
(2012) 08 DEL CK 0493
In the Delhi High Court
Case No : Writ Petition (C) 2879 of 2010

Rama Devi

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0493

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Jyoti Singh with Ms. Shahila Lamba, for the Appellant; Sonia Sharma and Mr. V.C. Jha for R1 to R3, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—Vide the instant petition, petitioner is seeking quashing of the letter dated 03.03.2010, 18.03.2010 and 26.03.2010, whereby the respondents had suspended the pension of the petitioner under Swatantrata Sainik Samman Pension for Freedom Fighter Scheme. Further sought Mandamus directing the respondents to continue paying the above said pension to the petitioner at such rate as admissible.

2. The brief facts of the case are that husband of the petitioner was discharged from the Indian Army in 1964. In the year 1975, he came to know that those persons who had worked in the Indian National Army (INA) were entitled to separate pension called "Freedom Fighter's Pension". Thus, he along with 80 other persons, who were with him in Singapore made an application in the year 1980 for grant of Swatantrata Sainik Samman Pension meant for Freedom Fighters as per the Scheme issued by Ministry of Home Affairs.

3. Based on the said application, a Screening Committee was constituted to look into the pending cases of INA Officers for grant of Swatantrata Sainik Samman Pension. The said Committee look into the case of the petitioner and after verifying the suffering undergone by the individuals of INA, recommended that

these persons were entitled for the pension under the Scheme mentioned above.

4. The husband of the petitioner was continuously getting the said pension w.e.f 23.11.1990. He died on 25.09.1994 and thereafter the petitioner being the widow of the Pensioner has been receiving the said pension.

5. Thereafter, due to a family dispute, the son of younger brother of deceased husband of the petitioner made a complaint with the respondents for stopping the pension received by the petitioner. Based on the said complaint, respondents sent a notice to the petitioner asking her explanation to disclose as from which period, the husband of the petitioner had undergone any sufferings as required under the Swatantrata Sainik Samman Pension for Freedom Fighters Scheme, 1980.

6. Since the husband of the petitioner had been discharged way back in 1964 and records being old, the petitioner tried to trace the same. While searching the house, a file was found by the petitioner, wherein there is certain Certificates issued by All India INA Committee and Pension Order dated 14.01.1991, Certificate of Freedom Fighter in respect of the petitioner issued by Govt. Of Haryana, an application form and a Discharge Certificate, which are annexed as Annexure P-1 (Colly).

7. Based on the above-said documents, a reply on behalf of the petitioner was sent by Captain S.S. Yadav, who was the General Secretary of All India INA Committee stating that the facts depicted that the husband of the petitioner had undergone suffering as mentioned in the Scheme.

8. The petitioner again received a letter from the respondent on 03.03.2010, wherein it is stated that the husband of the petitioner had not undergone any of the sufferings prescribed under the Swatantrata Sainik Samman Pension for Freedom Fighters Scheme, 1980 and thus, the pension received under the said scheme stands suspended and petitioner was asked to respond within three weeks from the date of receipt of the letter. It is further stated that as to why recovery should not be made from the petitioner. Copy of the letter dated 03.03.2010 and 18.03.2010 is annexed as Annexure P-3 (Colly).

9. Further respondent issued a letter on 26.03.2010 to the Central Accounts Officer (CPAO) ensuring that instruction be issued to State Bank of India of Manesar, Gurgaon to inform that the pension in respect of the petitioner has been suspended by the respondent.

10. Ms. Jyoti Singh, Id. Sr. Adv. appearing on behalf of the petitioner has submitted that the All India INA Committee issued Certificate, which is annexed as Annexure P-1 certify that the husband of the petitioner was a member of Indian National Army. He was a political suffering and as such was entitled to all the concessions allowed to other political sufferers.

11. The Officer of Chief Secretary, Govt. of Haryana also issued a letter which is at Page 18 of the Paper Book that Sh. Dhan Singh (husband of the petitioner)

was a bona fide freedom fighter of Haryana having PPO vide MHAFF/9102511.

12. Ld. Senior Counsel has heavily relied upon the Discharge Certificate of the husband of the petitioner, which is at Page 19 of the Paper Book, wherein his Unit is mentioned as Regiment of Artillery, date of enrolment as 04.10.1940 and date of discharge as 18.10.1964. Against the column of the Field Service indicated that Singapore 19.07.1941 to 31.10.1945. Against the column of Medals mentioned 1939-45 (Star), Burma (Star) and Pacific (Star), Independence Medal and G.S. Medal.

13. Ld. Counsel has drawn the attention of this Court that the respondents in Para 4.3 of their reply stated that they sought specific particulars separately in respect of Late Dhan Singh from Army, Air Defence Records. In reply, they had indicated that he was enrolled on 04.10.1940 and discharged on 17.10.1964 (AN) without any break in service with service pension w.e.f 18.10.1964. He was not discharged from service for his joining INA. Further, he was believed POW w.e.f 15.02.1942 and confirmed POW w.e.f 10.04.1945. Therefore, he was paid deferred pay for the period from 04.10.1940 to 29.02.1960 and War Gratuity for the period from 04.10.1940 to 15.08.1946. This report indicates that he did not join INA as he continued in service till 17.10.1964 without any break.

