

(2002) 02 CAL CK 0021

In the Calcutta High Court

Case No : C.O. No's. 2385 (W) , 2398 (W) , 2598 (W) and 20623 (W) of 1993, 7742 (W) of 1994 and 4160 (W) of 1995 and etc. etc.

Makhan Bala Middya and

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2002 Cal 162 : (2003) 1 CALLT 68

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Jayanta Biswas, Dipankar Dutta, Basudev Bag and Saradindu Samanta, for the Appellant; P.K. Ghosh, S.K. Garai, Anwari Qureshi, Tapas Kr. Chatterjee, P.K. Sen, Shyamal Mukherjee, Ashis Mukherjee, Swapan Banerjee, Mintu Goswami, Animesh Mukherjee, Uttam Kr. Majumdar and Tulsidas Maity, for the Respondent

Final Decision : Allowed

Judgement

Amitava Lala, J.—All the writ petitions are arising out of a common question i.e. grant of freedom fighters' pensions. Therefore, all the writ petitioners were directed to be taken for an analogous hearing to avoid prolixity and multiplications of proceedings. Although the common question is in respect of grant of freedom fighters' pensions but cases are categorised into three categories (a) cases which have been recommended by the State and accepted by the Union but subsequently refused to grant pension: (b) Cases recommended by the State accepted by the Union but later turned down by the Union; (c) Cases which have not yet been considered or recommended by the State or nipped in the bud for any cause which according to them are not fit and proper.

2. In most of the cases I find that those are related to District Midnapore, State of West Bengal leaving aside few others. The Court cannot avoid but to take

judicial notice that District Midnapore of the State of West Bengal was hot belt of freedom fighters" movement in the pre-independence period. History says so. Both violent and non-violent movements mostly motivated from there. The nature of violent and non-violent movements were not same or similar in nature. In a violent movement, an individual or a group of persons must be identified in an action. But in a non-violent movement, where a mass of people involved in an agitation all of them must not be identified. But for the sake of justice, it cannot be said that persons who were either involved in violent or non-violent movement but escaped from the notice or knowledge of the then authority are not freedom fighters at all. Therefore, in coming to an appropriate conclusion and in rendering equitable justice, the background of the freedom fight movement of the country should be taken note by the Court of law. There are reasons for doing so. The nature of the then police action and freedom fighters" action were different from now which cannot be visualised by sitting in an administrative arm chair in an air-conditioned room of free India. Therefore, one has to go back to the period. When there was no independence, freedom fighters were treated as criminals in the eye of law but immediately after independence such criminals become national heroes. Simultaneously, British Polices who made them criminals are no longer there after independence. Some of the police personael who did not change their mind-set immediately after independence gradually accustomed with the situation of free India. By the passage of time, the rigour of the police activities in respect of so called pre-independent criminals became diminished or vanished. As a consequential effect, value of documents in connection with freedom fighters, if any, in the custody of the police become less important or not important in comparison to those days. This slackness of maintaining the documents cannot be said to be intentional but casual due to non-existence of the causes. I mean to say that it was a transitional period. Nobody ever thought that such documents will carry any value in future in free India as a piece of evidence for the purposes of granting freedom fighters" pension.

3. Long after the independence, when the political leaders sitting in the Parliament or legislative houses started thinking to do a little favour to their known and unknown colleagues of pre-independent period a problem arose. Such problem was not aggravated when the same was restricted only on giving Tamra Patra" to them as a token of respect. But the same was aggravated from when government started thinking to give certain financial benefits to them. Financial involvement comparison to number of citizens and number of freedom fighters of the country is so negligible that administration should not proceed more in refusing but granting it. The present policy of the Government by liberalising the scheme speaks that refusal will be less than granting it. In spite of the same if refusal rise more than granting it there should be clear conflict between the policy and action. If the action of the administration is contrary to the policy of the policy makers, the same is improper which likely to be interfered with by way of judicial review.

