

(2019) 10 BOM CK 0130
In the Bombay High Court
Case No : Writ Petition No. 264 Of 2019

Nakul Sagun Narulkar

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 14-10-2019

Acts Referred:

Citation : (2019) 10 BOM CK 0130

Hon'ble Judges : M.S. Sonak, J;Nutan D. Sardessai, J

Bench : Division Bench

Advocate : Shivan Desai, Raviraj Chodankar, D. Shirodkar

Final Decision : Dismissed

Judgement

M.S. Sonak, J

1. Heard Mr. S. Desai, learned counsel for the Petitioner, Mr. R. Chodankar, learned Standing Counsel for Respondent No.1 and Mr. D. Shirodkar, learned Additional Government Advocate for Respondent No.2.

2. The Petitioner, who is already recognized as Freedom Fighter by the State of Goa under the Swatantrata Sainik Samman Pension Scheme (State Scheme) formulated by the State Government, aggrieved by the denial of pension under the Swatantrata Sainik Samman Pension Scheme, 1980; formulated by the Central Government (Central Scheme), seeks the following reliefs in this petition :-

"(A) A writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction for quashing and setting aside the Administrative Instruction dated 06.10.2009 bearing No.8/8/2009-FF(P) issued by Respondent No.1;

(B) A writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction for quashing and setting aside the impugned communications issued by the Respondent No.1;

(C) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction to Respondent No.1 to reconsider and grant the Petitioner's claim to freedom fighter's pension under the 1980 Scheme;

(D) For ad-interim ex-parte reliefs in terms of prayer clauses (B);

(E) For such other and further reliefs as this Hon'ble Court deems fit and proper in the facts and circumstances of this case."

3. There is no dispute that the Petitioner has been recognized and is in receipt of Freedom Fighters' Pension under the State Scheme. The Petitioner's claim for pension under the Central Scheme has been declined by the Central Government, relying upon the Administrative Instruction dated 06.10.2009, which provides that only the claimant above 15 years of age at the time of their participation in the freedom movement would be eligible for sanction of samman pension under the Central Scheme. It is the case of the Respondent that the Petitioner, at the stage of his participation in the Goa Liberation Movement/Phase-II (1954-1955) was less than 15 years of age and therefore, ineligible to receive the samman pension under the Central Scheme.

4. The Central Government has formulated the Central Scheme for award of samman pension to freedom fighters who had suffered a minimum imprisonment of six months in the mainland jails before independence. There were some exceptions carved out in favour of ex-INA personnel, women and SC and ST freedom fighters. The Central Scheme clearly provided that 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 were also treated as part of the national freedom struggle for the purpose of grant of pension, unless any movement(s) is specifically decided as not qualifying for the grant of samman pension.

5. The Ministry of Home Affairs vide communication dated 17.02.2003, made it clear that the Central Government has decided to grant central pension to the participants of 2nd Phase of Goa Liberation Movement (1954-1955) who have been granted freedom fighters pension by the State Government by 01.08.2002 by relaxing the eligibility criteria under the Swatantrata Sainik Samman Pension Scheme, 1980 i.e. the Central Scheme. Neither the original Central Scheme of 1980, nor the communication dated 17.02.2003 extending the samman scheme to the participants of 2nd Phase of Goa Liberation Movement (1954-1955) make any reference to the age limit of the participants in the freedom movement.

6. The Respondent however placed on record the Office Memorandum dated 18.03.2005, which states that in addition to the existing provisions for processing samman pension cases of the Goa Liberation Movement, Phase - II, the following was also decided :

"The minimum age of participant should be 15 years at the time of

commencement of the Movement i.e., on 1st January 1954"

7. The Petitioner as well as the Respondents have also placed on record the communication dated 06.10.2009, which reads as follows :-

"No. 8/8/2009-FF(P)

Government of India

Ministry of Home Affairs

(FFR Division)

Lok Nayak Bhawan, Khan Market,

New Delhi, dated 6th October, 2009.

To,

The Chief Secretaries,

All States/Union Territories

[As per list attached]

Subject :- Fixation of age limit for consideration of claims for Samman pension under the Swatantrata Sainik Samman Pension Scheme, 1980.

Sir,

I am directed to say that at present the Swatantrata Sainik Samman Pension Scheme, 1980, per se, does not prescribe any minimum age for being eligible for Central Samman pension. This has led to situations where minors, even those 12 years of age, have been sanctioned the pension.

2. The question of fixation of minimum age limit for consideration of claims for Samman pension has been carefully considered in the Ministry and it has been decided that henceforth only claimants above 15 years of age at the time of their participation in the freedom movement, would be eligible for sanction of Samman pension. This age stipulation would be condition precedent in all claims to be processed for Central Samman pension in future.

This issues with the approval of the Union Home Minister.

