsel further submitted that even the letter, Annexure P-4 sanctioning the Freedom Fighters Pension does not remotely suggest that the assertion of the appellant of having joined the INA during his detention as POW, was doubtful. Lastly, it was submitted that the learned Single Judge has erred in not appreciating the "ratio decidendi" of Mukund Lal Bhandari's case (supra). Learned counsel for the appellant referred to Annexures P-8, P-9 and P-10 to show that the appellant was an Ex-INA personnel. Learned counsel for the respondents on the other hand, submitted that the pension under the scheme was granted as Sam-man to the persons who struggled for the country and this benefit is not being granted as a programme of compensation. Learned counsel produced the record for perusal. It was also submitted that the record was also produced before the learned Single Judge.

5. After hearing learned counsel for the parties and going through the record, we

are of the opinion that the appellant is not entitled to the relief for a couple of reasons. Under the scheme of the Government of India (Ministry of Home Affairs), dated 25.8.1972, it was provided that the following categories will be eligible for pension:-

(a) "persons who have suffered imprisonment in the main land jails for a period of not less than six months before Independence, and also their families, where the freedom fighters are no longer alive. This includes ex-INA personnel also. Detention under the orders of competent authority will be considered imprisonment for the purpose of pension."

6. Appellant who claimed to have been taken as POW while serving in the Army in Burma during the second world war and alleges to have later on joined INA, was granted pension under the above scheme prospectively w.e.f. 18.11.1989 keeping in view the observations of the Supreme Court in Mukand Lal Bhandari's case (supra). The appellant, however, claims pension retrospectively from the date of his application i.e. 22.3.1975. The sole controversy that emerges from the above is, whether the appellant is entitled to pension from 22.3.1975 the date of the application or w.e.f. the date of sanction. A note mentioned at the end of the scheme reads thus:-

NOTE:- "The pension scheme commences from August 15th, 1972. Applications received on or before 15th August, 1972 will be sanctioned pension from August 15th, 1972. Applications received after August 15th, 1972 will be considered for pension only from the date of sanction."

7. Admittedly, the appellant originally made application for the grant of pension under the Scheme, which is dated 22.3.1975. His case for grant of pension prior to that date cannot at all be considered. As per the provisions contained in the note, the appellant could at the most be granted pension from the date of its sanction. The appellant, as noticed above, was granted pension w.e.f. 18.11.1989. Aggrieved by the action of the respondents refusing pension from the date of his application, the appellant filed writ petition claiming pension retrospectively i.e. from the date of the application in view of the law laid down in Mukand Lal Bhandari's case (supra) wherein the apex Court laid down that whatever the date on which the claimants make the applications, the benefit should be made available to them. It was further observed that the benefit of the scheme of freedom fighters should flow only from the date of the application and not from any date earlier. The writ petition has been dismissed as noticed above. It has throughout been the categorical stand of the respondents that pension to the appellant has been sanctioned by giving him the benefit of doubt. As per the scheme and having regard to the observations of the Supreme Court in the reported case, the appellant was entitled to pension from the date of application only on his furnishing the requisite proof. On a consideration of the matter, we are of the view that the claim put forward by the appellant is very doubtful. The first grouse of the appellant is that the respondents did not produce the record before the Court as was directed by interim order dated 7.11.1996. The appellant

further asserts that the non-production of the record clearly leads to the conclusion that the conclusion about the pension having been granted by giving benefit of doubt, has been arrived at on imaginations. The records was, however, produced by the respondents during the course of hearing of this appeal and thus the grouse of the appellant in that behalf does not survive any longer. To us it appears that the record was produced before the learned Single Judge. It has also been produced before us. Order granting pension clearly records that the pension is being given to him by giving the benefit of doubt. It was not clearly proved that the appellant had joined INA and the certificates produced by him in that behalf and referred to during the course of hearing of this appeal were in doubt as the original documents had a cutting therein. Contention of the counsel thus, that the record was not produced before the learned Single Judge or that the pension was not granted to the petitioner by giving him the benefit of doubt, cannot be accepted. It was shown by reference to a certificate dated 4.6.1974 at page 41 of the administrative file of the respondents, issued by the Record Officer that "as per our records he is not a member of Ex-INA and no financial assistance granted to Ex-INA personnel by Government of India from time to time was granted to him." But the appellant submitted his application supported by that very certificate in which there is a cutting and word "not" has been deleted with a view to make out that he is a member of ex-INA. Not only this, the appellant on another occasion produced its attested copy also wherein the word "not" has not been typed at all. There cannot be any escape from the conclusion that the certificate itself on the basis of which the appellant is staking his claim from pension, is doubtful and once that is so, a rigid approach deserves to be followed.

8. Above apart, the appellant has not mentioned either in the writ petition or during the course of hearing that as to on which date, month or year, he was recruited to the INA or he joined INA. Pension under the scheme is admissible to those who suffered imprisonment in the main land jails for a period of not less than six months before independence as a member of the INA. Appellant has not been able to satisfy this criterion by producing any material on record. The admitted position on behalf of the respondents is that the appellant was POW and on the basis of certain correspondence/letters attached with the writ petition, it could at the most be taken that he was a member of the INA, but when did he join the INA and for how long he remained in the main land jails are the questions which still remained unanswered by the appellant. Thus on the strength of this weak type of documentary evidence, the appellant did not satisfy the eligibility criterion for the grant of the pension. He was, however, still granted pension w.e.f. 18.11.1989 by giving him the benefit of doubt.

9. For what has been stated above, we see no ground to differ with the conclusion arrived at by the learned Single Judge in that behalf. The appeal thus fails and is consequently dismissed. No costs.