
(2003) 12 SHI CK 0016

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1456 of 1996

Lal Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 31-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2004) 1 ShimLC 208

Hon'ble Judges : L.S. Panta, J

Bench : Single Bench

Advocate : Vijay Verma, for the Appellant; Ankush Dass Sood, Addl. C.G. S.C., for the Respondent No. 1, M.S. Chandel, Genl. and Vijay Thakur, Dy. A.G., for the Respondent No. 2., for the Respondent

Final Decision : Allowed

Judgement

Lokeshwar Singh Panta, J.—Petitioner Lal Singh has filed this writ petition under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction to the Respondents. The reliefs sought for in this writ petition are to the following effects:

(i) That the impugned orders Annexure P-5 dated 16th November, 1992 and Annexure P-6 dated November 1, 1993 be quashed and set aside.

(ii) That the Respondents be directed to grant the Petitioner Freedom Fighter Pension under the Freedom Fighters Pension Scheme, 1972 as amended till date and consequential benefits thereof since the date of filing the application i.e. 12.1.1976.

(iii) That all arrears with interest at the rate of 18% per annum be paid to the Petitioner.

(iv) That the record of the case be summoned before this Hon'ble Court.

(v) That any other and further order that this Hon'ble Court deems fit and

proper in the facts and circumstances of the case may also kindly be passed for which the Petitioner shall ever prayed.

The facts may briefly be enumerated. The Petitioner was enrolled in Unit No. T.I.B. the Dogra Regimental Centre, Jalandhar in the year 1932 as Piper. He participated in the National Liberation Struggle as a member of INA, Commandant, Dogra Regimental Centre ordered the discharge of the Petitioner from services in the year, 1946. According to the Petitioner he had to suffer many myseries in the wake of unemployment. The Petitioner applied for the grant of Freedom Fighters, Pension under the Freedom Fighters? Pension Scheme, 1972. In the year 1976 the State of Himachal Pradesh-Respondent-rejected his application vide order dated 16.11.1992 (Annexure P-5). The Union of India-Respondent-1 herein vide letter dated 21st July, 1993 (Annexure P-8) asked the Petitioner to send his original Discharge Certificate to enable the Ministry concerned to process his case further. The Petitioner submitted the original Discharge Book to the Under Secretary, Ministry of Home Affairs Govt. of India, vide letter dated 4 August, 1993 (Annexure P-7). The Petitioner received communication dated November 1,1993 (Annexure P-6) from the Under Secretary to the Govt. of India, Ministry of Home Affairs conveying the rejection of the claim of the Petitioner for the grant of freedom fighter pension. According to the Petitioner, he is entitled to get the freedom fighter pension as per the Freedom Fighters? Scheme, 1972 which was later on renamed as "Swatantrata Sainik Samman Pension Scheme. 1980. The Petitioner has challenged the action of the Respondents being illegal, mala fide and contrary to the petition scheme.

2. This petition is contested by the Respondents by filing two sets of separate affidavits. Counter-affidavit on behalf of the Union of India-re-spondent-1 herein has been filed by Shri B.M.S. Negi, Director in the Ministry of Home Affairs. Union of India has stated that the "Freedom Fighters? Pension Scheme, 1972" was liberalized and was renamed as "Swatantrata Sainik Samman Pension Scheme, 1980. It is admitted that the Petitioner applied for the grant of freedom fighters pension from the Central Revenues on 26.6.1975 under the "Freedom Fighters? Pension Scheme, 1972 (hereinafter referred to as "the Scheme, 1972"). In support of his claim he submitted one attested copy of service certificate from Block Development Officer, Hamirpur in which it was mentioned that Petitioner was enlisted in the British Indian Army on 12.10.1932 and discharged from the Army on 11.8.1946 in consequence of "service no longer required being a member of INA" with very good character. On the basis of the service certificate, case of the Petitioner was referred to the Record Office of the Ministry of Defence who maintaining the records of Ex-INA personnel who had joined the INA. The Record Office, the Dogra Regiment, Meerut Cantt vide their letter No. LIB/6282/3 dated 20th January, 1976 (copy annexed as Annexure-C) intimated that on checking of service documents in respect of the Petitioner it was found that the Petitioner was enrolled in the Army on 12th October, 1932 and was released from service on 11th August, 1946 (AN). Further they had stated that the Petitioner was posted believed Prisoner of War w.e.f. 15th February, 1942 and was granted