4. It is an admitted position that on 15th August, 1972 a scheme had been commenced for the purpose of granting pension to the living freedom fighters and their families, if they were no more alive and to the families of martyrs. The same was liberalised in 1980 with effect from 1st August, 1980 and renamed as "Swatantra Sainik" Samman Pension Scheme, 1980. The very word "Samman" is key note of equitable justice. The necessity of the very introduction of the scheme is available in the preamble of the same. Thus, when the legislature thought it fit and proper to liberalise the scheme to give benefit to the freedom fighters, rigidity of reading of other part of the scheme. The very nomenclature of the scheme is not only a product of liberalisation alone but also product of respect to such persons or to the family members who wasted best part of their life to make the country free. They never fought for their own but for the country. Therefore, it is impossible thinking that freedom fighters will keep documentary evidences in their custody or make themselves available for necessary execution of documentary evidences to get recommendation from free India. On the contrary it is obligation of the country to find them out. This is true purpose of the introduction of a liberalised scheme of pension. The recital is the intent of its framers. Mischief, of any statute is to be remedied by itself. It is a key note of the construction of the statute wherever the enacting part is open to doubt. The subsequent scheme obviously made to eliminate difficulties of granting pension. Even thereafter if the Court construe rigidly then the construction will be contrary to the true interpretation of the liberalised scheme.

5. One of the category under the scheme is "proclaimed offender". The question of proclaimed offender is a subject matter of the litigation herein. The later part of the scheme speaks as follows :

"REMAINED UNDERGROUND

(I) Documentary evidence by way of Court's announcing an award on his head, or for his arrest or ordering his detention.

(ii) Certificates from veteran freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not forthcoming due to their nonavailability".

6. From the plain reading it appears that one is alternative mode of proof to other. An argument was put forth by the authority that a proof by the certificate of a veteran freedom fighter is a secondary evidence. By incorporating the words : if the official records are not forthcoming due to their nonavailability" mode of secondary evidence is indicated. I am sorry to say that this is not the true interpretation of the liberalised scheme. A harsh comment has been made by one of the Counsels of the Union of India that unless and until the police documents are verified it will be very difficult to eliminate the proclaimed offender from the criminals. The very foundation of such argument is unacceptable. Some veteran freedom fighters have already been given recognition by the country to issue certificates in such circumstances. They

issued the same. Therefore, it has to be accepted. Challenge, if any, is in fact, a challenge to their own cause which cannot be sustainable. Sufferers can-not be made victim of the circumstances by any illogical argument. The true import is if anybody's name is escaped from the governmental records and certified by a veteran freedom fighter than there is hardly any cause to refuse the claim. Therefore, this is an alternative mode of proof of the claim.

7. There Supreme Court of India, in the judgment reported in 1993 AIR SC 2508 : AIR 1993 SC 2117 (Mukund Lal Bhandari v. Union of India) exhaustively dealt with the scheme by giving emphasis on the aspect of liberalisation. In the said judgment three categories of candidates were considered for giving relief. Firstly, the candidates who have not produced the required proof in support of their claim that they had, in fact, participated in the movement and were sentenced to imprisonment for six months or more. Secondly, candidates who have filed their applications before the Government after the date prescribed for filing the application. Thirdly, the candidates who are entitled to have pensions but whether from the date they produced the required documentary proof in support of their claim or from earlier date.

8. So far as the sufficiency of proof is concerned, the Court held, that the scheme itself mentioned the documents required to be produced before the Government. It is not possible for this writ Court to scrutinise the documents which according to the petitioners they have produced in support of their claim and pronounce upon their genuineness. It is the function of the Government to do so. Therefore, the prescription of the Supreme Court of India is that under normal circumstances in giving remedies, constitutional Court should not behave like a Fact Finding Court. But that does not necessarily mean writ Court cannot interpret the scheme and clarify the modus operandi of the Government. A single Bench of this Court as available from a reported judgment (2000) 1 Cal LJ 572 (Saktibala Samanta v. Union of India) held that the aforesaid Supreme Court judgment has hardly any application to the fact of the present case. The above is only applicable in connection with rejection of the claim of the freedom fighters on the ground of limitation. Thereafter, proceeded with the findings of the fact under the writ jurisdiction by negating the claims of the freedom fighters due to non-availability of the Government records. I am sorry to say that interpretations of the Supreme Court has been hurriedly read out. Moreover, when the writ Court cannot behave like Fact Finding Court in positive side, the same ratio will also be applicable in negative side which appears to have been done in such judgment. However, under normal circumstances the matters should have referred to a larger bench but such Single Bench Judgment has already been considered by the Division Bench of this Court in MAT 2066 of 2000 (Saktibala Samanta v. Union of India). Although the appeal was dismissed on the factual admission, if any, available therein but two observations of the Division Bench are very important in this respect. One part is that the Division Bench did not agree with the Learned Trial Judge that there had been a suppression or omission or fraud on the part of the appellant/ petitioner so that the decision of the

