
(2000) 04 PAT CK 0013
In the Patna High Court
Case No : C.W.J.C. No. 1531 of 1999

Ram Prakash Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 20-04-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 38(5), 395

Citation : (2000) 4 PLJR 802

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Advocate : Dhananjay Kumar, for the Appellant; J.P. Karn, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Chattopadhyaya, J.—Being aggrieved by the order of the Central Government dated 11.9.1998 refusing to grant freedom fighter's pension, the petitioner has moved this Court in this writ application. A grievance has been made that when the State Government, after repeated queries recommended the case to the Central Government for grant of such pension the concerned Government has no jurisdiction to refuse the same.

2. According to the petitioner he was convicted in G.R. Case No. 736/42 registered u/s 395 of the Penal Code read with Section 38(5) D.I.R. The petitioner remained absconded and continued his freedom movement from underground. Subsequently, pursuant to the decision of the Interim Government his case was dropped. In 1982 the petitioner filed an application for grant of freedom fighter pension and since then the State Government on verification of the case record recommended his case to the Central Government. By letter dated 5.7.1991 (Annexure-6) the Central Government asked the petitioner to submit certain papers in triplicate. He submitted his papers as required by the Central Government and thereafter also the concerned Government made further query by letter dated 25.3.1994 (annexure-9). The Director Cum Deputy Secretary (Home) Special, Bihar sent all the reports along with recommendation.

3. In this background it is alleged that even though on scrutiny the State Government was satisfied and sent its recommendations, the Central Government illegally refused the benefit available to the petitioner under the Scheme.

4. Mr. Dhananjay Kumar, learned counsel for the petitioner with reference to various annexures submits that when on the direction of the Central Government the State Government scrutinised the pros and cons of the entire materials in relation to the petitioner and ultimately sent its recommendation for grant of pension, the Central Government was not justified in denying the said benefit. Mr. J.P. Kam, learned counsel appearing on behalf of the Union of India, on the other hand, submits that the Central Government being the final authority for grant of such pension has to be satisfied about the genuineness of the claim from the records available before it. Referring to statements made in the counter affidavit, he further submits that on the basis of the letter of the State Government dated 17.12.1992 a new file was opened as earlier file of the petitioner was not available in the Ministry. It asked the State Government to send all the previous papers relating to the case of the petitioner. When the documents were sent in March, 1994 the Central Government found that the petitioner had applied for grant of pension in 1982 claiming of absconsion from August 1942 to 1945 being involved in G.R. No. 736/42. This created suspicion because according to the Central Government if the decision was taken to sanction pension to him in 1991 as claimed by the petitioner on the basis of the letter dated 5.7.1991 as to why some clarifications were sought for from the State Government in 1992. Different file numbers were given.

5. On close scrutiny doubt arose in the mind of the authority in relation to the signature of the petitioner on his applications of different dates. Similarly his absconsion was not proved from the documents inasmuch as no name was indicated in the list of "proclaimed offenders not arrested". The petitioner was requested to clarify this position but on his visit to the office of the Deputy Secretary, Freedom Fighter Pension in 1998 he could not explain this point about his claim relating to the date of disposal of the case, his exact involvement in the case and final outcome of it. He merely put emphasis on the fact that all documents in relation to his case are complete.

6. From the counter affidavit it appears that the Central Government found from the copy of the decision of G.R. Case that a fine of Rs. 200/- was imposed on all the accused persons in September, 1944 but there was no indication in any of the documents about any imprisonment in case of default. Moreover, in column 10 of the said case no name was indicated under the heading "name of proclaimed offender not arrested". Thus the concerned Government was of the view that the fact that the applicant absconded has not been proved on the basis of any document and, as such, his claim was rejected by the impugned order.

7. The Freedom Fighter Pension Scheme, 1972 provides production of evidence from the official records of the relevant time during which the applicant had

claimed suffering. Thus, it is the primary evidence which is required to be produced before the authority. However when the primary evidence is not available the secondary evidence like co prisoner's certificate is acceptable in respect of jail suffering if such certificate is issued by the legislator or ex-legislator

