

(1986) 06 OHC CK 0022

In the Orissa High Court

Case No : O.J.C. No"s. 1012 and 1013 of 1979

Panu Charan Mohapatra and etc.

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 24-06-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1987 Ori 283 : (1986) 62 CLT 355 : (1986) 2 OLR 194

Hon'ble Judges : R.C. Patnaik, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : M.N. Das, M.M. Das, N.N. Misra and R.K. Mohapatra, for the Appellant; R.K. Patra, Additional Government Advocate and Addl. Standing Counsel (Central Govt.), for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—The petitioners in these writ applications seek to quash the orders passed by the Government of India in the Ministry of Home Affairs, New Delhi suspending the payment of pension to the petitioners under "Freedom Fighters Pension Scheme, 1972" and subsequently cancelling payment of pension.

2. The relevant facts in both the cases are similar. Both the cases were heard together with the consent of the learned counsel for the parties. Accordingly, both the writ applications are disposed of by this common judgment.

3. Shorn of unnecessary details, the case set out in the writ applications is that the Government of India made a scheme known as "Freedom Fighters" Pension Scheme, 1972" commencing from 15th August, 1972 to provide for grant of pension to the living freedom fighters, their families, if they are no more alive and to the families of martyrs. For the purposes of the scheme, a freedom fighter was defined as "a person who has suffered a minimum imprisonment of six months in the mainland jails before independence. However, Ex-INA and Ex-Military personnel will be eligible for pension if the imprisonment/ detention

suffered by them was outside India."

Under the said scheme the petitioner applied to the Secretary to the Government of India, Ministry of Home Affairs, New Delhi in the prescribed pro forma for grant of pension.

Panu Charan Mohapatra, petitioner in O.J.C. No. 1012 of 1979, claimed to be a freedom fighter having suffered imprisonment for a total period of 7 months 15 days, i.e. from 11-10-1942 to 26-5-1943 Under the order of the then Ruling Chief, Nayagarh, during the Quit India Movement. The applicant submitted some documents in support of his claim. Similarly, Bhramarbar Majhi, petitioner in O.J.C. No. 1013 of 1979, claimed to be a freedom fighter having suffered imprisonment/detention for a total period of 7 months 15 days i.e. from 11-10-1942 to 26-5-1943 under order of the then Ruling Chief, Nayagarh, during the Quit India Movement. Both the petitioners claimed to have been lodged in different camp jails at Nayagarh. Panu Charan Mohapatra claimed to have been detained in the camp jail in Badachhauni Math in Nayagarh while Bhramarbar Majhi claimed to have been detained in the camp jail at K.C. Club. On their applications, the petitioners were sanctioned pension at the rate of Rs. 200/- per month with effect from 15th August, 1972 and they received the said amount till the end of October, 1974, when payment was suspended under the impugned order. The petitioners were issued show cause notice to explain why the grant of pension in their favour would not be cancelled. They submitted their show-cause. According to the petitioners, without any further enquiry, the orders cancelling the grant of pension were passed. The petitioners challenged the order of suspension/cancellation of pension to them on the grounds of violation of principles of natural justice, arbitrariness and discriminatory treatment.

4. The Union of India, opposite party No. 2 in the writ applications, in its counter-affidavit while admitting the position that the petitioners were granted pension at the rate of Rs. 200/- per month under the scheme, has taken the stand that the said payments were provisional in nature subject to further enquiry and review. Initially the grant was made on the basis of the report forwarded by the State Government that the petitioners were freedom fighters eligible for grant of pension under the scheme and subsequently, suspension and cancellation of the said payment were made also on the basis of reports received from the State Government that the applicants' claim that they were lodged in different camp jails at Nayagarh were found to be incorrect since there was no camp jail at Nayagarh during the relevant period. Thus, the Union of India has taken the stand that its decision under the impugned orders was passed on enquiry not by its own agency but by the State Government and its reports to it from time to time.

