

(1987) 10 RAJ CK 0028
In the Rajasthan High Court
Case No : Writ Petition No. 1564 of 1985

Smt. Ram Pyari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-10-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1988 Raj 124 : (1988) 1 RLW 271

Hon'ble Judges : G.M. Lodha, Acting C.J.;Pana Chand Jain, J

Bench : Division Bench

Advocate : Jagdeep Dhankar, for the Appellant; B.P. Gupta and S.B. Mathur, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

G.M. Lodha, Actg. C.J.

1. "Patrika", a prestigious daily news paper of Rajasthan, carried an important story on Sept. 10, 1985 under the caption "Sainik ki patni 40 sal se pension ke liye bhatak rahi hai". The story attracted the attention of one of us and as it was a case of denial of pension to a widow of . alleged Indian National Army Hawaldar, who laid down his life for the motherland in Azad Hind Fauz of Netaji Subhash Chandra Bose for fighting the British Government, notice was taken by the Court on paper news only and it was treated as writ petition. Notices were issued to the various connected and concerned departments. The tragic tale and woeful story narrated by Smt. Rampyari relates back to the days when Netaji Subhash Chandra Bose formed the Azad Hind Fauz known as Indian National Army to obtain freedom of India by fighting British Government before independence in forties.

2. In Burma there was confrontation of Indian National Army with the British Army fighters and in action Havildar Major Birad Singh laid down his life in 1944. However, the respondents' case is that according to their register of casualties of

Indian Army, he died on Nov. 1, 1948 in Far East. Mr. Gupta further pointed out that Birad Singh was a personnel of the Indian Army and not Indian National Army and his wife has been allowed family pension. In para. 5 Clause (b) the following payments are alleged to be made to the widow--

- (i) Deferred pay Rs. 501/14 for the period from 4-1-1930 to 31-7-1946.
- (ii) War gratuity Rs. 207/8 for the period from 3-9-1939 to 15-8-1946.
- (iii) Final settlement of account Rs. 1968/9 paid to her son Ganpat Singh nominated to estate.
- (iv) Special Family Allowance from 1-11-46 to 31-12-49.
- (v) Family Pension @ Rs. 8/ per month w.e.f. 1-1-50. (She is also entitled to periodical increases sanctioned by the Government from time to time. Her present entitlement is Rs. 173.00 per month inclusive all increases).
- (vi) Children allowance to three children @ Rs. 2/- per month to each child.
- (vii) Ex-gratia award of death gratuity plus MO Commission Rs. 50.10 annas.

It is, however, contested that since she is claiming the pension as a member of the Indian National Army, that cannot be allowed without proof.

3. We have considered the submissions of Mr. Gupta Before us today photo stat copies have been produced and original record has also been shown on behalf of the widow of Birad Singh. According to this record there is a certificate of the All India I.N.A. Committee, 82, Daryaganj, Delhi, which is dt. Nov. 11, 1985 mentioning that Birad Singh was a member of Indian National Army and is a political sufferer and is entitled to all the concessions allowed to other political sufferers vide Government of India, Ministry of Home Affairs letter No. 4/6/61-Ests. (C), dt. May 23, 1961, His particulars have been mentioned in which it has been shown that his rank was Havildar and he was in the Unit 7/6 Rajasthan Rifles earlier. The village is Banura of Sikar district, Tehsil Danta Ramgarh. In this very record there is yet another important document which clinches the issue and that is a recital in the Congress Centenary Celebration where Birad Singh's photo was placed and the following citation was mentioned : --

foM+nflg% vktkn fgUn QkSt esa izFke jktLFkkuh jktiwrkuk jkbQYI ds pqfuUnk tokuks es ls "ks[kkokVh ds fcM+nflg ,d Fks tks lu~ 1942 esa vktkn fgUn QkSt ds xBu ds lkFk gh] mlse "kkfey gq;s A Hkkjr eka dh csfM;ka dkVus dk mUgsa ;g cgqr vPNk volj feyk Fkk A og ns"k dks LorU= djkus ds fy;s n` < fu"p;h Fks A mudh Hkkouk mu n~okjk jfpr bu iafDr;ks es izdV gksrh gS tks og vius lkfFk;ks dks lq;k;k djrs Fks%

ges nq[kks dks vc Hkwyk tkuk iMsxk A

oru ds fy, nq[k% mBkuk iMsxk AA

, vktkn fgfn;s mBks] dej cka/kks A

oru yqV jgk gS] cpkuk iMsxk AA

gqDe usrkth dk ctkuk iMsxk A

oekZ ds iseuk ekspsZ ij vaxztksa ds fo:) y<rs gq;s cg xEHkhj :i ls t[eh gks x;s A ,slh fLFkfr esa Hkh ns" k Hkkouk ls izsfjr gks mUgksaus vius lkFk dks vkxs c<us dk vkns" k fn; k vkSj ^^oUns ekrje~** ds ukjs ds lkFk gh os jk"V? ij cfynku gks x;s A

4. It was also pointed out that Shri Yadav, Joint Secretary of All India I.N.A. Committee has pointed out to the Ministry of Home Affairs in letter dt. Oct. 28, 1985 that name of Birad Singh was written as Virot Singh by phonetic error and the name of the martyr appears at serial No. 1643. Attested photostat copy of the extract from the Roll of Honour was sent. The Roll of Honour-Anecdotes of Indian Martyrs" by Kali Charan Ghosh contains his name at serial No. 1643 and the entry reads as under : --

"1643 Virot Singh Hav 7/6 Raj. Rifles S.O. 1 Grla Regt. Died of disease at Mbulmien Hospital in June, 1945."