Supreme Court in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, would be applicable. The other part is that it is open for the petitioner to act in terms of the paragraph 9 of the "order" (Scheme as per the Learned Counsels for the parties) passed by the Central Government. Paragraph 9 speaks for two modes as aforesaid. Therefore, the ratio of the Supreme Court and Division Bench judgments do not prescribe to this Court either to get to be persuaded by Single Bench nor refer the matter to larger Bench.

9. According to me, there is a huge gap in deciding the issue by applying common law principle and by applying equitable principle. When we shall be guided by common law principle, unless prescribed otherwise we shall be meticulous about evidential value of the documents. But when we shall be guided by the equitable principle we shall be guided by the circumstances. We have only to remember whether one is party to fraud or sharp practice apparent from the face or one is victim of the circumstances. If one is hit by the first part then he is not entitled for equitable justice but if one is hit by the second part then Court of equity should not deal with him harshly. The very purport of introduction of the scheme by the Government is to liberalise the proof of claim keeping on the back of the mind various odds which may be faced by a person if such scheme is not introduced. Hence, a contrary though backed by common law principle ignoring the true purport of the scheme ought to be declared as bad. In coming to conclusion as on this ratio I associate myself with the ratio of the Judgment and order of the Supreme Court in Mukund Lal Bhandari and others Vs. Union of India and others, and say that it is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State are scattered all over the country and most of them may even be inhabiting the remotest part of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are not alive their widows and unmarried daughters have to prefer the claims. The position may still be worse with regard to their knowledge of the prescribed date. What is more, if the scheme has been introduced with the genuine desire to assist and honour those who have given best part of their life for the country, it ill behoves the Government to raise plea of limitation against such claims. In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependants and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of work out of such scheme. The scheme was rightly be renamed in 1980 as the Swatantra Sainik Samman Pension Scheme to accord with its object. It has particularly held that in the very nature of things such documents have to be secured either from the jail records or from the persons who have been named in the Scheme to certify the eligibility. Therefore, the interpretation of the Supreme Court is that either the first mode will be available or alternative mode will be available and that is the true interpretation of the scheme. Incidentally, I like to refer the ratio of another single Bench judgment reported in Chaitnya Charan Das Vs. State of West Bengal and others, where it

was held that for the purpose of grant of Samman Pension the history or literature has a little role to play except when the same provides for any evidence to arrive at a just decision.

10. In 1983, Deputy Secretary, Government of India, Ministry of Home Affairs wrote a letter to the Chief Secretary of all the State Governments/Union Territory Administration that :

(i) Firstly, underground suffering recognised for the purpose of pension from the inception of the scheme provides that the persons should have gone underground only after he was wanted by the police for his activities relating to National struggle for freedom viz. the freedom fighter should either be a proclaimed offender or on whom the award was announced or on whom detention orders were issued but were not served. In this context, the fact that the freedom fighter was wanted by the police for his activities relating to freedom struggle continues to be the essence of eligibility for pension on the basis of the underground sufferings. Voluntary abscondence, therefore, does not make a person eligible for Samman Pension.

(ii) Secondly, the pre-condition of eligibility up to 31st July, 1980 has been that the fact of abscondence should be established from the Official documents available with the State Government in the form of a judgment or any other executive order, declaring a person an absconder. The liberalised pension scheme, however, provides with effect from 1st August, 1980 that in the absence of official records because of their nonavailability, a certificate from a prominent freedom fighter who himself had been in jail in connection with the National Freedom Struggle for not less than five years would be acceptable to substantiate the claim of abscondance, internment or externment this relaxation, thus, provides an alternative mode of evidence and before relying upon the, same it would be necessary for the Government to satisfy itself that the applicant was a genuine freedom fighter and official records of that period are not available. Further, the genuineness of the certificate itself has to be verified by making a reference to the Jail sufferings of five years, claimed by the certifier and that there is no complaint about indiscriminate certification against him.

