
(1997) 01 DEL CK 0014

In the Delhi High Court

Case No : Civil Writ Petition No. 1360 of 1996

Shakodiripaka Bhadraiah and Others

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-01-1997

Acts Referred:

Citation : (1997) 2 AD 466 : (1997) 66 DLT 290

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Vimal Wadhawan and A.K. Vali, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present petition raises the question of grant of pension to the petitioners on the scheme known as Swatantrata Sainik Sanman Pension Scheme. The petitioners have no doubt been granted pension but their only grievance in this writ petition is that they should have been granted pension from the dates of their applications on the basis of the judgment of the Supreme Court as reported in C.

(2) The respondent has filed counter affidavit wherein the following plea is taken in para No. 5.

"5.That the petitioners who are parties to the writ petition had applied for grant of Swatantrata Sainik Samman Pension on various dates. In their applications they had mentioned that they had participated in the Arya Satyagraha Movement in the year 1938-39 and the Nizam Government had issued arrest warrants against them and as such they went underground for a period of more than 6-8 months. They had not furnished any documentary evidence from official records i.e. Court/Jail Authorities in support of the sufferings claimed. The secondary evidence submitted by the petitioners from a freedom fighter in the form of personal knowledge certificate and another certificate issued by the Secretary, Arya Samaj, Warangal are not Accept able to the Government for the reason the

same should be accompanied by non-availability of records certificate from the concerned jail/Court Authorities. As per the provisions of the Swatantrata Sainik Samman Pension Scheme, 1980 and also as per the orders of Hon''ble Supreme Court in the case of M.L. Bhandari & Others, applications are subject to thorough scrutiny/verification and sanction of pension would however be subject to the requisite proof in support of the claim. Thus strictly speaking the applications of the petitioners deserved rejection as they could not substantiate their claim. However, on liberal grounds pension was granted to them prospectively i.e. from the date of order by giving benefit of doubt as per policy of the Government in such type of cases."

The reading of the above would indicate that the applications of the petitioners were rejected as they could not substantiate their claims but on the ground of liberal interpretation they were granted pension prospectively from the dates of the orders by giving them benefit of doubt.

(3) The matter is settled by the judgment of the Supreme Court on which reliance is placed by the respondent which is filed as Annexure R-I to the writ petition. The said judgment reads as follows :

"Special Leave granted. Heard Counsel for both sides .On behalf of the Union of India strong reliance was placed on the decision of the Division Bench of this Court dated 24th April, 1995. On the other hand, learned Counsel for the respondent placed reliance on an earlier judgment of this Court in Mukand Lal Bhandari & Ors. v. Union of India 6- Ors., 1993 Supp. (3) Scc 2, as well as the decision in Amarnath Malhotra & Ors. v. Union of India, dated 19th October, 1994. The distinction, however, is that in the case relied on by the Union of India the - respondents were granted the benefit under the policy not because it was a clear case of the respondents being freedom fighters but because benefit of doubt was given and hence the pension was restricted from the date of the order and not the date of application. In the two case relied on by the respondent there was no question of the benefit having been founded on a finding of fact which did not clearly establish that the petitioners were freedom fighters but on the liberal ground of giving them the benefit of doubt and restricting it from the date of order. We are, Therefore, of the opinion that there is a distinction between the decision relied on by the learned Additional Solicitor General on behalf of the Union of India and two decisions relied on by the respondent In the instant case, since the benefit of doubt was given and the status of freedom Fighter was recognised on that basis, the case would be covered by the first mentioned dated 24th April, 1995 Union of India v. Ganesh Chandra Dolai & Others. In the result, the appeal is allowed and it is directed that the benefit will be given to the respondent from the date of the order and not the date of application. No order as to costs."

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(4) In view of the above, no other relief can be granted to the petitioners. The

writ petition is devoid of merit and/is, accordingly, dismissed.