

(2013) 02 DEL CK 0277

In the Delhi High Court

Case No : LPA 69 of 2013

Rama Devi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0277

Hon'ble Judges : D. Murugesan, C.J;V.K. Jain, J

Bench : Division Bench

Advocate : Jyoti Singh and Mr. Dinesh Yadav, for the Appellant; Sonia Sharma and Mr. V.C. Jha, for the Respondent

Final Decision : Dismissed

Judgement

CM 1738/2013 (exemption)

Exemption allowed, subject to just exceptions.

The application stands disposed of.

CM 1739/2013 (delay in filing the appeal)

This is an application for condonation of delay of 119 days in filing the appeal.

In view of the submissions made therein, the application is allowed and the delay in filing the instant appeal is condoned.

The application stands disposed of.

LPA 69/2013

1. The husband of the appellant/petitioner was working in Indian Army.

He was discharged from the Army on 18.10.1964. He applied for grant of pension under "Freedom Fighters Pension Scheme", which provided for grant of pension to the freedom fighters as well as their widows. After his death, the appellant

started receiving the aforesaid pension.

A complaint came to be made against the appellant, alleging therein that neither she nor her husband was entitled to pension under "Freedom Fighters Pension Scheme". After making enquiry from Army, the respondent sent a letter dated 3.3.2010 to the appellant stating therein that her husband had not undergone any suffering prescribed in Swatantrata Sainik Samman Pension Scheme 1980 and therefore, was not eligible for the said pension. It was also observed in the communication that the husband of the appellant had obtained pension by suppressing facts submitting forged documents. She was asked to show cause as to why the pension sanctioned to her husband/her be not cancelled and the amount of pension already drawn be not recovered. The appellant/petitioner submitted a reply stating that there was no suppression of facts/submission of forged documents by her husband and she claimed that her husband had served in INA. The pension was ultimately suspended vide letter dated 26.3.2010. Being aggrieved the appellant filed a writ petition which came to be dismissed vide order dated 14.08.2012. Aggrieved from the dismissal of the writ petition, the appellant is before us by way of this appeal.

2. As regards the eligibility for grant of pension under the aforesaid Scheme, according to the respondent, provides as under:-

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(ii) Under the above Scheme, a person is eligible for Swatantrata Sainik Samman Pension if he had undergone at least one of the sufferings prescribed in the Scheme (imprisonment/detention against an executive order/underground sufferings/externment/internment etc.) on account of his participation in the freedom struggle. Participation in the INA and in the Indian Independence League is also treated as participation in the National Liberation Movement.

(iii) As per the provisions of the Swatantrata Sainik Samman Pension Scheme, 1980, any application who claims any of the above mentioned sufferings is required to produce documentary evidence in support of his claimed sufferings.

3. As per the provisions of the Swatantrata Sainik Samman Pension Scheme, 1980, any applicant who claims jail suffering is eligible for grant of Central Samman Pension subject to the fulfillment of the following:

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

(b) Secondary evidence:-In case records of the relevant period are not available, the secondary evidence in the form of 2 co-prisoners' certificates (CPCs) 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 evidence from the official records in support of the claimed suffering are not available. In case the co-prisoner was a sitting or ex-M.P./M.L.A., only one certificate in place of the two is required. In the case of persons belonging to INA category, only one CPC is required.

3. It would thus be seen that a person would be entitled to pension under the aforesaid scheme only if he has suffered imprisonment for a minimum period of six months and such imprisonment is on account of participation in freedom struggle. If a person has undergone imprisonment/detention for reason other than participation in freedom struggle he is not entitled to any pension under he said scheme. The participation in the INA and in the Indian Independence League, however, is treated as participation in the national liberation movement meaning thereby that if someone has participated in the INA and has suffered minimum imprisonment/detention prescribed in the scheme, on account of his participation in the INA, he would be entitled to such pension. If a person has undergone detention/imprisonment for reasons other than the participation in INA or on account of some reasons other than participation in the freedom struggle, he is not entitled to pension under the scheme.

4. During the course of argument, we specifically asked the learned counsel for the petitioner/appellant as to what proof she had to show that the husband of the appellant/petitioner had participated in INA. She however, could not point out any document which would indicate that the husband of the appellant was a Member of INA or had undergone detention/imprisonment on account of participating in the activities of INA.

5. The report which the respondent obtained from Indian Army would show that the husband of the appellant was enrolled on 4th October, 1940 discharged on 17.10.1964 and he continued to be in service till his retirement as per the conditions of service and there was no break in service. The report further shows that he was paid deferred pay for the period from 4.10.1940 to 29.2.1960 and war gratuity for the service period. Though there is evidence to show that the husband of the appellant was believed to be a prisoner of war with effect from 15.2.1942 and confirmed prisoner of war on 10.4.1985, there is nothing on record to show that he had joined INA and was discharged from Army on account of his having joined the said organization. The fact that the husband of the appellant continued to be in service without any break till 17.10.1964, clearly shows that he did not join INA and that is why he was treated to be in continuous service without any break till 17.10.1964. Since, in order to be eligible for grant of pension, the husband of the appellant was required to have participated in the freedom struggle, his being a prisoner of war for some period would not entitle him to grant of pension in the absence of his having joined INA or having suffered imprisonment/detention in connection with some other form of struggle for freedom of the country. For the reasons stated hereinabove, we find no merits in the appeal and the same is hereby dismissed. In the facts and

circumstances of the case, there shall be no orders as to costs.