(iii) Thirdly, it may be mentioned that a large number of persons have stacked their claims of pension under the liberalised Pension Scheme on underground sufferings. Since, three certificates are based on personal knowledge, it has been decided that the certifier who issues the certificates in favour of the freedom fighters should ordinarily belong to the same administrative unit (viz. District) before the reorganisation of the State to which the applicant belonged i.e. his area of operation during the freedom struggle should have been the same as that of the residence of the applicant.

(iv) Lastly, all cases of underground sufferings/internment/externment which are not based on official records should invariably be placed before the State Advisory Committee and the recommendation of the State Government along

with the extract of the proceedings of State Advisory Committee should be forwarded to the Ministry for further consideration.

11. Government of India has directed the State Government to follow the aforesaid guidelines :

While the above guidelines should be followed it is equally necessary that there should be no delay in the disposal of the cases. In this context, it is suggested that the State Government should prepare an agreed list of the freedom fighters authorized for issue for such certificates on the basis of 5 years actual jail suffering. This consolidated list giving necessary details may be compiled after thorough verification of their own claims of jail sufferings and sent to this Ministry very urgently so that the names of such freedom fighters are readily available with the Ministry for scrutiny of cases of underground/internment/externment sufferings. Ordinarily this process should not take more than a month.

12. Government of India further directed the State Governments on 21st August, 1984 to follow the guidelines :

(i) Firstly, the claim of a person that he had undergone imprisonment for 2 years or more in connection with the national freedom struggle may be examined with reference to the claim made by him in his application for Samman Pension and the documents furnished by him in proof thereof. In case he had not submitted but now submits any documentary evidence which clearly proves his claims of jail suffering for 2 years acceptable within the provisions of the scheme, is competence to issue certificates for underground internment/externment sufferings may be accepted.

(ii) Secondly, the exposition that the applicant and certifier should "belong" to the same district would mean that they were resident of the same district at the time of freedom struggle "district" being the district as at that time and not the district where they may be presently residing. In case a certifier had straged Satyagraha and courted arrest or was arrested in different districts in connection with the national freedom movement, the certificate of abscondence issued by him in favour of the claimants residing in those districts as they existed at that time may be accepted for Samman Pension. It may be noted that there is no change in the basic requirement that such certificates are required to be issued on the basis of the personal knowledge of the certifying freedom fighters and will be accepted as valid collateral evidence of suffering only if the official records pertaining to that period are not available.

(iii) Thirdly, the abvoe relaxation i.e. reduction of certifiers" jail suffering from 5 years to 2 years will be applicable to claim already received before 31st March, 1982. No fresh applications will be entertained. The cases which have been rejected on the ground of failure of the applicants to produce certificates from a prominent freedom fighter with 5 years" jail sufferings may be re-considered on production of fresh acceptable evidence from a freedom fighter with actual jail

sufferings of 2 years or more and revised verification report with remarks of the State Government may be sent to the Ministry of Home Affairs.

13. Further such guidelines are directed to be followed by the State Governments in the form of a request indicating invariably the documents/certificates on the basis of which they accept the claim of a certifier that he had suffered imprisonment for a minimum of 2 years. This will facilitate the expeditious clearance of the claims recommended by them.

