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**(2016) 02 KL CK 0140**  
**In the High Court Of Kerala**  
**Case No : W.A. No. 168 of 2014**

Omana

APPELLANT

Vs

The Union of India and Others

RESPONDENT

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**Date of Decision :** 24-02-2016

**Acts Referred:**

**Citation :** (2016) 02 KL CK 0140

**Hon'ble Judges :** Ashok Bhushan, C.J. and A.M. Shaffique, J.

**Bench :** Division Bench

**Advocate :** J. Om Prakash, Advocate, for the Appellant; N. Nagaresh, Assistant Solicitor General, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Ashok Bhushan, C.J.

1. Heard the learned counsel for the appellant.

2. This writ appeal has been filed against judgment dated 30th May, 2013 in WP(C) No. 13591/2013. Petitioner was granted dependent family pension as widow of deceased freedom fighter by order dated 19th November, 2010 w.e.f. 2nd July, 2010 on the basis of direction issued by this Court dated 2nd July, 2010 in WP (C) No. 1830/2008. Aggrieved by the order in so far as it granted the benefit of pension from 2nd July, 2010 alone, and not from the date of the application, petitioner filed WP(C) No. 13591/13, which writ petition has been dismissed by the learned Single Judge upholding the order of the Central Government. Learned Single Judge took the view that since the claim of the petitioner was granted only on the basis of secondary evidence and not on the basis of primary evidence, grant of pension from 2nd July, 2010 was justified. Aggrieved by the judgment of the learned Single Judge, this appeal has been filed.

3. Learned counsel for the appellant contends that claim of petitioner for grant of pension was based on underground suffering of petitioner's husband and for the

said claim, although no primary evidence could be produced, but personal knowledge certificate was submitted by the petitioner. It is further submitted by the learned counsel for the appellant that as per the Scheme, i.e., Swatantrata Sainik Samman Pension Scheme, 1980, the claim pertaining to underground suffering can be proved by documentary evidence by way of Court's/ Government Orders proclaiming the applicant as an offender or certificates from veteran freedom fighter, who had thus undergone imprisonment. He has referred to Clause 9 of the Scheme, and submits that there cannot be any difference between the evidence produced by the claimant for proving his/her claim. He has also placed reliance on the judgment of the Apex Court in *Mukund Lal Bhandari v. Union of India* (, AIR 1993 SC 2127).

4. We have considered the submission of the learned counsel for the parties and have perused the records.

5. There is no dispute with regard to the fact that the claim of the petitioner for grant of pension, she being widow of freedom fighter late K.K. Sreedharan, was given on the personal knowledge certificate issued by the freedom fighters. It is to be noted that earlier the Central Government has rejected the claim by an order dated 10th October, 2007 on the ground that petitioner had not submitted any acceptable record-based primary evidence, duly verified by the State Government nor a valid Non-availability of Records Certificate (NARC) from the State Government. The matter came to this Court on a writ petition filed by the petitioner, being WP(C) No. 1830/2008, where the petitioner claimed that NARC certificate has been issued by the State Government. Considering the same, this Court directed the Central Government to decide the matter considering the documents including the personal knowledge certificate produced by the petitioner from Sri H.K. Chakrapani. The case of the petitioner was clearly based on the personal knowledge certificate. No primary evidence, that is orders of the Government or the Court, were produced. The judgment on which reliance has been placed by the petitioner, i.e., *Mukund Lal Bhandari* (supra), was a case where the petitioner has claimed pension from a date anterior to the date when application was made. The submission made was that the claimant should be entitled to the benefit of pension from an earlier date. The said argument was noticed by the Apex Court in para 5, which is to the following effect:

"5. That leaves us with the question as to whether, notwithstanding the date on which the application itself is made, the claimant should be entitled to the benefit of the pension with effect from an earlier date. In support of the contention that the benefit should be made available with retrospective effect, reliance is placed on the two cases cited earlier where the benefit is given with effect from 1st August, 1980. We have given our anxious consideration to the question and are of the view that for reasons more than one, the benefit should flow only from the date of the application and not from any date earlier. As pointed out before in the two earlier cases the question with regard to the retrospectivity of title benefit was neither raised nor answered. We have, therefore, to decide it for the first

time. There is no doubt that if the object of the Scheme is to benefit the freedom fighters, theoretically, they should be entitled to the benefit from the date the Scheme came into operation. But the history, the true spirit and the object of the Scheme would itself probably not support such straight-jacket formula. As has been pointed out above, the Scheme was introduced in 1972 on the occasion of the Silver Jubilee of our National Independence. It is not suggested that some of the freedom fighters were not in need of financial assistance prior to that date. When the Scheme came into force for the first time, it was also restricted to those who were in need of such assistance and hence only such freedom fighters were given its benefit, whose annual income did not exceed Rs. 5,000/-. It is only later, i.e., from 1st August, 1980, that the benefit was extended to all irrespective of their income. The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependants. The preference in employment, allotment of accommodation and in admission to schools and colleges to their kith and kin etc. are also the other benefits which have been made available to them for quite sometime now.

Hence we are of the view that the pension under the Scheme should be made payable only from the date on which the application is made whether the application is accompanied by the necessary proof of eligibility or not. The pension should, of course, be sanctioned only after the required proof is produced."

In the above context, rejecting the said submission, the Apex Court held that pension should be paid to the applicant from the date on which original application is received. The judgment of the Apex Court thus was on a ground of a case where claim was sought to be laid on an earlier date from the date of application. Mukund Lal Bhandari's case (supra) was considered by the Apex Court in the subsequent judgment in Union of India v. Kaushalaya Devi [, (2007) 9 SCC 525], where, the Apex Court has held that when the claim was allowed on

the basis of secondary nature of evidence, pension should be granted from the date of the order and not from the date of application. In paragraphs 5, 6 and 7, following was laid:

"5. In the present case, we have perused the record and found that it is stated therein that the claim was allowed on the basis of secondary nature of evidence. In other words, the claim was not allowed on the basis of jail certificate produced by the claimant but on the basis of oral statement of some other detenu. Hence, we are of the opinion that the pension should be granted from the date of the order and not from the date of the application.

6. Learned counsel for the respondent has relied on the judgment of this Court in *Mukund Lal Bhandari v. Union of India*.

7. In our opinion that decision is distinguishable as it has been stated therein that the pension cannot be granted from any date prior to the application. In our opinion this does not mean that it cannot be granted from a date subsequent to the application".

Learned Single Judge has also placed reliance on the judgment of the Apex Court in *Kaushalaya Devi (supra)*.

6. In the facts of the present case, we do not find any error in the judgment of the learned Single Judge holding that the petitioner was not entitled for grant of pension from the date of application. It is clear from the order of the Central Government that Central Government granted the pension from 2nd July, 2010, the date of the order of the High Court, by which order, High Court directed the Central Government to consider the matter on the basis of NARC certificate, which was issued by the State in pursuance of an interim order dated 2nd July, 2010 passed by this Court in WP(C) No. 1830/2008. State Government issued the NARC certificate only after the issuance of the order of this Court dated 2nd July, 2010. Hence, such date was taken as the date for grant of pension for the petitioner by the Central Government. Earlier when NARC certificate has been issued by the State Government in pursuance of the order dated 2nd July, 2010 passed by this Court, taking the date 2nd July, 2010 for grant of pension cannot be said to be unreasonable or based on no rationale.

Thus, in the facts of the present case, learned Single Judge did not commit any error in upholding the grant of pension from 2nd July, 2010. There is no merit in the appeal. Appeal is, therefore, dismissed.