

(2002) 10 BOM CK 0038
In the Bombay High Court
Case No : Writ Petition No. 2853 of 1994

Shankar Kolhe

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-10-2002

Acts Referred:

Defence of India Rules, 1962 — Rule 56(1), 56(4)

Citation : (2003) 2 MhLj 633

Hon'ble Judges : V.K. Tahilramani, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : Uday S. Malte, for the Appellant; R.G. Deso, Standing Senior Counsel for respondent No. 1 and P.B. Patil, A.G.P. for respondent Nos. 2 and 3, for the Respondent

Judgement

B.H. Marlapalle, J.—The petitioner claims that he had participated in the Indian Freedom Movement and was arrested by the police under Rules 56(1) and 56(4) of the Defence of India Rules. He was convicted by the learned Magistrate at Dharangaon and was sentenced to suffer F. I. for one year. He was confined in Dhule District Prison from 18th August, 1942 to 12th January, 1943 and was released before completion of the sentence period of one year unconditionally and perhaps on account of the general amnesty granted by the Government of India then. In support of these contentions he relied upon the certificate dated 30th July, 1962 issued by the Superintendent of Dhule District Prison.

2. On 31st July, 1978 he submitted an application for freedom fighters pension under the 1972 scheme framed by the Government of India. He had also submitted such an application to the respondent No. 2 as well. By order dated 11th May, 1983 he was awarded the pensionary benefits by the Government of Maharashtra. At the same time, the Government of India modified the 1972 scheme and renamed it as Swatantrata Sainik Samman Nivrutti Vetan Yojana, 1980 and the petitioner had submitted the application for his claim. Petitioner says that his case was recommended by respondent No. 2 State Government on

26th March, 1987 to the Government of India and in spite of such a recommendation his claim has not yet been considered by the respondent No. 1 for pensionary benefits under the 1980 scheme. Hence, this petition .

3. Shri S.K. Saini, Director in Freedom fighters Division of the Ministry of Home Affairs, Union of India has filed return on behalf of respondent No. 1. So far as the petitioner's claim is concerned, we reproduce the statements made in para Nos. 6 and 7 of the same return :

"6. That the claim of the petitioner for pension is still premature because even though the petitioner has produced a jail certificate, it has not yet been verified. Verification of documents is necessary in the light of the judgment of the Supreme Court in W.P. No. 153 of 1992 referred to above and also keeping in view the fact that in a large number of cases, the jail certificates/other documents produced by the applicants in support of their claims have been found to be fake/forged. This respondent has already written to the jail authorities in this regard. 7. That, the Central Government can examine the claims only on receipt of the verification report of the jail certificate from the jail authorities and would pass appropriate orders."

4. The learned counsel for the petitioner has invited our attention to the communication dated 26th March, 1987 addressed by the Assistant Secretary to the Government of Maharashtra in the General Administration Department to the Deputy Secretary to the Government of India, Ministry of Home Affairs wherein it has been clearly stated in para No. 3 that on the verification of the documents received through the Collector it was observed that Shri Shankar Nana Kolhe (the petitioner) satisfy the conditions for grant of pension as a freedom fighter under the Government of India's Swatantrata Sainik Samman Nivrutti Vetan Yojana, 1980. Hence, the State Government recommended his claim. A copy of the verification report was also forwarded along with the said communication. These documents do show that the verification regarding the petitioner's imprisonment period consequent to the conviction order passed against him was done by the State Authorities and they recorded their satisfaction that he met the conditions of eligibility set out in Clause 4 of the Swatantrata Sainik Samman Nivrutti Vetan Yojana, 1980. When such a record is available with the respondent No. 1 the plea taken by the same respondent that there was no verification regarding the petitioner's period of sentence suffered, cannot be accepted.

5. We, therefore, hold that the petitioner is a person eligible for the benefit of the Freedom Fighters Pension Scheme of 1980 as formulated by the Government of India and we direct the respondent No. 1 to consider the petitioner's case and pass appropriate order on the basis of the communication dated 26th of March, 1987 from the General Administration Department of the Government of Maharashtra. This shall be done as expeditiously as possible and in any case within a period of two months. We also clarify that the petitioner shall be entitled for the pensionary benefits from the date he had submitted his application and the arrears of pensionary benefits shall be released within a period of six months.

6. Rule made absolute accordingly with no order as to costs.
7. Writ to go forthwith.