14. Not only from the liberalisation scheme of the year, 1980 but also from the subsequent circulars as aforesaid certain directives of the Union of India are crystal clear :

(a) Certificate of the freedom fighters in respect of jail suffering is an alternative mode of proof of evidence, therefore, either the records of the jail suffering or the certificates of the freedom fighters will be the documents in support of the claim. As because one has not been able to produce the jail suffering record or the same is not available, such certificate as given by a freedom fighter cannot be ruled out. This is not the true interpretation of the scheme;

(b) Ratio decendi of the Supreme Court is judgment that the duty of the Governmental Authority is to find out the freedom fighters or their family members because of certain reasons. Therefore onus of such proof cannot lie upon the incumbents alone for the purpose of collection of evidence when it is in the hands of third parties. Such situation, as discussed by the Supreme Court is not only applicable in respect of the limitation for making such application or for the period of calculation but also for the entire method of finding out such people for the purpose of showing respect i.e. samman;

(c) Grant of Samman Pension to the freedom fighters is a noble cause of the country. Therefore, it is primary responsibility of the country to show such respect by following the guidelines of the Supreme Court in the Mukund Lal Bhandari and others Vs. Union of India and others, what is necessary in matters of such claims is to ascertain the factum of eligibility". Therefore, such factum of eligibility may come out from the jail records, from any other records of the State which are made by the Intelligence Branch of that period, from the certificate of the freedom fighters, and largely from the ascertainment of the State machinery on the historical background. As such, governmental machinery cannot avoid it is onus to find out actual sufferer to give such Samman. The governmental body cannot proceed with a pre-fixed mind that they are going to give appointment to an employee in the governmental service to show respect or samman to the ripe old aged freedom fighters or to their family members of the (sic) who are even in the worse conditions living of. Unless and until a flexibility is shown in the procedure of granting pension to the freedom fighters or their family members the preparation of scheme or issuance of re-peated circulars by the Union of India will appear to be an eye-wash:

(d) There is no guidelines of voluntary abscondee. Therefore mere refusal

without any cogent evidence over the official records or certificate of the then freedom fighters cannot prevail. It is strictly fact oriented on the date and time then available. Therefore, the record will be consulted and if any, the certificate of the freedom fighter has to be taken into account. It is to be remembered that the person who suffered in jail with the freedom fighter or associated with him or her at the relevant point of time will be the best person to judge the situation and certify the abscondence was voluntary or involuntary. Therefore. I fall to understand after 50 years of independence how such situation can be evidently proved without the certificate of a freedom fighter. In other words, the certificate of a freedom fighter has to be taken into account in such a situation. If I visualise the historical back-ground I shall be able to find it out who are the proclaimed offenders but in a non-violent movement there is hardly any scope to find out who are the proclaimed offenders or person absconding voluntarily or involuntarily. Moreover, a voluntary absconding cannot rule out recognition of a freedom fighter. His worth saying in this respect that in the British reign when fight for independence were aggravating day to day policy of the freedom fighters were to hide themselves to avoid arrest, many of such people came and saw the light of the day after independence. Hence, the actual description were eliminating that class of freedom fighters for getting their pensional benefit in the garb of voluntary abscondence cannot be held to be a good.

15. Lastly, it is true that Union of India cannot officiate as a post office in granting pension without scrutinising the records forwarded by the respective State or States or their Advisory Committees but they should not behave mechanically. It is to be remembered that the recommendations of the State, either based on records or based on alternative proof of evidence, to recommendations based on such scheme which cannot be ignored by the Union of India mechanically. The order or orders impugned hereunder are the practically outcome of the same. Similarly, order refusing the grant of pension on account of non-service of the official record in spite of the certificate by a freedom fighter goes contrary to the root of such policy. Against the background, in a single bench judgment of this Court reported in(1999) 1 CLT 241 (Gokul Chandra Panja v. Union of India, Court held that the manner in which the Central Government has proceeded is wholly contrary to the scheme. No doubt the Central Government has a discretion and is not bound to accept the recommendation of the State Government. But it can only reject the recommendation for valid reasons. Those reasons cannot include the kind of report submitted by the State Government in this case which are based on no evidence whatsoever and in fact was misleading. Such judgment was tested by a Division Bench of this" Court in an unreported judgment being MAT No. 1604 of 1999 (Union of India v. Gokul Kr. Panja) and the same was dismissed. According to me, now grant of pension is much easier than refuse. Therefore, the Government will be much more careful in refusing the same.

