
(1998) 02 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C. No. 1354 of 1997 (R)

Dhirendra Nath Chatterjee

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-02-1998

Acts Referred:

Citation : (1998) 2 PLJR 593

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : Alok Lal, for the Appellant; A.K. Trivedi, for the Respondent

Final Decision : Allowed

Judgement

P.K. Deb, J.—This writ petition has been filed for Issuance of an appropriate writ In the nature of certiorari for quashing the letter dated 7.4.1997 (Annexure 19) Issued by the Secretary, Government of India, Ministry of Home Affairs, Freedom Fighters Division, New Delhi (respondent No. 2) by which the claim of the petitioner for grant of Freedom Fighters Pension (hereinafter referred to as "the Pension") has been rejected by assigning some grounds. According to the petitioner, the grounds assigned are contrary to the circular for grant of Pension and also the observations made in the order of this Court dated 21.2.1997 passed In CWJC No. 509 of 1997 (R). The petitioner was born in the year 1912 in the erstwhile East Pakistan, now Bangladesh, and Immediately after Matriculation, he came down to Chakradharpur In the year 1930 where his father was working as Assistant Station Master In the Railway. Being influenced by the Ideology of Mahatma Gandhi and other stalwarts of the Freedom Fighters Movement on those days, he along with other youths in the locality participated In the Civil Disobedience Movement. While responding to the calls of Civil Disobedience Movement given by Mahatma Gandhi, the petitioner along with other youths plunged into that movement and they were picketing near the liquor shop of one Nepal Sao, the petitioner was arrested along with all time associate Gopal Kumar. In the said movement, some elderly persons like Shri R.

N. Rao, Shri Singh Manjhee, Shri Nageshwar Pandit, Shri M. M. Moitra, Shri Shiv Lal Mochi etc. also got arrested and while the petitioner and Gopal Kumar were lodged In Bhagalpur Jail, the others were lodged in Arrah Jail, after conviction by Chalbasa court. The petitioner and Gopal Kumar were sentenced to undergo rigorous Imprisonment for six months and they remained behind the bar for entire period of six months at Bhagalpur Jail

2. The petitioner applied In 1972 for getting the Pension as per the declaration of the Union Government, Department of Home Affairs and accordingly submitted the certificate given by Gopal Kumar and R. N. Rao and after inquiry, the State Government sent its recommendation to Home Ministry, Government of India, long back in the year 1984, but after long delay, the petitioner's prayer was rejected on some flimsy grounds and then he had come up to this Court in C.W.J.C. No. 3382 of 1995 (R). The certificate etc., which were given by the petitioner were disbelieved and this Court by order dated 5.7.1996 asked the Central Government to reconsider the case of the petitioner in the light of the observations made therein but again the prayer of the petitioner was rejected. Then he came up in C.W.J.C. No. 509 of 1997 (R) and this Court had allowed the writ petition on 21.2.1997 by making specific observation. The certificates given by R. N. Rao were not considered as he was not the co-prisoner. So it was stated that only one certificate submitted by Gopal Kumar went in favour of the petitioner and as per the circular, another certificate is required from co-prisoner. The certificate given by R. N. Rao was rejected on the ground that at the relevant time he was at Arrah Jail. This Court observed that as R. N. Rao, and Gopal Kumar and the petitioner were arrested and convicted in the same case and were imprisoned and while two were imprisoned and kept at Bhagalpur Jail, R. N. Rao was kept at Arrah Jail. Then, in that view of the matter, perhaps the certificate of R. N. Rao together with the certificate of Gopal Kumar if read in between the lines can attract the provision of the Scheme as contained in Annexure 9 and hence Annexure 17 Is hereby quashed and the matter is sent back to respondent No. 2 to reconsider the case of the petitioner. Pursuant to that direction, it has again been reconsidered and rejected vide Annexure 19 dated 7.4.1997.