Yours faithfully,

Sd/-

(A. K. Goyal)

Joint Secretary to the Government of India Telefax : 2469 1940"

8. As noted earlier, there is no dispute whatsoever that the Petitioner was in receipt of freedom fighters' pension from the State Government by 01.08.2002 for his participation in the Goa Liberation Movement. Thus in terms of

communication dated 17.02.2003, the case of the Petitioner was required to be considered for grant of pension under the Central Scheme, by relaxing the eligibility criteria under the Central Scheme.

9. In fact, if the application of the Petitioner is perused, then, it is quite clear that the Petitioner's claim for samman pension was not restricted to his participation in the 2nd Phase of Goa Liberation Movement (1954-1955), but same was in relation to participation of the Petitioner in the Goa Liberation Movement from the years 1954 to 1961. The communication dated 17.02.2003, no doubt, refers to extension from the Central Scheme to the participants of 2nd Phase of Goa Liberation Movement (1954-1955) who had been granted freedom fighters' pension by the State Government, by 01.08.2002. However, the Central Scheme, in clause 5, makes it clear that apart from the mainstream of the liberation struggle the movement/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 were also treated as part of national freedom struggle for the purpose of grant of pension "unless any movement(s) is specifically decided as not qualifying for the grant of Samman pension."

10. From the impugned communication issued to the Petitioner by the Respondent No.1, it is apparent that the case of the Petitioner has been treated only in the context of his participation in the 2nd Phase of Goa Liberation Movement (1954-1955) and his case has been turned down, only on the ground that the Petitioner as on 01.01.1954, was less than 15 years of age. However, the case of the Petitioner in the context of his participation in the Goa Liberation Movement for the entire period between 01.01.1954 and 19.12.1961 i.e. the date on which the Goa was actually liberated has not at all been considered.

11. The date of birth of the Petitioner is 06.09.1942. This means that on 01.01.1954, the Petitioner was less than 15 years of age. However, as on 06.09.1957, the Petitioner had attained the age of 15 years. The Petitioner's application for grant of samman pension, in the context of his participation in the Goa Liberation Movement from 01.01.1954 and upto 19.12.1961, has not even been considered by the impugned communication, in the proper perspective.

12. The Apex Court in the case of State of Orissa Vs Choudhuri Nayak (dead) through Lrs and others (2010) 8 SCC 796, after taking into consideration its earlier decisions in the case of Mukund Lal Bhandari Vs Union of India 1993 Supp(3) SCC 2, Gurdial Singh Vs Union of India (2001) 8 SCC 8 and State of M.P. Vs Devkinandan Maheshwari (2003) 3 SCC 183, considered the object of the Freedom Fighters' Pension Scheme and indicated what should be the approach of the Authorities in dealing with the applications for pension under the Scheme and thereafter summarized the legal position in such matters as under :-

"10. This Court in Mukund Lal Bhandari v. Union of India [1993 Supp. (3) SCC 2], Gurdial Singh v. Union of India [2001 (8) SCC 8] and State of M.P. v. Devkinandan Maheshwari [2003 (3) SCC 183] considered the object of the

Freedom Fighters Pension scheme and indicated what should be the approach of the authorities in dealing with the applications for pension under the scheme. We may summarize them as under:

(i) The object of the scheme was to honour, and where necessary, to mitigate the sufferings of those who had struggled to achieve independence for the country. Many freedom fighters, even though they did not have sufficient income to maintain themselves, would even be reluctant to receive the Pension under the Scheme, as they would consider it as putting a price on their patriotism. The spirit of the Scheme being both to assist and honour the freedom fighters and acknowledge the valuable sacrifices made by them, the authorities should treat the applicants with respect and courtesy. The scheme should not be converted into some kind of routine scheme for payment of compensation.

(ii) The persons intended to be covered by the Scheme are those who sacrificed and suffered for achieving the independence of the country, without expecting any reward for their sacrifice and sufferings. Therefore they cannot be expected to maintain and produce perfect records or documents about their participation in the freedom struggle.

(iii) Once the country has decided to honour freedom fighters by granting a pension, the approach of the authorities implementing the Scheme should not be obstructionist or technical while examining the applications and documents produced, but be practical having regard to the fact that most of the applications are by old persons with no proper records.

(iv) The criterion for pension under the scheme is not age, but participation in freedom struggle. The freedom fighters pension can, therefore, in exceptional cases, be granted even to those who were minors at the time of struggle, if evidence clearly showed that they had participated in the freedom struggle and fulfilled the requirements of the Scheme.

The above principles were spelt out to ensure that no genuine freedom fighter was denied pension under the scheme."

(Emphasis supplied)

13. On perusal of the impugned communication, we find that the approach of the Respondent has been obstructionist or technical, despite the fact that the Apex Court has made it clear that such Schemes are to honour the freedom fighters by granting them pension and therefore, the approach of the Authorities implementing such scheme should not be obstructionist or technical but be practical having regard to the fact that most of the applications are by old persons with no proper records. Apart from the approach of the Respondents in the present case being obstructionist and technical, we find that the return filed by Ropna Kharia, Under Secretary, Government of India, Ministry of Home Affairs, Freedom Fighters and Rehabilitation Division dated 20.06.2019 is also, quite insensitive. In this case, there is no dispute that the Petitioner has been

recognized as Freedom Fighter under the said Scheme and is also in receipt of pension under the said Scheme. Despite this, Ropna Kharia, in the affidavit, proceeds to state that the very filing of this petition is "in order to misuse the process of law" or that the Petitioner has "no locus standi" to file the present petition or that "Writ Petition against the answering respondent is not maintainable and deserves to be dismissed".