14. In rejoinder, petitioner has stated that husband of the petitioner was confirmed POW and had undergone imprisonment during British Rule in India. Additionally, one Sri Ram, who was a colleague of petitioner's husband, has sworn in on an affidavit about the facts of the petitioner's husband being in INA and also having served together in Sumatra. The copy of the said Certificate is annexed as Annexure P-1. The said Sri Ram also filed an affidavit stating therein that the husband of the petitioner was deputed with Azad Hind Fauz from May, 1942 to August, 1945 for the security of Defence Oil Refinery at Brendan, Sumatra.

15. Ld. Counsel for the petitioner has further submitted that as per the Scheme, only six months' imprisonment is required. For the said qualification, the husband of the petitioner was found entitled and thereafter granted pension after due verification.

16. On the other hand, Ms. Sonia Sharma, Ld.Counsel appeared on behalf of the respondents has submitted that as per the Scheme, a person is eligible if he had undergone at least one of the sufferings as prescribed in the Scheme (imprisonment / detention against the executive order / undergone sufferings / externment / internment etc. on account of his participation in the freedom struggle. The participation in the INA and in the Indian Independence League is also treated as participation in the National Liberation Movement.

17. For imprisonment suffering, a person must suffer minimum imprisonment of six months on account of participation in freedom struggle subject to furnishing primary evidence i.e. 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 against the executive order / undergone sufferings / externment / internment etc., facts of the case and reasons of release.

18. Ld. Counsel for the respondents further stated that many Indian Army Personnel were made POW during the Second World War and joined INA constituted in the South East Asia under the command of General Mohan Singh in 1942 and later under Netaji Subhash Chandra Bose. Out of those INA personnel, who suffered imprisonment / detention by the Britishers or loss their Govt. jobs for their participation in the INA movement were eligible for pension on production of the prescribed documentary evidence. In such cases, discharge book / certificate issued by concerned Army authority / Regiment is a crucial documentary evidence to decide the eligibility of the claimant for pension under the Swatantrata Sainik Samman Scheme.

19. It is further submitted that in the absence of discharge book / certificate, the particulars obtained from the concerned Army Records Office were taken into consideration while suspending the pension of the petitioner.

20. Moreover the said respondents sought specific particulars in respect of the husband of the petitioner from Army / Air Defence Records. According to the records, he was enrolled on 04.10.1940 and discharged on 17.10.1964 without any break in service. This report indicates that he did not join INA and he continued in service till 17.10.11964 without any break. Therefore, the petitioner could not furnish any evidence primary or secondary in support of her claim.

21. After hearing Id. Counsel for the parties, it is emerged on record that the Swatantrata Sainik Samman Pension was provisionally granted to Sh. Dhan Singh, i.e. deceased husband of the petitioner w.e.f 23.11.1990 on the advice of the Committee constituted for the purpose. Thereafter, on receiving the complaint, the respondent verified from the Army record and found that he was enrolled in Army on 04.10.1940 and discharged on 17.10.1964 (A/N) without any break in service. This information is contrary to the discharge certificate relied upon by the husband of the petitioner. Moreover, the complainant also produced document to show that Late Sh. Dhan Singh's elder brother had also obtained Swatantrata Sainik Samman Pension fraudulently, which was subsequently cancelled by Govt. of India.

22. For the pension in question, strict proof of primary evidence is required, such as Imprisonment / Detention Certificate from the concerned Jail Authority, District Magistrate or the State Government indicating the period of sentence awarded with all particulars i.e. date of admission, date of release with facts of the case and reasons for release.

23. The petitioner failed to furnish any document mentioned above to prove that her deceased husband had suffered minimum imprisonment of six months.

24. The petitioner has not even furnished secondary evidence. In case records of

relevant period are not available, co-prisoners certificate required from the freedom fighter who have proven jail sufferings of minimum one year and were with the deceased husband of the petitioner in jail could be considered, provided that the State Government, Union Territory administration concerned, after due verification of the claim and its genuineness issued Certificate to this effect. The knowledge certificate issued by one Sri Ram is also not supported by any document being his proven co-prisoner or colleague.

25. The object was to honour and where it is necessary, also to mitigate the sufferings of those who had given their all for the country in the hours 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, would be contrary to its spirit to convert it into some kind of programme of compensation. This aforesaid view has been observed by the Apex Court in *Mukund Lal Bhandari and others Vs. Union of India and others*, .

26. In view of the reasons recorded above, I find no infirmity in the orders passed by respondents.

27. I here make it clear that the pension in question was started on the basis of documents submitted by the deceased husband of the petitioner. Therefore, the respondents shall not take any step to recover any money from the petitioner.

28. Accordingly, instant petition is dismissed. No order as to cost.

CM. NO. 5755/2010

In view of the above, instant application become infructuous and disposed of as such.