The State of Orissa, opposite party No. 1 on the other hand, takes the stand in its counter-affidavit that the competent authority for grant of pension under the scheme is the Union of India and that the role played by the State Government is simply that of a via-media agency for supply of certain relevant information. It is

the case of this opposite party that the initial recommendation in favour of the petitioners for grant of pension was made on the basis of certain Court records and reports available at Nayagarh. But subsequently on receiving some complaints that orders for grant of pension in some cases were passed on erroneous and misleading reports and false certificates received from the jail authority, the matter was confidentially enquired into by the Finance Department of the State Government and on such enquiry it was found that sufficient materials in support of the claim of the petitioners that they were detained/imprisoned in different camps/jails at Nayagarh during the Quit India Movement was not forthcoming. The report on which the State Government had earlier recommended their cases was, according to the opposite party, of doubtful reliance. Both the opposite parties have taken the stand that the scheme vests no absolute right in the petitioners to receive pension and that it is within the competence of the authorities concerned to suspend/cancel the grant of pension at any time even without giving any notice to the recipient. In these cases, the opposite parties contend, that the principles of natural justice have been duly complied with since show cause notices were served on the petitioners and their replies thereto were considered before passing the impugned orders.

5. From the case of the parties stated in the foregoing paragraphs, the question that arises for consideration is whether the orders suspending and cancelling the grant of pension to the petitioners under the scheme were just and proper. A perusal of the scheme framed by the Government of India shows that it was intended not only to give some financial benefit to the freedom fighters but also to give them status and prestige in the society. This was a small recognition for the role played by the freedom fighters in the struggle for independence of the country and the suffering endured and the sacrifice made by them for the cause of the nation. From the records it appears that after the enforcement of the scheme, both the petitioners were given Tamra Patra in recognition of their service as freedom fighters by the Governor of Orissa, accompanied by the usual publicity and fanfare attached to such official functions and their names find place in different publications along with other recognised freedom fighters of the State. This was followed by the grant of pension referred to above. As candidly admitted by the State Government, its recommendation for grant of pension to the petitioners was based on Court records as also other official records available at Nayagarh. Those records clearly indicate the existence of camp jails at Nayagarh where persons arrested in connection with agitation during the Quit India Movement were lodged. The subsequent enquiry as alleged by the opposite parties became necessary because of complaints from some quarters that sanction of pension had been made on the basis of incorrect and erroneous certificates about detention of the applicants. There is nothing on record to show that there was any specific allegation that the petitioners submitted false or misleading information/documents relating to their detention. On perusal of the report said to have been submitted to the State Government when the matter was under review, it appears that no categorical conclusion was arrived at by the

officer inquiring into the matter, that there was no camp jail at Nayagarh during the Quit India Movement where persons were detained in connection with agitation were lodged. An impression is sought to be created that materials on which reliance was placed earlier were not absolutely reliable. This conclusion, we are constrained to observe, was not based on adequate and reliable materials. Further, the very approach to the question is improper and undesirable. The freedom fighters had not received any recognition for their service for nearly three decades after independence. Thereafter the Government of India framed the Scheme giving an impression that the country still remembers the freedom fighters and appreciates their services, and in token of such appreciation, some financial benefits and other forms of recognition, like distribution of Tamra Patra and certificate, were made. Therefore, to brand some of the recipients of freedom fighters' pension as persons who manipulated and submitted false certificates and false informations for getting such pension would be simply adding insult to the injury and would adversely affect the status/prestige and dignity of the persons concerned in society. Such a drastic measure, we regretfully observe, should not have been taken by the opposite parties in a casual manner as has been done in the cases before us. To add to the confusion, even after the order of suspension of pension was communicated to the petitioners, the Collector, Puri, has himself acknowledged the existence of the camp jails at Nayagarh fluring the Quit India Movement in 1942, which is clear from his communication in Annexure-3A, in O.J.C. No. 1012 of 1979 and from the further affidavit filed on 31-1-1976 in O.J.C. No. 1012/79.

6. In view of the discussions in the foregoing paragraphs, we allow the writ petitions, quash the impugned orders, Annexures 6 and 8 suspending and cancelling the payment of pension to the petitioners and direct the opposite parties to pay the petitioners' pension under the "Freedom Fighters" Pension Scheme, 1972. The petitioners shall be paid arrear dues towards pension within the three months hence. There will be no order for costs in these proceedings.

R.C. Patnaik, J.

7. I agree.