14. This is not the case where the Petitioner has suppressed any facts. The Petitioner has clearly stated his date of birth. The Petitioner has given instances of his participation in Goa Liberation Movement, restricted not just to 2nd Phase which commenced from 01.01.1954 but his participation in the freedom movement right upto 19.12.1961. From the impugned communication, it is apparent that the case of the Petitioner has been considered only in the context of his participation in the 2nd Phase of the Goa Liberation Movement (1954-1955). There is no consideration of the Petitioner's further participation in the Goa Liberation Movement from 1955 to 1961. This is despite the fact that there is no dispute whatsoever that at least in the year 1957, the Petitioner, had completed 15 years of age.

15. Even in so far as the issue of age limit as on 01.01.1954 is concerned, the Respondents were duty bound to consider the observations of the Apex Court in the above stated decisions, wherein the Apex Court, has clearly held that the criteria for the pension under the Scheme is not age, but participation in the freedom struggle. The freedom fighters pension can, therefore, in exceptional cases be granted even to those who were minor at the time of struggle, if evidence clearly showed that they had participated in the freedom struggle and fulfilled the requirements of the Scheme. These principles were laid down by the Apex Court to ensure that no genuine freedom fighters was denied the pension under the Scheme.

16. The Petitioner in the present case has produced the substantial material in order to substantiate his participation in the Goa Liberation Movement, which is recognized as one of the movements for eligibility of samman pension under the Central Scheme. Therefore, the Respondents were not justified in completely ignoring all such material and denying the Petitioner the samman pension under the Central Scheme, relies exclusively on the factor that the Petitioner was less than 15 years of age as on 01.01.1954, when 2nd Phase of the Goa Liberation Movement (1954-1955) commenced. The Respondents in terms of ruling of the Apex Court were duty bound to appreciate that the criteria for pension under the Scheme is not the age but participation in the freedom struggle. Therefore, the freedom fighters pension can, in exceptional cases, be granted even to those who were minor at the time of struggle if the evidence clearly showed that they had participated in the freedom struggle and fulfilled the requirements of the Scheme.

17. Mr. Chodankar however relied upon the decision of the Madras High Court in E. V. Narayanasamy Vs The Government of India 2011(0) Supreme (Mad) 2297

to contend that mere grant of pension under the State Freedom Fighters Scheme does not render such freedom fighters eligible to the pension under the Central Scheme. There is absolutely no quarrel with this proposition. The claim of the Petitioner in the present case is not only on the basis that he has been granted pension under the State Scheme. The claim of the Petitioner is that the Petitioner is even otherwise eligible under the Central Scheme being a genuine freedom fighter and that the Petitioner cannot be denied the pension under the Central Scheme relying exclusively upon some administrative instruction to the effect that the applicant must have been more than 15 years on the date of his participation in the 2nd Phase of the Goa Liberation Movement (1954-1955).

18. Mr. Chodankar also relied upon Smt. Palammal Vs The Government of India 2013 (0) Supreme (Mad) 1140 in support of same proposition that mere eligibility under the State Scheme does not entitle the applicant, as a matter of right, to any samman pension under the Central Scheme. Again, as indicated above, even this decision is quite distinguishable because the claim of the Petitioner is not merely on the basis of the eligibility under the State Scheme.

19. In fact, in the case of Smt. Palammal (supra), the decision of Government of India to deny the samman pension was quashed and set aside by the Court because the Authorities had failed to apply the law laid down by the Apex Court in Gurdial Singh (supra) and Mukund Lal Bhandari (supra).

20. In Gurdial Singh (supra) this is what the Hon'ble Apex Court has observed:

"6. The Scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this Country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of the citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from a foreign country is very cumbersome and expensive. Keeping in mind the object of the Scheme, the authorities concerned are required that in appreciating the Scheme for the benefit of freedom fighters a rational and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the Scheme are supposed to be such persons who had given the best part of their life for the country."

(Emphasis supplied)

21. In Mukund Lal Bhandari (supra), this is what the Hon'ble Apex Court has observed:

"9. As far as the standard of proof is concerned, the Supreme Court at paragraph 9 went on to add that 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 the Scheme had 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 had 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 the 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 probalised 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."

(Emphasis supplied)

22. Applying all the aforesaid principles to the facts of the present case, we quash and set aside the impugned communication and direct the Respondent No.1 to reconsider the case of the Petitioner, in accordance with law, by taking into account the observations made in this judgment and order, as expeditiously as possible and in any case within a period of three months from today.

23. Rule in this petition is made absolute in the aforesaid terms. There shall be no order as to costs.

24. All concerned to act on the basis of the authenticated copy of this order.