
(2002) 10 MP CK 0085
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1020 of 2002

Rewashankar Guha

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 23-10-2002

Acts Referred:

Defence of India Rules, 1962 — Rule 38(1)(a), 38(1)(c)

Citation : (2003) 3 MPLJ 230

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Yogesh Dhande, for the Appellant; B.N. Mishra, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.—Petitioner claims freedom fighter pension admissible under M.P. Swatantrata Samman Nidhi Rules, 1972 (for short "the Rules"). The Order Annexure-13 rejecting the claim of the petitioner is assailed in the instant writ petition.

2. The factual matrix indicate that petitioner took part in freedom movement; he also participated in "Quit India Movement" in the year 1942; petitioner participated in "Jhanda Satyagraha" and hoisted the Tri-colour on Tahsil Court at Harda along with others. He was arrested and was kept in custody for three days and thereafter was released on payment of fine. Petitioner also participated in "Prabhat Pheris" and distributed pamphlets bulletin against the British Government. The petitioner was arrested along with others u/s 38(i)(A) and 38(5) of Defence of India Rules for Prevention of Pre-Judicial Activities criminal case No. 93/42 was registered. Petitioner remained in custody from 2-10-1942 to 5-10-1942. Fine was imposed by ADM, Harda; in the absence of jail at that time, the petitioner was kept in custody along with others. In support of the claim, register of Freedom Movement, 1942 Annexure-1 has been filed. The relevant entry is at serial No. 1233 dated 13-10-1942. In Column-8 of Annexure-1, it is

mentioned that file "A" connected with the crime has been destroyed as certified under the signature of the Recordkeeper dated 25-11-1949. Petitioner filed an application Annexure-2 on 9-1-2001 to the Collector for grant of "Samman Nidhi" and to declare him a Swatantrata Sangram Senani; thereafter petitioner filed an application in the prescribed proforma on 24-4-2001 along with an affidavit and filed certain other documents. Affidavit (Annexure-5) of Smt. Laxmi Jalkhare, prominent freedom fighter of District-Hoshangabad to certify the factum of arrest and detention of the petitioner; affidavit (Annexure-6) of Shri Beni Prasad was also filed. Other documents were also annexed such as certificates of Shri Shankerlal Joshi, Shri Radheshyam Parashar and Shri Mangilal Guha; they were also incarcerated along with the petitioner. Certificate of Shri Laxminarayan Agarwal, President, Freedom Fighters' Association was also filed. The State Government vide order dated 11-5-2000 Annexure/12 has allowed the pension to similarly situated person, namely, Shri Beni Prasad Tonk who was arrested and detained along with the petitioner; however, the case of the petitioner has been treated differently and has been rejected as per order Annexure-13 for no good reason.

3. A return has been filed by respondents contending that petitioner's case is not covered under rule 2 of the Rules. Petitioner has not produced clinching evidence in respect of the proof that he participated in the freedom movement. There is no material to justify the claim of the petitioner that he was fined and was incarcerated. It is admitted that petitioner was sentenced to pay a fine of Rs. 5 for breach of Rule 38(1)(a) and 38(1)(c) of Defence of India Rules; at the same time, it is contended that there is no material on record to justify the claim as preferred by the petitioner. Petitioner has not shown the period for which he remained underground. It has been disputed that petitioner remained in lock up for three days. The application of Shri Beni Prasad Tonk was initially rejected; he submitted an application for review with further documents to prove the fact that he was in jail for four days and since there was amendment in the Rules of 1972 whereby even a day's jail sentence brought the Freedom Fighter within the definition of Swatantrata Sangram Sainik, as such benefit has been extended to him by the order Annexure-12 dated 11-5-2000.

4. Learned counsel for petitioner submitted that case of the petitioner has not been dealt with in accordance with the Rules. Beni Prasad Tonk was arrested along with petitioner; this fact has not been disputed and the petitioner has been discriminated. There is overwhelming documents on record that petitioner was arrested and was kept in custody for three days. The order Annexure-13 has been passed on the ground that there is no proof of petitioner's remaining underground. However, the petitioner's claim is based on remaining in confinement for three days.

5. Shri B.N. Mishra, learned Govt. Advocate appearing for respondents submits that petitioner ought to have submitted the proof with respect to remaining in confinement; the order Annexure-13 is proper and calls for no interference.

6. Perusal of the Rules R/1 indicates that as per amendment made in the rule 2, even confinement in jail for one day is enough and this fact has not been disputed in the return. The case of the petitioner has been rejected on totally impermissible grounds as per order Annexure-13. The ground to reject the case of the petitioner that there is no proof of his remaining underground though this fact has been mentioned that petitioner remained in custody for three days and was released after some time on the fine, register Annexure-1 indicates that petitioner was taken into custody and was confined; fine of Rs. 5/- on each count for breach of Rule 38(1)(a) and 38(1)(c) of Defence of India Rules for Prohibition of Pre-Judicial act. The trial was made in the Court of ADM, Harda; this aspect has not been taken into consideration in the order Annexure-13 while rejecting the application and factum of arrest has not been disputed in the return. It follows that petitioner remained in custody for three days as claimed by him and there is overwhelming documents on record; in support of the same, affidavits of Smt. Laxmibai (Annexure-5), Shri Shankarlal (Annexure-8), Shri Radheshyam Parashar (Annexure-9) and affidavit of Shri Mangi Lal Guha (Annexure-10) have been filed; all are freedom fighters and are in receipt of freedom fighter pension. The case of Beni Prasad Tonk is not at all distinguishable from that of petitioner. In case of Beni Prasad Tonk the pension has been released. Considering the amendment in the rules, same yardstick ought to have been applied for the petitioner, but he has been discriminated with for no good reason. In the instant case documentary evidence is available in the shape of register (Annexure-1) and fact of imposition of fine and trial has not been rightly disputed by the respondents. In my opinion, the respondents have erred in law while passing the impugned order Annexure-13. The application ought to have been allowed. In my opinion, no useful purpose would be served in sending the case back as this aspect has not been disbelieved in the order Annexure-13 nor disputed in return that petitioner remained in jail for 3 days and was fined.

7. In view of above, the respondents are directed to treat the petitioner as a freedom fighter and release the Pension/Samman Nidhi in accordance with the rules within four months from today.

8. Resultantly, the writ petition is allowed. The impugned order P/13 is quashed.

9. Costs on parties.