

(2015) 08 DEL CK 0053
In the Delhi High Court
Case No : LPA 621 of 2013

Nar Singh Prasad Roy

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 258, 82, 83
Penal Code, 1860 (IPC) — Section 147, 393

Citation : (2015) 10 AD 695

Hon'ble Judges : Pradeep Nandrajog, J; Mukta Gupta, J

Bench : Division Bench

Advocate : I.C. Mishra, for the Appellant; Arun Bhardwaj, CGSC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.

CM 13044/2013

For the reasons stated in the application the delay of 114 days in filing the appeal is condoned.

Application is disposed of.

LPA 621/2013

1. During the Silver Jubilee year of Independence a Central Scheme for grant of pension to Freedom fighters and their eligible dependents (where freedom fighters had already expired) was introduced by the Government of India with effect from August 15, 1972 which was subsequently renamed with effect from August 01, 1980 as Swatantrata Sainik Samman Pension, 1980 (in short the SSS Pension Scheme). The salient features of the SSS Pension Scheme amended up to date and relevant for the present petition are:

"2. Who is eligible for Samman Pension:-

All the persons who participated in the freedom movement in some way or the other are not eligible for Samman Pension. Only following category of freedom fighters are eligible for the Samman Pension under the Scheme subject to furnishing of the specified evidences:-

2.1 Eligible dependents of martyrs:- A martyr is a person who died or who was killed in action or in detention or was awarded capital punishment due to participation in the freedom struggle of India. Relevant documents from official records and newspapers of the relevant time are considered as evidences in such cases.

2.2 Imprisonment:- A person who had suffered minimum imprisonment of six months (3 months in case of women, SC/ST freedom fighters) on account of participation in freedom struggle subject to furnishing of the following evidences:-

(a) Imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Govt. indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons and release.

(b) In case records of the relevant period are not available, the secondary evidences in the form of 2 co-prisoner certificates (CPC) from freedom fighters who have proven jail suffering of minimum 1 year and who were with the applicant in the jail could be considered provided the State Government/ Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available. In case the certifier happens to be a sitting or Ex.M.P./M.L.A., only one certificate in place of the two is required.

2.3 Underground:- A person who on account of his participation in freedom struggle remained underground for more than six months provided he was;

A. a proclaimed offender; or

B. one on whom an award for arrest/head was announced; or

C. One for whose detention, order was issued but not served.

Explanation:

Voluntary underground suffering or self-exile suffering for party work under command of the party leaders, are not covered as eligible sufferings for pension under the Central Scheme.

The claim of underground suffering is considered subject to furnishing of the following evidence:

(a) Documentary evidence by way of Court's/Govt.'s orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention.

(b) In case records of the relevant period are not available, secondary evidence in the form of a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit could be considered provided the State Government/ Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available.

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3. Procedure

Persons who consider themselves eligible for Samman Pension under the Scheme and desire the Samman Pension, should apply in duplicate on the prescribed application form. The application, duly filled in and supported with required documents as proof of claim of suffering, should be sent to the Chief Secretary of the concerned State Government/ Union Territory Administration. A copy of such application should be sent to the Deputy Secretary to the Government of India FF Division, MHA, New Delhi as an advance copy. However, claims can be processed by the Central Govt. only on receipt of verification & entitlement to pension report from the State Govt./U.T. Administration concerned. In case the requirements of the scheme are fulfilled, Samman pension is granted to the applicant.

4. Acceptability of Secondary Evidence

Secondary evidences can be considered only if supported by a valid Non-Availability of Records Certificate (NARC). The provisions of the scheme were clarified to the State Governments in several circulars of the Govt. of India, gist of which is available in the Appendix attached herewith. The instructions on NARC were reiterated by the Govt. of India, Ministry of Home Affairs, vide circular No. 8/12/95-FF(P) dated

2.11.98, relevant extracts of which are reproduced as follows-

"As per the scheme, claims of the applicants for samman pension are required to be supported by the duly verified official records of the relevant times. Only in case of non-availability of such records, secondary evidences, as specified in the scheme, can be made basis of such claims. However, due care and caution is required in such cases in view of several instances of bogus/forged claims which have come to the notice of the Central Government. It is of utmost importance that before recommending such cases, complete facts of the case in which the applicant claims involvement, are verified from all the agencies which could have been concerned with the matter. These may include the police station concerned, the District administration, the jurisdictional court, competent authority issuing detention order, the advisory board/appellate court, prison authorities, and intelligence agencies. Discrete enquiry should also be made to ascertain genuineness of the claims. The NARC should be issued only after the above

verification. It is reiterated that the NARC should invariably be worded as follows

"All concerned authorities of the State Government who could have relevant records in respect of the claim of the applicant, have been consulted and it is confirmed that the official records of the relevant time are not available."