mustering out pension @ Rs. 5/- per month w.e.f. 12th August, 1946. The Respondent No. 1 has also stated that the Record Office of the Dogra Regiment had categorically stated that there was no record in the service documents of the Petitioner which could indicate that he had served with the INA and further the personnel who was associated with the INA was not granted any pension. On the basis of the report of the Record Office, the case of the Petitioner was rejected by Ministry of Home Affairs and the rejection order was conveyed to the Petitioner vide communication dated 4th March, 1976 (copy annexed as Annexure-D). Thereafter the Petitioner had been representing to the Ministry and his last representation/review appeal was received on 3.3.1993 through the office of the Chairman-cum-Managing Director, H.P. Ex-Servicemen Corporation (H.P. State Govt. Undertaking), Hamirpur for reviewing the case. Letter dated 21st July, 1993 (Copy annexed as Annexure-E) was sent to the Petitioner by Ministry of Home Affairs asking him to send original copy of his Discharge Certificate. Accordingly the Petitioner vide letter dated 4th August, 1993 (Copy annexed as Annexure-F) forwarded his original Discharge Certificate to the Ministry for further examination. On receipt of the original Discharge Certificate the Record Office of the Dogra Regiment, Meerut Cantt was again requested vide letter dated 6th September, 1993 to confirm the authenticity and veracity of the entries made in the original Discharge Certificate submitted by the Petitioner. In reply to the letter of the Ministry, the Record Office, Dogra Regiment, Faizabad, Uttar Pradesh vide their letter No. 6228/NERL-II/12 dated 23rd September, 1993 intimated that as per service documents held by them, the Petitioner was enrolled in the Dogra Regiment on 12th October, 1932 and released from service on 11th August, 1946 (AN) due to demobilization and reduction of strength of Army. Further it is stated that the entry made at page-2 of Discharge Certificate to the effect that the Petitioner was dismissed on the grounds of "Service no longer required being a member of INA" u/s III(i) of Army Rule 13-B seems to be incorrect. In the case of the Petitioner his discharge was enforced under Army Rule 13-B (III)(i) on fulfilling the conditions of his enrolment of having reached the stage at which discharge has been enforced, whereas personnel of INA were discharged under Army Rule 13-B III(v) which would reveal that the Petitioner was not a INA soldier. Further it is stated that entries at page-2 of the Discharge Certificate were erased by the individual. On the basis of above premises, Union of India prays for dismissal of the writ petition.

3. Sh. Mohan Chauhan, Joint Secretary (GAD) to the Govt. of Himachal Pradesh, Shimla in his affidavit-in-reply filed on behalf of the State of Himachal Pradesh has admitted that the Petitioner applied for the grant of State freedom fighter's samman rashi under the "H.P. Swatantarta Sainani Samman Rashi Yojana, 1985" in the year, 1988 through the Deputy Commissioner, Hamirpur. The case of the Petitioner was placed before the Sub-Committee constituted under the H.P. Freedom Fighters Welfare Board in its 32 meeting held on 22.9.1992. The Committee did not recommend the Petitioner's case for the grant of Samman Rashi as he was not found eligible under the provisions of the State Scheme

since the Petitioner has not undergone two month imprisonment/underground/extension etc. during the participation in the freedom struggle. The Petitioner was accordingly informed vide Annexure P-5.

4. In the rejoinder filed in opposition to the counter-affidavit of the Union of India, the Petitioner has reasserted the averments made in the writ petition and denied the averments of the counter-affidavit. He has stated that the Respondent-Union of India has not clearly stated whether the entries allegedly changed in the Discharge Certificate pertain to the English language or the Urdu language of the Discharge Certificate. He has stated that the entries in the Discharge Book would clearly show that the services of the Petitioner were discharged being a member of INA. He further stated that he has been awarded "Tamra Patra" by the Hon'ble Ex. Prime Minister late Smt. Indira Gandhi for his services rendered as a member of INA. No rejoinder to the reply filed by the State Govt. has been filed by the Petitioner.

