
(2000) 08 DEL CK 0007
In the Delhi High Court
Case No : Civil Writ No. 2746 of 1996

Ms. Khazni

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 08 DEL CK 0007

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : Mr. S.M. Hooda, for the Appellant; Mr. A.K. Bhardwaj, for the Respondent

Judgement

N.G. Nandi, J.—In this writ petition under Article 226 of the Constitution of India, the petitioner prays for quashing of the impugned letters dated 3.9.1991 and 8.5.1996 respectively and for writ of mandamus directing the respondents to restore the F.F.Pension w.e.f. December, 1992 and also pay the arrears along with the interest thereto.

2. The petitioner is the widow of late Dheeru Ram who was enrolled as combatant soldier in the Indian Army on January, 5, 1930 in 2/9 Jat Regiment; that during the second world war, 2/9 Jat Regiment is stated to have fought against Japanese imperial forces and whole of the Regiment surrendered to the Japanese forces on 15.2.1942; that 2/9 Jat Regiment as a whole joined the IN a on February 16, 1942 and the new Unit was known as 3 Guerrilla Regiment and the deceased husband of the petitioner was promoted to the rank of Havaldar; Later on he died in action as it is reported in who's of Indian Martyrs; that the petitioner being legal widow of Ex.INA Havaldar Dheeru Ram applied for the grant of Freedom Fighter Pension under the Freedom Fighter Pension Scheme, 1972; that the petitioner was granted Freedom Fighter Pension w.e.f. 15.8.1972 vide letter dated 7.6.1974; Also this fact was communicated by the Chairman, F.F.Assitt. Committee Government of Haryana, Chandigarh to Choudhary Ranbir

Singh (M.P.), the petitioner being voter of Lok Sabha constituency of Ch. Ranbir Singh, vide letter dated 18.6.1974; that the petitioner has some difference with the villagers and there are several villagers who were serving in records of the Jat Regiment and who were not happy with the petitioner. They manipulated some entries in the record with the record office and managed to sent a letter to the Ministry of Home Affairs that Dheer Singh was not in the I.N.A.; that respondent no.1 asked for the documents and also suspended the F.F. Pension vide letter dated September 3, 1991; that respondent No. 3 also sent another letter dated 27.12.1991 stating therein that her husband late Dheeru Ram died in Malaya on 14.7.1942; that the Army Hq. prepared the record in 1956 which is based on surmises and conjectures and does not have authenticity as the communication between the Headquarter and the Jat Regiment was totally cut off and there was no means of ascertaining the fact regarding the date of death of any soldier. Also the record does not deny the fact as the same is accepted by the Government of India; that the 2/9 Jat Regiment as a whole surrendered to Japanese Imperial forces on February 15, 1942 and then the 2/9 Jat Regiment was renamed as 3 Guerrilla Regiment; that two affidavits of ex-soldiers of 2/9 Jat Regiment who personally knew late husband of the petitioner, were submitted to respondent no.1; that respondent No. 2 made secret Magisterial inquiry and perusal of the same also establishes that the late husband of the petitioner was freedom fighter.

3. The respondents filed counter-affidavit and refuted the claim of the petitioner, inter alia, contending that the real name of the late husband of the petitioner is Dheer Singh and not Dhiru Ram as evident from the voters list and election commission care; that the late husband of the petitioner No.10199, Ex-sappy Dhir Singh was enrolled in the 2/9 Jat Regiment on 5.11.1930; that the husband of the petitioner died on 14.7.1942; that the duplicate discharge certificate dated 16.4.1968, Annexure R-1, was submitted to the Ministry by the petitioner herself along with representa- corporation dated 31.10.1973 and that in this representation, the petitioner herself submitted that her husband died in July, 1942 at Singapore; that on the basis of documents annexed, Central F.F.Pension was granted to the petitioner as the widow of Dhir Singh alias Dhiru Ram. However, later it was revealed from the Army Records Office letter dated 27.6.1991 that late Sepoy Dhir Singh had never joined IN a and that he was reported dead on 14.7.1942; that the record office further stated that Smt.Khazani Devi (Petitioner) wife of the deceased was granted family pension at the rate of Rs.8/- per month w.e.f. 15.7.1942; that the Army record office has reiterated that "As per records held in this office and informed several times to all concerned that No.10199 late Sep. Dhir Singh had never served IN a whereas the above deceased individual died in Malaya on 14th July, 1942."; that the Army record office has further intimated that the name of late Dhir Singh was found published at page No. 6, Seriall No.189, in a book "REGISTER OF CASUALTIES INDIAN ARMY WORLD WAR II, VOLUME XIII, 9TH JAT REGIMENT, 1956". The above book was published by the Government of India, Ministry of defense; that

it is a historical fact that the Indian troops of "British Army" deployed in Malaya and Singapore surrendered before the Japanese Army on 15.2.1942 and were made prisoners of war. It was only in September, 1942 that 1st INA, comprising of British Army Soldiers, was raised by Gen.Mohan Singh. However, this IN a was disbanded in May, 1943. The IInd INA, headed by Netaji Subhash Bose was raised only in July, 1943. As late Sepoy Dhir Singh expired on 14.7.1942, the question of his joining IN a does not arise; that only those ex-army personnel who had either joined IN a or had taken part in some specific mutinies (recognised by the Government of India) are eligible for grant of Freedom Fighters' Pension from Central Revenues. As the case of late Dhir Singh does not come under either of the two categories mentioned above, Central F.F. Pension cannot be granted to his widow i.e. the petitioner.