5. Service particulars of Birad Singh are also available which are as under : --

"Regimental Number 11855, Rank Hav. Name Birad Singh Unit with which last served Raj. Rif. Date of enrolment 4-1-30, Age and Height on enrolment 18 years 5"9" Class Rajput (Shekhawati), Father's name Isar Singh, Date of discharge 1-11-46, cause of discharge Presumed dead while prisoner of war, Character on Discharge Home Address :--

Village Banura P. O. Sikar, Tehsil Sambhar, Distt. Jaipur.

Remarks : --

According to Shri S. S. Yadava's letter dt. Dec. 19, 1985 Birad Singh was holding the rank in I.N.A. as Sub Officer and the Unit was 1 Grla. Regt.

It would thus be seen that the certificate dt. Nov. 11, 1985 is corroborated by the other documents mentioned herein above. In another important book "Who's who of Indian Martyrs" Birad Singh has been described as under : --

"Virat Singh: Havildar in the 7/8 Rajputana Rifles, Indian Army: Joined the Indian National Army in Malaya, Served as an S.O. in the First Guernilla Regiment Died in hospital at Moulmein, Burma in June, 1945."

We have, therefore, got no doubt that there is ample record to show that Birad Singh (Virot Singh) was a member of Indian National Army and he died as a member of Indian National Army in Burma. He was a freedom fighter and entitled to all concessions and payments and benefits which are given to the freedom fighters" families.

6. It is a pity that a widow had to fight for more than 40 years and even though the national press carried story after story of her plight, yet the Government on

some technical ground or the other or due to red tapism did not allow any relief.

7. The story of the widow Rampyari and her suffering for more than four decades for getting the benefits, which a widow of a freedom fighter gets is really heart rending, hair raising, society rocking and conscience shocking. We, therefore, direct that Rampyari must be given all benefits as provided in the various laws and notifications and specially Government of India Notification No. 4/6/61-Ests. (C), dt. May 23, 1961 and other various notifications issued.

8. Here it may be mentioned that the Director of Pension Department of Rajasthan by order dt. Oct. 15, 1985 directed a grant of pension to Rampyari of Rs. 200/- from Jan. 1, 1982 to Sept. 30, 1985 and then from Oct. 1, 1985 Rs. 250A per month as per order dt. Oct. 15, 1985. But in a most unusual and unprecedented manner, this order was stayed by another order of the Sahayak Shashan Sachiv, Rajasthan State, G.A.D. dt. Oct. 30, 1985. This order of stay of the order of pension contains no reason, We would, therefore, direct that not only the payment as mentioned in order dt. Oct. 15, 1985 at the rate of Rs. 200A from Jan. 1, 1982 to Sept. 30, 1985 and Rs. 250A onwards should be made within a period of one month from today by the Director of Pension Department, Rajasthan, but further all other benefits in the shape of pecuniary payment or otherwise should be allowed to Rampyari treating her as widow of the freedom fighter and a Martyr, who as a member of the Indian National Army laid down his life for the motherland in Burma in 1945.

9. The other benefits and arrears of payments apart from the above mentioned in the Government of Rajasthan's order should also be given within another six months and thereafter regular payments be made at her village in the Sikar district. We may clarify that she is entitled to medical facilities and pension from the State Government as well as additional pension from the Central Government according to Freedom Fighter's Pension Scheme, 1972 and Swatantra Sainik Samman Scheme, 1980 and Indian National Army Pension Scheme.

10. Both the State of Rajasthan and also the Government of India would now settle the amount as per the above directions. Since more than 40 years time has expired and the widow is now at the age of about 80 years and is struggling for life on account of serious ailment, we further direct that in anticipation of final settlement the following amount should be paid by the two Governments within a period of two months from today failing which they would further pay interest at the rate of 12% from Sept. 11, 1985 when this writ petition was registered by this Court : -- Rajasthan State Government -- Rs. 25,000/- Government of India - Rs. 25,000/-

The above amount would be adjusted on final settlement of the case of pension and other benefits etc. to which she would be entitled.

11. It is also directed that she should be given all medical facilities by the State of Rajasthan and if she so desires, she should be kept in the S.M.S. Hospital at Jaipur for her treatment in a suitable Deluxe Cottage Ward free of charge.

12. Mr. Dhankar, learned counsel for Ram Pyari submits that there are about seven dozen of other such cases of widows and families of the soldiers who have sacrificed their lives in Indian National Army in Shekhawati area alone. For us it is difficult to give a general direction for payment, but we direct that the Government of India or the State of Rajasthan, whosoever is concerned according to the Rules would depute a special officer to have his camp in Sikar town and scrutinise these cases after due notice through the Panchayat agencies and media so that though delayed, justice can be done to them also. Mr. Dhankar should file list of such persons with detailed particulars to the Chief Secretary of Rajasthan.

13. We are happy to place on record our deep sense of appreciation for the valuable assistance provided by Dr. D. K. Taknet, Assistant Professor, Business Administration, University of Rajasthan, Jaipur, who on account of his excellent zeal for service to the poor widows and down-trodden, had collected all this material by making serious consistent efforts and working for quite few years. We hope that such selfless service and assistance rendered to the cause of widows, disadvantageous persons, sufferers of weaker sections by Dr. D. K. Taknet would not go unnoticed at the hand of the Government which should suitably encourage such selfless real social-workers.

14. A copy of the judgment may be sent to Smt. Ram Pyari free of cost.

15. Consequently, the writ petition is accepted as indicated above with costs of Rs. 2,000/-.