5. Learned Counsel for the parties have been heard at length. The original Discharge Certificate produced by the learned Counsel for the Petitioner is also perused by me. The only question involves for determination and consideration is whether the Petitioner had been discharged from the Army being a member of INA or due to demobilization and reduction of strength of the Army. The original Discharge Certificate of service copy whereof is placed on record as Annexure P-1 is in two languages namely English and Urdu. In both these languages at page-2 against Column No. III there of it is indicated "discharged by order of Commandant, the Dogra Regimental Centre, Jalandhar cannot be in consequence of service no longer required being a member of INA". I find no over writing or tempering with the Discharge Certificate in the original certificate against column No. III or in the copy placed on record as Annexure P-1. The reason as stated above discharging the Petitioner from services are the same in both the languages i.e. English and Urdu. On the basis of the Discharge Certificate it can be safely said that the Petitioner had been discharged as he was found to be a member of INA. Under "the Pension Scheme", 1972, participation in the INA and the Indian Independence League is also treated as participation in the National Liberation Struggle. Under the eligibility Clause (f) of "the Pension Scheme", 1972,, a person who lost his job, central or military or means of livelihood for participation in national movement is eligible for freedom fighters pension. Under the Swatantrata Sainik Samman Pension Scheme, 1980 apart from the mainstream of the liberation struggle the movements-mutinies which were directed against the British (French in case of Pondicherry and Portuguese in case of Goa) with freedom of the country as its ultimate goal is also treated as part of National Freedom Struggle for the purpose of grant of pension. Participation/joining of the Petitioner as a member of a INA is held to be as participation in National Liberation as per the provisions of the "Pension Scheme, 1972 as well as" Swatantrata Sainik Samman Pension Scheme, 1980". The claim of the Petitioner is squarely covered under both the Schemes. Therefore, the order of rejection dated Nov. 1, 1993 Annexure P-6 passed by the Govt. of India, Ministry

of Home Affairs dealing the claim of the Petitioner is not sustainable. On bare reading of entries at page-2 of the original Discharge Certificate, in my view, entry against column-III as noticed above is not found erased. The reason of rejection of the claim of the Petitioner given by the Govt. of India is contrary, unjust, unfounded and against the Welfare Pension Schemes framed by the Union of India for the freedom fighter's who have laid their lives for the independence of the country or participated in the freedom struggle in the National Liberation Struggle as member of INA.

6. The Petitioner was not found eligible for the grant of State Freedom Fighter's Rashi under "H.P. Swatantrata Sainani Samman Rashi Yojna, 1985 by the State Govt. as he had not undergone imprisonment for a commulative period of not less than 2 months, or was externed or remained underground, for a cumulative period of not less than 2 months for participation in the National Movement before Independence. His claim, therefore, has rightly been referred by the State Govt.

7. In the result, for the abovesaid reason, the writ petition is allowed to the extent rejecting the claim of the Petitioner for the grant of the freedom fighter's pension by the Union of India. The order of Union of India impugned in this writ petition dated Nov. 1, 1993 (Annexure P-6) and order dated September 23, 1993 (Annexure-H) to the reply filed by the Union of India are set aside and quashed. The Petitioner is held entitled to the grant of pension from the Union of India. However, keeping in view of the lapse of time and peculiar circumstances of the case. I am not inclined to grant the pension to the Petitioner from the date of the application filed by him in the year 1976 as claimed and feel that the ends of justice would be met if the Petitioner is granted pension from November 1, 1993 when the order of rejection Annexure P-6 came to be conveyed to the Petitioner by Under Secretary to the Govt. of India, Ministry of Home Affairs. The arrears of pension shall be calculated and paid to the Petitioner within a period of four months from today, failing which he is entitled to interest at the rate of 9% per annum from November 1, 1993 till the date the arrears are actual paid.

8. The Petitioner, if so advised is at liberty to approach the State Government after he received the freedom fighter pension from the Union of India for the grant of State Freedom Fighter's Swatantrata Sainani Samman Rashi. As and when the Petitioner's claim is received by the State Govt., the same shall be considered afresh had decided by the State Govt. in accordance with "H.P. Swatantrata Sainani Samman Rashi Yojna, 1985.

9. In the facts and circumstances of the case, the parties shall bear their own costs.