4. Annexure P-3 dated 7.6.1974 is the copy of the application submitted by the petitioner for grant of pension from Central Revenues to freedom fighters and their families. Annexure P-3a, dated 18.6.1974 is the communication to the petitioner regarding the grant of Freedom Fighter Pension Rs.70/- per month. In the said letter, it is also mentioned that the petitioner has been again informed that her husband was not a freedom fighter but he laid his life during second world war. Annexure P-4 is the impugned letter dated 3.9.1991 whereby the petitioner was required to produce the evidence as regards i) proof of dismissal/discharge from the Army due to IN a activities; ii) Number, rank and unit of Regiment/Battalion of the Indian Army with which last worked; iii) Attested copy of letter issued by the Record office of the Regiment giving financial aid on account of restoration of forfeited pay and allowances. Annexure P-5 is the order dated 3.9.1991 whereby Freedom Fighter's Pension to the petitioner as the widow of the deceased Dhir Singh has been suspended forthwith. Annexure P-18, dated 8.5.1996 is the impugned order whereby the petitioner has been informed that the sanction of family pension be treated as cancelled w.e.f. the date it was sanctioned and the amount Rs.76,310.40 drawn by the petitioner from 15.8.1972 to 31.10.1992 has been ordered to be recovered.

5. Annexure R-1 is the copy of the service documents in respect of deceased husband of the petitioner. Perusal of the same suggests that Dhir Singh was the member of 2/9 Jat Regiment and he was discharged on 14.7.1942 by reason of death. Thus, according to Annexure R-1, petitioner's husband died on 14.7.1942. Annexure R-2 is the representation by the petitioner wherein it is stated that the petitioner's husband died in July, 1942 at Singapore. Annexures R-4, R-5 & R-6 are the Army record according to which No.10199 late Sepoy Dhir Singh had never served I.N.A. whereas deceased Dhir Singh died in Malaya on 14.7.1942.

6. According to the respondents, Indian troops of British Army deployed in Malaya and Singapore surrendered before the Japanese Army on 15.2.1942. The first INA, comprising of British Army soldiers raised by Gen.Mohan Singh was disbanded in May, 1943 and the second IN a headed by Netaji Subhash Bose was

raised in July, 1943. It is not much disputed that the petitioner's husband late Dhir Singh died on 14.7.1942.

7. Considering Annexures R-1, R-2, R-4, 5 & 6, it does not appear that the deceased Dhir Singh was a member of I.N.A., when first I.N.A. formed in September, 1942 having been disbanded in May, 1943 and Therefore the petitioner as the widow of deceased Dhir Singh cannot be entitled to Freedom Fighters Pension and the grant of Freedom Fighters Pension to the petitioner would be liable to be withdrawn/cancelled and Therefore, no relief as regards Annexure P-4 dated 3.9.1991 has been granted to the petitioner.

8. Vide impugned order dated 8.5.1996, Annexure P-18 the amount of Rs.76,310.40 is sought to be recovered from the petitioner. The petitioner having received this amount pursuant to the grant of Freedom Fighters Pension as the widow of the deceased Dhir Singh, 2/9 Jat Regiment, in my opinion, the respondents would not be entitled to enforce recovery of the same as the amount has been received by the petitioner pursuant to the orders in this behalf. The respondents while issuing Annexure P-2, and communicating the grant of Freedom Fighters Pension to the petitioner as the widow of the deceased Dhir Singh, should have verified the position as regards entitlement to the grant of Freedom Fighters Pension.

9. It is pertinent to note that pension of Rs. 70/- granted vide annexure P-3 was enhanced to Rs.100/- per month subsequently w.e.f. 1.10.1976. It is only by the communication dated 3.9.1991, Annexure P-4, the petitioner has been informed that she was not eligible for grant of pension under the Freedom Fighter Pension Scheme as her deceased husband never joined the I.N.A. and that grant of Freedom Fighter Pension Rs.70/- per month was provisional subject of adjustment of said pension. Now as per Annexure P- 3a, dated 18.6.1974, if the husband of the petitioner was not a freedom fighter and was not covered in the Freedom Fighter Pension Scheme, then Freedom Fighters Pension should not have been granted at all much less enhancement from Rs.70/- to Rs.100/- per month. The respondents are estopped from seeking recovery which would, in my opinion, would disentitle the respondents to enforce recovery of the amount received by the petitioner and for that reason, the impugned order dated 8.5.1996 is liable to be quashed as no recovery can be effected against the petitioner.

In the result, the petition partly succeeds to the extent that the impugned order No. 16/R/2699/72-FF(INA) dated 8.5.1996 seeking recovery of F.F. Pension amount received by the petitioner, deserves to be quashed.

Order accordingly.