

(2004) 10 DEL CK 0083
In the Delhi High Court
Case No : WP (C) . 16046 of 2004

Devender Singh	Vs	APPELLANT
Freedom Fighter Division and Others		RESPONDENT

Date of Decision : 04-10-2004

Acts Referred:

Citation : (2004) 114 DLT 634 : (2006) 1 SLJ 481

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Suman Chauhan, for the Appellant; K.K. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner by this writ petition, seeks a direction to the respondents to release the freedom fighter pension to him from the date of its suspension along with interest. Further, quashing of letters dated 7.3.2002 and 2.7.2004, whereby the pension sanctioned to the petitioner had been suspended and cancelled, be quashed as null and void.

2. Petitioner claims that a case bearing NARC OF GR No.46(8) OF 1942 was registered against him at Police Station Maner. He had been declared as an absconding person. Petitioner, Therefore, on 28.1.1982, applied for the grant of pension in his favor to respondent No.3. Petitioner also sought record of case GR No.46(8) of 1942, in respect of petitioner's taking part in the freedom movement from the Court of Special Magistrate, Danapur. The said record was not available. Petitioner, Therefore, led secondary evidence, as admissible under the Scheme and submitted the "personal knowledge certificate" from District Veteran Freedom Fighter, Sh.Dev Prasad Singh, which was followed by certificate from another Freedom Fighter. Petitioner claims that he remained under ground from 18.8.1942 to December, 1944.

3. Petitioner's claim for grant of pension was recommended by the State Advisory Committee. It is the petitioner's case that this recommendation was

made after thorough enquiry and complete verification. Petitioner duly completed the requisite formalities and on 5.3.1998, petitioner's claim for pension was sanctioned at the rate of Rs.3,000/- per month w.e.f. 2.1.1998. In the event, the High Court of Patna in CWJC No.10638/2001, suo motu gave directions for investigation in respect of pensions sanctioned to freedom fighters in the year 1997-98 in the State. As a result of this probe, a report was submitted by the respondents, in petitioner's case. On mere physical looks, it was reported that petitioner appeared to be 65-70 years old and as such during the freedom movement, he would have been 7 to 11 years old. Hence in the absence of the case record, petitioner appeared to be of tender age and a minor incapable of having participated in the freedom movement. Accordingly, vide order dated 7.3.2002, suspension of the pension was ordered. A show cause notice was issued for cancellation.

4. Respondents thereupon had the petitioner subjected to medical examination. Based on physical, dental and radiological findings, respondents determined the age of the petitioner in December, 2002 between 70-72 years, which made the petitioner to 10 to 12 years old at the time of 1942 movement.

5. Learned counsel for the petitioner strenuously urged before me that petitioner had duly satisfied all the requirements for the grant of pension under the scheme. There was no reason to suspect the certificates issued by the Veteran Freedom Fighters. She further submitted that the radiological findings could at best be a determination of approximate age. Moreover relying on Modi Medical Jurisprudence, she submitted that resort to determine age based on denture can be done at best in younger years and not at the ripe age of over 70. She submits that respondents could not merely on the basis of physical looks proceed and suspend the pension. Relying on Gurdial Singh Vs. Union of India and Ors. reported at (2201) 8 SCC 8 she submitted that the standard of proof required was not as stringent as in criminal cases or in a case adjudicated upon rival contentions of all the parties. The case of the claimants under the Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt".

6. Mr.K.K.Sharma appears for the respondent on the basis of an advance copy having been served. He opposes the writ petition and submits that there were large scale malpractices, which led the High Court of Patna to suo motu suspend the pensions. Petitioner's case is virtually a case of no evidence. He submits that the certificates obtained from Veteran Freedom Fighters cannot be determinative and accepted as the sole basis for grant of pension.

7. There can be no denying the fact that there have been a large number of cases, where unfortunately claimants resorted to malpractices and production of fabricated documents to obtain pension, which led the High Court of Patna to suspend the pensions granted and order fresh inquiry and investigation into the granting of such pensions. Petitioner's case also figured as one, where investigation was ordered pursuant to the order of the High Court. The official

record relating to the petitioner's detention and participation in the alleged train robbery is not available. There is no official record available with regard to the petitioner being an absconding person. Petitioner has given the personal knowledge certificate by two freedom fighters. This evidence is considered when the records are not available. However, in the instant case, the factor, which has persuaded the authorities is that based on the medical test conducted, petitioner's age works out to between 10 to 12 at the time of the incident. Based on petitioner's own application moved in 1982, he would have been 16 years of age. No proof has been given with regard to petitioner being 56 years of age. While it is true that based on medical tests, the exact age cannot be determined and there is generally a difference of two years or so. However, a striking feature is that petitioner himself neither in the application nor in the representations made ever mentioned that he was a minor and had participated in the freedom movement. To my mind, this is a striking feature, which could not have normally escaped. In the natural course, the factum of the applicant participating in the freedom movement at young age of 12 to 14 years and being so full of zeal to serve the motherland, would have found a place in the application for grant of pension. The non-mentioning of petitioner's minority or his young age in any of the representations, to my mind, is a factor, which lends support to the respondent's claim that petitioner was a child of tender age and could not have normally participated in these activities in the absence of disclosed facts or other evidence.

8. In these facts, especially, when there is no official record available regarding the participation of the petitioner in the freedom movement and other factors including his minority as assessed, the decision of the respondents in suspending/ cancelling the petitioner's pension cannot be faulted with. Writ petition has no merit and is dismissed.