

(1995) 08 DEL CK 0021

In the Delhi High Court

Case No : Civil Writ Appeal No. 1057 of 1994

Ganga Bishan Jain

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 08-08-1995

Acts Referred:

Citation : (1995) 3 AD 779 : (1995) 59 DLT 556

Hon'ble Judges : Dr. M.K. Sharma, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : R.K. Kapur, Madan Lokur and Nandini Ramachandran, for the Appellant;

Judgement

M.K. Sharma, J.

(1) By this writ petition the petitioner has sought for a direction to the respondents for grant of freedom fighters pension to the petitioner w.e.f. 1.8.1980 or in the alternative from the date of the application under the provisions of the Freedom Fighters Pension Scheme (hereinafter called the Scheme).

(2) The petitioner in his writ petition has stated that he participated in the freedom struggle for the independence of the country and on account of his patriotic activities he was arrested in pursuance of a criminal case which was registered against him by Nasik Police and he underwent imprisonment from 12.10.1943 to 19.2.1944 at Nanded Jail and subsequently from 20.2.1944 to 25.5.1944 at Nasik Jail. According to the petitioner, the total period of imprisonment underwent by him thus was 7 months and 14 days and in terms of the provisions of the Pension Scheme the petitioner is entitled to receive such pension having fulfilled the eligibility criteria of having undergone 6 months imprisonment.

(3) The respondents in their counter affidavit have stated that the petitioner had been able to produce documentary evidence to show that he had undergone

imprisonment for about 4 months and 7 days which is less than the minimum period of suffering specified under the scheme which is at least 6 months period. It is further stated that the petitioner has not been able to produce any evidence to show that he had undergone 3 months and 7 days imprisonment at Nasik and in the absence of the same it is impossible to accept the contention of the petitioner that he has been imprisoned for a period of 7 months and 14 days.

(4) Learned Counsel appearing for the petitioner has drawn our attention to a copy of the document and its translation in English where from a definite information and knowledge could be gathered, that the petitioner was arrested on 12.10.1943 A.D. and was released on 19.2.1944 A.D. and that he was imprisoned for a period of 4 months and 7 days. According to the learned Counsel, the petitioner was thereafter transferred from Nanded Jail on 19.2.1944 and taken to the Nasik District Jail, where he was lodged up to 25.5.1944 and in support of his submissions the learned Counsel drew our attention to a letter of the Superintendent of Nasik District Jail dated 28.6.1989 wherein it had been stated that no record is available about the location of Nasik District Jail. He has drawn our attention to another letter issued by the Special Judicial Magistrate, District Nanded dated 21.12.1989, wherein it is stated that on verification of the Nasik District Jail records and Collector office, Nasik records it was found that in both the said offices at Nasik, records pertaining to the year 1943-44 are not available. On the basis of the aforesaid documents the learned Counsel for the petitioner submits that as no record is available for the said period showing detention of the petitioner in Nasik Jail a presumption should be drawn in favor of the petitioner about his further detention for the purpose of computing the period of his detention and benefit of the same should be given to him.

(5) The scheme for grant of pension to freedom fighters and their families from central revenue is guided by the provisions of the Scheme and Guidelines issued in that respect. One of such provisions is that a person who has suffered a minimum imprisonment of 6 months in the main land Jails before independence is eligible for such pension whereas in case of women and SC/ST freedom fighters the minimum period of actual imprisonment for eligibility of such pension was reduced to 3 months. It has been laid down in the said scheme the nature of the evidence that the claimant has to produce to prove about such suffering of imprisonment for six months, in order to receive the benefit of such pension. It is further laid down therein that in case of imprisonment/detention a certificate has to be produced from the concerned jail authorities. District Magistrates or the State Government and in case of non-availability of any such certificate a certificate from Co-prisoners or from a sitting Member of Parliament or Mla or an Ex. M.P. or Mla specifying the jail periods could also be produced. When the claim is based on one being connected with under-ground activity, it is laid down that the claimant has to produce in support of his claim documentary evidence by way of Court's/ Government Orders proclaiming the applicant as an offender or announcing an award on his head or for his arrest or for ordering his detention. If however, such official records are not available or forthcoming due to their non-

availability, certificates from Veteran freedom fighters who themselves have undergone imprisonment for 2 years or more are to be annexed in support of the claim. It is further laid down that a certifying veteran freedom fighter in respect of underground suffering internment, externment and the claimant should belong to the same administrative unit before the re-organisation of State and their area of operation must be the same. In case the claim is based on the basis of suffering for internment or externment the official order of such internment or externment or any other corroborative documentary evidence is to be submitted in support of such claim and in case such evidence is not available then certificates from Veteran Freedom Fighters who have undergone 2 years imprisonment is to be produced.

(6) On consideration of the aforesaid provisions of the Scheme and also on careful perusal of the documents produced by the petitioner as disposed from the present writ petition, we find that except for a period of 4 months and 7 days of imprisonment having undergone by the petitioner no other cogent and reliable evidence and/or other documentary evidence as required under the provisions of the scheme could be produced by the petitioner in support of his claim for making himself eligible to receive the benefit of the aforesaid scheme. We are also not in a position to draw a favorable presumption in favor of the petitioner about his imprisonment in Nasik Jail from 20.2.1944, as claimed by the petitioner, in view of the absence of any documentary or other such reliable evidence as laid down under the scheme. In absence of such reliable and cogent primary or corroborative evidence as required under the provisions of the Scheme and referred to above, we cannot come to a definite conclusion that the petitioner fulfills the necessary criteria for receipt/grant of such pension. As the criteria and nature of evidence required for claiming such benefit under the scheme are earmarked and well defined, we have no jurisdiction to direct any deviation there from so as to make the petitioner eligible to claim the said benefit.

(7) In the result, we have no other option but to dismiss the writ petition, but without any costs.