2. The appellant Nar Singh Prasad Roy filed a claim under the SSS Pension Scheme. Appellant claimed that he had participated in the August 1942 Movement and due to his participation a criminal case was registered against him and his colleagues as GR 75/42 on August 20, 1942 titled as "Emperor Vs. Hira Prasad and Ors." Appellant was named as an accused in the said case. However he was not arrested at the place of occurrence and he absconded. Non-bailable warrants were issued against the appellant. Since he could not be arrested proceedings under Section 82/83 Cr.P.C. were initiated and he was declared a proclaimed offender. It is the claim of appellant that he remained under-ground till December 1943 apprehending arrest.

3. It is the case of appellant that despite recommendation from the State of Bihar he received a letter from the Central Government seeking clarification stating that "According to court record, you have been discharged, when you have not been arrested." Despite sending clarification no decision was taken hence the appellant filed the writ petition being W.P.(C) No. 4343/2010 wherein the impugned order dated January 31, 2013 was passed dismissing the writ petition. Hence the present appeal.

4. The learned Single Judge vide the impugned order noted that the appellant had applied for a copy of information regarding GR No. 75/1942 on April 10, 1992. The Record Keeper, District Record Room, Dhumka issued a certificate regarding non-availability i.e. Non Available Record Certificate (NACR) mentioning therein "According to list records are destroyed". The same was verified vide the communication dated September 30, 1992 which stated:

"In the front page recorded descriptions in Re:Emperor Vs. Hira Prasad Singh & Others the proceedings u/S. 147, 393 IPC and 348(b), 38(5) DI Rules proceeded against the accused persons and in this case the accused had discharged under Section 258 Cr.P.C. and main records has been destroyed."

5. After seeking clarification as noted above vide the letter dated February 25, 1994 the Central Government rejected the claim of the appellant for the following reasons:

"I regret to state that your application under SSS Pension Scheme 1980 has been rejected because according to court record you have discharged while you were absconder then how you had discharged and when you had arrested."

6. Referring to the requirements of the scheme as noted above the learned Single Judge noted that the claim of the appellant was based on secondary evidence and he could not prove the same by facts and evidence. The Court noted the submission of the learned counsel for Central Government that despite

the fact that all relevant records have been destroyed, from where details of the Section under which appellant was booked and released creates suspicion. The Court also noted that NARC has not been produced by the appellant in the prescribed format. The Personal Knowledge Certificate given by Jagannath Jha was not acceptable as the same should be from a freedom fighter who has proven jail suffering for a minimum two years and who happen to be from the same administrative unit. While giving the Personal Knowledge Certificate Jagannath Jha did not furnish any record to show that he suffered jail for a minimum of two years. The recommendation by the Government of Bihar was merely on the basis of Personal Knowledge Certificate given by one Jagannath Jha. Since no documentary evidence was filed to support his claim, the learned Single Judge referring to the decisions in Union of India (UOI) Vs. Bikash R. Bhowmick and Others, (2004) 7 SCC 722 and Union of India (UOI) Vs. K. Indrasena Reddy and Another, AIR 2007 SC 2484 : (2007) 5 SCALE 775 : (2007) 14 SCC 305 : (2007) 5 SCR 686 : (2007) AIRSCW 4424 declined to grant relief.

7. Before this Court again learned counsel for the appellant reiterates his arguments and claims parity with Satish Chandra Mishra who was granted SSS Pension and was named as an accused with the appellant in the GR.

8. Indubitably, there is no material on record to show that the appellant was an accused in Re: Emperor Vs. Hira Prasad Singh & Ors. No certified copy of the GR-75/42 where appellant claims himself to be an accused has been placed on record. No copy of the attachment order pursuant to the proceedings under Section 82/83 Cr.P.C. has been placed on record. What has been placed on record is the Personal Knowledge Certificate from one Jagannath Jha. However, there is no material to show that Jagannath Jha suffered minimum two years as per the requirement of SSS Pension scheme. Thus the case of the appellant does not fall within the four corners of the requirement of the SSS Pension Scheme.

9. As regards claiming parity with the decision of the learned Single Judge of this Court in Shri Satish Chandra Mishra Vs. Union of India (UOI) and Others, (2009) 164 DLT 172 . it may be noted that there is no material on record to show that the appellant was a co-accused with Satish Chandra Mishra. The learned Single Judge did not cast a doubt on the Personal Knowledge Certificate issued in favour of Satish Chandra Mishra by Dhokhal Mahte and Parmanand Singh, the two freedom fighters and thus held that in view of the secondary evidence Satish Chandra was entitled to the benefit of SSS Pension Scheme.

10. The Supreme Court in Bikash R.Bhowmik and K. Indrasena Reddy (supra) while dealing with the case of pension to the freedom fighters under the SSS Pension Scheme reiterated that a freedom fighter would be entitled to the pension under the SSS Pension Scheme only if he fulfilled the eligibility criteria/conditions laid down under the said scheme. It was further reiterated that mere recommendation of the State Government was not sufficient and the competent authority before deciding grant of pension must see whether the case of the freedom fighter falls within the four corners of the requirements of the SSS

Pension Scheme.

11. Considering the facts and circumstances of the case we find no reason to interfere with the impugned order. The appeal is dismissed.