

(2008) 03 DEL CK 0170

In the Delhi High Court

Case No : Writ Petition (Civil) No. 2313 of 2004

Smt. K. Pattamma

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Citation : (2008) 03 DEL CK 0170

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : B.K. Dash, Pabitra Biswal and Saurabh Gaur, for the Appellant; A.S. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Sudershan Kumar Misra, J.—This case arises out of the cancellation of freedom fighter's pension that had been awarded to the late husband of the petitioner under the Swatantrata Sainik Samman Pension Scheme, 1980. It would appear that the pension was cancelled on the ground that the requisite conditions, and in particular, the requirement that the late husband of the petitioner ought to have suffered imprisonment as a member of the Indian National Army, was not satisfied.

2. The petitioner's late husband had applied for pension under the Swatantrata Sainik Samman Pension Scheme, 1980 (formerly known as Freedom Fighters Pension Scheme, 1972). The claim of the petitioner is that a certificate issued by the All India IN a Committee to her husband to the effect that he was a member of the Indian National Army, has not been believed. It is the case of the respondent that the All India IN a Committee is not an official body and, Therefore, the records maintained by the Committee are not official records and cannot be relied upon for granting benefits under the scheme. In addition, the stand of the Government is that even if it were to be assumed that the petitioner's husband was a member of the Indian National Army, he was still required to fulfill the other conditions of the scheme, before any benefits can be

granted to him.

3. It is also averred that before the pension granted to the petitioner's husband was cancelled, a show cause notice was given calling upon her to produce documentary proof in support of her contention that her husband was a member of the Indian National Army and had suffered imprisonment on that account. It is averred that the impugned order dated 19.12.2000 came to be passed because the petitioner failed to produce such documentary proof. In addition, it is the stand of the Government that as per the records prepared and maintained by the Army Authorities, the petitioner's late husband was never inducted as a member of the Indian National Army.

4. On the other hand, the petitioner relies on a captivity certificate dated 29.9.1983 which is stated to have been issued by respondent No.2. This document contains two certificates; a captivity certificate, and an INA certificate. It bears the official seal of the EME records, Sikandrabad. Counter affidavit filed by respondent No. 1/Union of India is silent on this aspect. Respondent No.2 has not filed any separate counter affidavit. Although the respondent No.1 has filed a reply to the show cause notice and had also sought an opportunity in that reply to file a detailed affidavit at a later stage, this assertion of fact which is supported by annexure "B" has not been traversed, save for a bald denial in para 3 to the effect that as per the records maintained by Army Authorities, the petitioner's husband was never inducted as a member of the Indian National Army.

5. The eligibility criteria for the grant of pension under the Scheme, as disclosed in the counter affidavit filed by respondent No. 1, is as follows:

(a) A person who had suffered a minimum imprisonment of six months in the mainland jails before Independence. However, ex-INA personnel will be eligible for pension if the imprisonment/detention suffered by them was outside India.

(b) The minimum period of actual imprisonment for eligibility of pension has been reduced to three months, in case of women and SC/ST freedom fighters from 1-8-1980.

From the records produced by respondent No. 1, it appears that the petitioner's husband was originally enrolled in the Royal Indian Army Supply Corps on 15.4.1940. Thereafter he was believed to have become a Prisoner of War in Malaya from 15.2.1942 to 17.3.1945. On 18.3.1945, he reported to the Infantry Brigade of the Royal Indian Army and he left Burma on 7.6.1945. He was ultimately discharged from service of the Royal Indian Army Supply Corps from 6.12.1945. The certificate dated 29.9.1983 annexed by the petitioner as annexure "B" merely states that:

Certified that Ex-ME-123263 :L/Nk K. Narasima was enrolled in the Army Supply Corps on 15th April, 1940. He was a prisoner of War (POW), while serving in Malaya and remained POW from 15th February, 1942 to 18th March, 1945. He

was originally discharged from service w.e.f. 6th December, 1945 for having joined Indian National Army and categorized as "GREY".

6. The first sentence that the Petitioner's husband was enrolled in the Royal Indian Army Supply Corps on 15.4.1940, is obviously intended to indicate the enrollment of the petitioner in the Royal Indian Army Supply Corps, at Bangalore on that date. The next sentence further certifies that the petitioner's husband was a Prisoner of War while serving in Malaya from 15.2.1942 to 18.3.1945. This period also corresponds to the period which is considered by respondent No.2 as the time spent by the petitioner's husband as a prisoner of war of the Japanese obviously as a part of the Royal Indian Army. The reading of communication dated 31.1.2002 sent by the EME records, Sikandrabad bears this out.

7. The only other endorsement which is on the certificate is the last sentence which states that "he was originally discharged from service w.e.f. 6.12.1945 for having joined Indian National Army and categorised as grey". This is the only reliable source of information which might demonstrate the fact that the petitioner's late husband had in fact joined the Indian National Army. However, the details of the petitioner's late husband as to when he actually joined the Indian National Army, are not forthcoming. In any case, it is quite clear that the captivity/imprisonment suffered by the petitioner's husband was not on account of his having joined the Indian National Army. It is a historical fact that the Prisoners of War, who were captured by the Japanese Army as members of the Royal Indian Army, were thereafter released from captivity with the option of joining the Indian National Army and serving there. Counsel for the petitioner also does not dispute this position. Unfortunately, in this view of the matter, the highest case of the petitioner can be that her husband did serve in the Indian National Army.

8. Be that as it may, to enable the petitioner to claim the pension in question, her late husband should have also undergone a minimum imprisonment of six months, either within or outside India, as a member of the Indian National Army. Regrettably, there is no official record to demonstrate the captivity/imprisonment/detention of the husband of the petitioner as a member of the Indian National Army.

9. Admittedly, the petitioner's claim for pension emanates from Swatantrata Sainik Samman Pension Scheme, 1980 (formerly known as Freedom Fighters Pension Scheme, 1972). The petitioner's Counsel also does not dispute the eligibility criteria reproduced by respondent No.1 in its counter affidavit and the said scheme. Whether the petitioner's husband was entitled to any other pension or grants of any kind is not material to this petition. I do not propose to go into that question. The question before me admittedly is the right of the petitioner's husband, if any, to the pension under the Scheme of 1980. The reading of the scheme leaves no doubt that for the ex-INA personnel to be eligible to the pension under the scheme, they must have suffered a minimum imprisonment of six months as a member of the Indian National Army. There is nothing to show

that the petitioner's late husband suffered any imprisonment on account of his being a member of the Indian National Army. Consequently, I do not think the petitioner can be granted any relief under the Swatantrata Sainik Samman Pension Scheme, 1980.

10. In that view of the matter, the writ petition is dismissed.

CM No. 2126/2004

11. Since the writ petition is dismissed, this application is rendered infructuous and is disposed of as such.