8. Since, 1.8.1980 Swatantrata Sainik Samman Pension Scheme, 1980 came into existence and under this scheme the income ceiling was removed and minimum jail suffering for the purpose of eligibility for pension was reduced from six months to three months in the case of women self freedom fighters and SC/ST Freedom Fighters. This new scheme provides that the pension will be given to those freedom fighters who have suffered imprisonment/abscondence/internment/externment for at least six months against an executive order of the then Government in connection with freedom struggle. In this connection the applicant has to submit jail certificate in support of his jail suffering and if such certificate is not available he has to produce Non availability of Records Certificate (NARC) as well as Co-Prisoners' Certificate (CPC) from two prominent freedom fighters, who have undergone imprisonment for at least one year. However, if the certifier is an M.P. or M.L.A. or Ex.M.P. or Ex.M.L.A who had been freedom fighter himself only one certificate is sufficient. Where the applicant claiming underground suffering he has to submit court's Govt.'s orders proclaiming the applicant as an offender, abstracts of abscondence register/copy of F.I.R./copy of attachment/forfeiture of property/CID reports etc. When these primary evidences are not available NARC from the State Government as well as PKC are required to be filed. Moreover, in such cases the applicant is required to fulfil any of the three conditions during his absconson;

- (i) he should be a proclaimed offender; or
- (ii) An award for his arrest/head was announced against him; or
- (iii) A detention order was issued against him but could not be served.

9. Where the applicant claims internment or externment he has to produce the copy of the order of externment or internment or any other corroboratory documentary evidence. Here also if such primary evidences are not available, certificates of the prominent freedom fighters, who themselves had undergone imprisonment for two years or more could be submitted but certifiers must belong to the same administrative unit before reorganisation of the State as of the applicant, meaning thereby, the area of operation must be the same.

10. In the case of Mukund Lal Bhandari and others Vs. Union of India and others, their Lordships, inter alia, have held that as regards the sufficiency of proof the scheme itself mentions the documents which are required to be produced before the Government. It is not possible for the Court to scrutinise the documents which, according to the petitioners, they had produced in support of their claim and pronounce upon their genuineness. It is function of the Government to do so.

11. In the present case, it is an admitted case of the petitioner that he was

convicted in G.R. No. 736/42 but he remained absconder. Thus, his case is covered by the second part of the scheme which requires the applicant to file certain documents in order to prove his claim for underground suffering. The petitioner, according to the Central Government, could not establish his claim, by producing any document, that though he was convicted but remained absconded and continued his struggle for freedom movement. He even could not produce any such document which would show that his name was indicated in the list of "proclaimed absconders not arrested". Even when he met the Deputy Secretary in July, 1998 he could not explain on points about his claim related to case number, date of initiation/disposal of the case etc.

12. In this connection, letter of the Central Government dated 20th July, 1998 as contained in annexure-11 may be looked into. The Government informed the petitioner that in the aforesaid G.R. case on 16.9.1944 the Court imposed fine of Rs. 200/- on the petitioner and other accused persons. However, in column 10 it is not indicated that any warrant of arrest was issued or any one absconded. It is true that the State Government on several occasions scrutinised the case of the petitioner before sending recommendation but none of the orders of recommendations reveals that these facts were ever taken into consideration by the State Government. So far letter of the Central Government dated 5.7.1991 as contained in annexure-6 is concerned, I am of the view that the Central Government never approved the grant of such pension to the petitioner. Subject of the letter reads as follows;

Kendriya Rajswa Me Swantrata Senaniyon Abam Unke Paribaro Ko Swantrate Senani Samman Pension Ki Swakriti.

This indicates only the subject matter of the letter by which the petitioner was requested to send certain documents to the concerned Ministry. The impugned order clearly reveals the reason for refusing pension to the petitioner. Under these circumstances, in my view, this Court cannot direct the Central Government to remain satisfied only on the recommendation sent by the State Government. This Court can take judicial notice of the fact that in some cases, before recommending the case of an applicant, the State Government does not consider the requirements as provided under the Scheme and merely acts on some certificates produced by the applicant. The Karnataka High Court under these circumstances have observed that such certificates cannot be taken to be always genuine and conclusive proof for granting pension under the pension scheme. It has further observed that it cannot be denied that such certificates can be obtained without much efforts. Moreover in the case of Union of India vs. Mohan Singh in Civil Appeal no. 12314 of 1995 disposed of on 9.9.1996 Their lordships have settled the law by observing that the High Court has no power to embark upon the appreciation of the evidence for coming to a finding that the documents were sufficient to hold that the petitioner was a freedom fighter. When the Government of India after scrutiny of the documents, has found that the documents are not sufficient to hold that the applicant had suffered

imprisonment, the High Court is not entitled to grant any relief. The same view has been taken by this Court in the case of Mahabir Jha vs. Union of India, in L.P.A. No. 1035 of 1998 disposed of on 20.7.1999. Thus considering the facts and circumstances of the present case in my view the petitioner is not entitled to get any relief from this Court.

I find no merit in this application which is, accordingly, dismissed.