16. The present case is similarly placed and backed by the similar situation.

17. The Union of India filed an affidavit belatedly which has been dealt with by the petitioner by filing affidavit-in-reply. However, in the midst of the argument it appears to this Court that there is an Annexure to such affidavit-in-opposition without any enclosure when a supplementary affidavit, was directed to be filed which was accordingly done. It appears that such affidavit filed by a Desk Officer of the Branch Secretariat of the Ministry of Home Affairs, Union of India at Calcutta. Most of the parts of the affidavit are argumentative in nature. The main submission "has been made on the basis of the annexures wherefrom it appears that the same is the copy of the letter dated 8th November, 1993 from the District Magistrate of Midnapore regarding: availability of the records. According to the Learned Senior Counsel appearing on behalf of the Union of India when the letter was sent by saying that the copy of the letter was sent regarding "availability of records therefore the case cannot be construed as a case of non-availability of records for which a certificate on behalf of an existing freedom fighter can be acceptable as a piece of evidence. On repeated thrust on the part of the Learned Senior Counsel appearing for the petitioner or petitioners, I have come across a letter of the District Magistrate, Writers Building, Calcutta. In the said letter, concerned District Magistrate had written to the Special Secretary of the State mentioning the report of the District Magistrate and Superintendent of the Police of the same District forwarded are not contradictory to each other. It is stated in the enquiry report that none of the applicants are eligible for freedom fighters' pension. Such enquiry report has been submitted on the basis of the allegations that there were contradictions in between the records of the District Magistrate and Superintendent of police. The Superintendent of Police stated that in connection with above mentioned subject, all available police records including thana and DIB were duly consulted, but nothing transpired about his political activities during the period as claimed in the petitioner or during the pre-independence days. District Magistrate issued a certificate that this is to certify on the basis of the report received from the officer-in-charge of the concerned police station that no relevant records relating to issue of warrant, proclamation and prosecution for the period 1930-40 are available. The analysis of contents of both the letters were considered by the concerned District Magistrate in issuing the certificates. It is also recorded therein that report from concerned police stations were taken when they have confirmed that the warrant Registers of those police stations from 1932 to 1946 are not available. The Warrant Registers were maintained as per regulations of PRB. According to the Magistrate and as per provisions of PRB there are other records wherefrom details of the persons who have taken part in Freedom Struggle can be ascertained. The most important document is VCNB (Village Crime Note Book) which is maintained as per Regulation 391 of PRB (Police Regulation Book). VCNB is a permanent record that available in the police stations from 1930 to 1946. As per Regulation the police crime note book containing the villagewise record of criminal history of individual is maintained. The VCNB of the police stations were examined but the name of the applicants were not found in the said parts of the record. Other records were checked up but the names were not available. Some of the

documents are very old and not available. Because of their age they were worn out. Subsequently, annexures 1, 2 and 3 to the said report of the District Magistrate I find that VCNB contains certain information about crime of criminals including convicts and suspects. According to them it is a privileged document and it is not to be exhibited in the Court without the permission of the head office and no Judge can compel the production except with the same permission. It is open for inspection by magisterial and police authorities but no outsiders shall sit or obtain copies of its contents. Annexure 2 says about conviction register of the villages. Annexure 3 says about jail registers, returns, letters and records of every description for the purpose of preservation or destruction be classified under four heads : (a) Those are to be preserved permanently subject to destruction under the personal supervision of the Superintendent and sanction of the Inspector General or entirely ineligible or unless for age words or other causes as laid down in Rule 230 of the Bengal Records Manual. 1943; (b) These are to be taken for 12 years; (c) those are to be kept for 5 years; (d) Those are to be kept for 2 years. According to them, such documents were kept in the office of the Deputy Secretary, Government of West Bengal Home (Poll -- PSP) Department, 131 / A. B. B. Ganguly Street, Calcutta-700012. Subsequently, they submitted about nonavailability of the records but produced before this Court Index 1937 or up to 14th August, 1947 (Volume I & III) Government of West Bengal, Intelligence Branch to establish that the names of such persons are not available in the record. It appears from such book that some of the names of the petitioners are available there and some of the names of the petitioners are not available there. The freedom fighters whose names are available there they have their easiest way to get their pensionary benefit on the basis of the recommendations by the State Advisory Committee but those names are not available the alternative mode can be adopted.