3. The petitioner had produced certificate from Bhagalpur Jail and co- prisoner-ship certificate issued by Gopal Kumar and the certificate issued by Sri Manjhi, and Sri Rao, Ex-M. L.C. and the affidavit of Ramcharitra Mistry. The certificate granted by Manjhi was rejected as he was in Arrah Jail and Patna Camp Jail while the petitioner was at Bhagalpur Jail. So it does not qualify the co-prisonership certificate as required under the Scheme. Similarly, R. N. Rao's certificate was also rejected on the ground that he was confined at Arrah Jail. Mistry's affidavit was also rejected as he did not mention the period and the name of the Jail. So the claim was rejected again on the same ground that Gopal Kumar's certificate was in favour of the petitioner and another co-prisonership certificate is wanting.

4. It is really unfortunate to note that on the same ground again and again, the prayer of the petitioner, who is now an old man of 86 years and is waiting

Pension and Samman for the last 26 years, is being rejected on this plea or that plea and on hypertechnical ground. The observation of this Court twice has been attempted to be flouted. This sort of attitude is definitely detrimental not only to the petitioner but also to the public in general when an old man, a veteran freedom fighter not only for his pension but also is (sic) Samman was being rejected on flimsy grounds.

5. Mr. Alok Lal appearing for and on behalf of the petitioner has referred to a judgment of the Bombay High Court in Ramchandra D. Erande vs. Union of India and another (AIR 1997 Bombay 129) wherein it was held that the freedom fighters participation in freedom movement if to be true on scrutiny by the State Government through its high power committee and then recommended to the Union Government, then the Union Government is not empowered to make detailed verification on hypertechnical ground.

6. Mr. A. N. Trivedi, Senior Standing Counsel Central Government has submitted that the Central Government i.e. respondent No. 2 has taken proper attitude when there is difference between the co-accused and the co-prisoner and, as such, the certificates of Sri Mistry and Sri Rao had rightly been rejected. Those certificates are necessary for the purpose of verification of the fact of participating in the freedom movement. It has never been found that the petitioner's participation in the freedom movement was doubtful. It has also not been found that the petitioner along with Kumar, Rao and Ram Charitra Mistry had been convicted in the same case and were sent to Jail and only for accommodation purposes they have been sent to different jails. Does it mean that the certificate given by a person who was jailed at the same time but being confined to another jail would take away the benefit that they had been convicted at a time and sent to jail ? Such sort of hypertechnical attitude of the Government is definitely uncalled for and unwarranted. The fact which requires to be appreciated is whether the person concerned has really suffered imprisonment due to participating in the National Freedom Movement or not. If all the facts taken together finger towards one and only one conclusion that the petitioner did not participate in the freedom movement and went to jail then demanding of another certificate of co-prisoner at Bhagalpur Jail definitely is unwarranted.

7. Mr. Trivedi has referred to a decision of the Supreme Court in Mukund Lal Bhandare and others vs. Union of India and others (AIR 1993 SC 2126) and submitted that eligible candidate must prove the requirement before getting sanction and such proof according to him is the proof as required under the scheme. The proof is required for participation in the freedom movement and for such proof, mere guideline have been enumerated in the Scheme itself. The freedom movement was of 1942 and here in the present case, it is in the year 1930. Can it be possible for a man of 86 years old to collect some more certificate at this stage. Perhaps those persons who were imprisoned at that time have died by this time. Negative approach should not be there when it "could be

found that the person much less age could get the benefit perhaps on production of such certificate as per the Scheme. Sacrosanct object of the Scheme is not to defeat it but to give proper sanctity to it, so that the persons who have made us to take air in the free India should be given proper respect. Hypertechnicality for proof of the different guidelines of the scheme is not required if as a whole it could be found that the petitioner was freedom fighter on the face of it. Only because this Court had given again and again chance to respondent No. 2 for reconsideration of the matter and with all rigid approach twice the respondent No. 2 is giving go-by to the observations of this Court, I am not inclined to send it back for further consideration to respondent No. 2 because I think the petitioner will not get the benefit before his death because of the rigid negative attitude of the respondent No. 2 in the matter. In the result, this application is allowed, the order contained in Annexure 19 dated 7.4.1997 is quashed and respondent No. 2 is hereby directed to pass necessary orders within a month next from the date of receipt/presentation of a copy of this order for granting Freedom Fighters Pension to the petitioner which should be applicable from the date of his application. In the facts and circumstances of the case, I shall make no order as to costs.