18. Therefore, the Writ Court can make judicial review in this regard and give the guidelines for consideration of the claims of the respective freedom fighters on the basis of the proof of the claim. Such proof might have the first mode of proof or any other mode of proof by which factum of eligibility can be ascertained.

19. Recently, the Supreme Court of India reiterated the views of Mukund Lal Bhandari and others Vs. Union of India and others, in Gurdial Singh Vs. Union of India and Others, which came to notice of the Court in the course of delivering the judgment. The ratio of the judgment is principally similar with the present one which is hereby delivered. I have quoted the relevant portions hereunder (paras 7 and 8):

The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the

case of a person seeking pension under the scheme. It should not be forgotten that the persons intended to be covered by scheme have suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of claimants under this scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence it is probablilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.

We have noticed with disgust that the respondent Authorities have adopted a hyper-technical approach while dealing with the case of a freedom fighter and ignored the basic principles/objectives of the scheme intended to give the benefit to the sufferers in the freedom movement. The contradictions and discrepancies, as noticed hereinabove, cannot be held to be material which could be made the basis of depriving the appellant of his right to get the pension. The case of the appellant has been disposed of by ignoring the mandate of law and the scheme. The impugned order also appears to have been passed with a biased and close mind completely ignoring the verdict of this Court in *Mukund Lal Bhandari and others Vs. Union of India and others*, We further feel that after granting the pension to the appellant, the respondents were not justified to reject his claim on the basis of material which already existed, Justifying the grant of pension in his favour. The appellant has, unnecessarily, been dragged to litigation. for no fault of his. The High Court has completely ignored Its earlier Judgments in CWP No. 3790 of 1994 entitled *Mohan Singh v. Union of India* decided on 1 -6-1995 and CWP 14442 of 1995 decided on 1M2-1995".

20. Upon observing the pros and cons of the matter I have come to a definite conclusion that certain guidelines are to be followed by the State and Union Authorities in this respect which are given hereunder :

(a) The evidential value under the scheme either of the first mode or of the alternative mode has to be taken on the probabilities but not on the basis of fixed rule of evidence normally applicable in Civil and Criminal matters;

(b) It is not only duties of the respective parties to make applications and prove their claims but the authorities are also bound to find out eligible candidates out of their own for having pension by forming appropriate machinery for the same so that at least one real freedom fighter or their family may not feel aggrieved for not having pensionary benefit;

(c) The nomenclature of the scheme being "Swatantra Sainik Samman Pension Scheme, 1980", speaks about the "Samman" on the part of the authority,

therefore, it is national obligation to show appropriate respect to them, and rigidity of evidential proof is running contrary to the moto of the nation;

(d) To expedite the process a time bound programme is needed to be made and it is suggested thereunder that neither of the authorities will take more than one month period to make scrutiny and verification in respect of the grant of pension;

(i) The State authority will be bound to complete its process within one month from the date of application, if made or suo motu in the appropriate circumstances;

(ii) Similarly appropriate authorities of the Union of India complete their part performances within a period of one month from the date of recommendation of the case by the State authority;

(iii) The payment of actual pensionary benefit to the incumbent or the family members whosoever is entitled should not be delayed beyond the period of further one month from taking decision by the appropriate authorities of the Union of India;

(e) Immediately after the communications of the order, the State authorities will make random search of probable candidates districtwise and prepare list of such candidates on the basis of first or second mode or any other mode of proof of factum of eligibility and finalise the decision as expeditiously as possible within the given time period as specified above from the date of listing;

(f) This principle will also be applicable in which applications already pending before the State authorities and not been considered or the cases which are recommended but pending before the Union of India and the date of communication of judgment and order passed hereunder will be cut off date for the purpose of doing the needful as aforesaid;

(g) The cases which are already considered and sanction has already been made cannot be withdrawn without the established cases of fraud or sharp practice, if any;

21. Thus, the writ petition stands allowed and accordingly disposed of. All the matters particularly those appearing in the cause title either in the original side or in the Appellate side will be governed by the judgment and order passed by this Court. However, no order is passed as to costs.

22. Let an urgent xeroxed certified copy of this judgment, if applied for, be given to the Learned Advocates for the parties within 2 weeks from the date of putting the requisites.