
(2003) 08 DEL CK 0021
In the Delhi High Court
Case No : CW No. 781 of 2001

Smt. Rampyaribai

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 05-08-2003

Acts Referred:

Citation : (2003) 6 AD 394 : (2003) 108 DLT 506

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : R.K. Kapoor, Sumit Kumar Khatri and Mukesh Kumar Verma, for the Appellant; Rajiv Shakdhar, for the Respondent

Judgement

Badar Durrez Ahmed, J.—The petitioner is a widow of late Shri Babu Singh Rajput who, allegedly, was a Freedom Fighter. The main grievance is that the widow i.e. the petitioner is not being granted the Freedom Fighter Pension although she is entitled to the same under the Swatantrata Sainik Samman Pension Scheme, 1980. It is alleged that late Shri Babu Singh participated in the Hyderabad Freedom Movement in 1947-48. The scheme specifies the persons who are eligible for the Samman Pension. Paragraph 2.3 of the salient features of the Swatantrata Sainik Samman Pension Scheme, 1980 (hereinafter referred to as the said scheme) relates to persons, who on account of their participation in their freedom struggle remained underground for more than six months. Such persons, subject to their complying with the conditions mentioned in paragraph 2.3 of the Scheme, are eligible for the Samman Pension. It is the petitioner's contention that her late husband was such a person who, on account of his participation in the Hyderabad Freedom Struggle, remained underground for more than six months and in respect of him though the detention order was issued such order was not served. Therefore, he fell under category 'c' of paragraph 2.3 of the said Scheme. The Scheme itself provides that the claim of underground suffering would be considered subject to furnishing of the following evidence:-

"(a) Documentary evidence by way of Court's/Govt.'s orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention.

(b) In case records of the relevant period are not available, secondary evidence in the form of a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit could be considered provided the State Government/Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available."

2. The learned counsel for the petitioner states that there is no documentary evidence. So condition (a) will not be fulfilled. However, the petitioner's case falls under condition (b). All that is required in this case is that in case the records of the relevant period was not available, secondary evidence in the form of a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit is to be provided and the same could be considered provided the State Government/Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available. It is the contention of the learned counsel for the petitioner that the two affidavits that he has filed which are at pages 22 and 24 of the paper book Shri Kondiba and Shri Rajendra Tulsiram Sarangdhar should suffice for the purposes of establishing that the petitioner's husband had been underground for more than six months. Learned counsel for the respondent however, submits that the two affidavits are of persons who themselves remained underground from December 1947 to September, 1948 as indicated in the affidavit themselves. This would, Therefore, not be in compliance with the provisions of the Scheme itself which require a Personal Knowledge Certificate from a prominent freedom fighter who has proven jail suffering of minimum of two years. Such a certificate has not been provided by the petitioner and in such eventuality, it would not be possible for the respondent to ascertain as to whether the case of the petitioner is genuine or not.

3. It is pertinent to note that earlier a writ petition being CW 2407/1999 had been filed before this very Court by the said petitioner for the same relief. The said writ petition was withdrawn by the petitioner with liberty to approach the respondent with such further evidence as may found. The writ petition was accordingly dismissed as withdrawn with the aforesaid liberty by an order dated 2.5.2000. It appears that thereafter, the petitioner filed a representation dated 11.9.2000 a copy whereof is at page 26 of the paper book. The learned counsel for the petitioner, however, submits that despite the filing of the said representation, no order accepting or rejecting the representation has been passed or communicated to the petitioner.

4. Learned counsel for the petitioner relies on the decision in the case of Mukund Lal Bhandari and others Vs. Union of India and others, , delivered by the Supreme Court and particularly on the following passage:-

"In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependents and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes."

According to the learned counsel for the petitioner the entire approach of the Government should be ameliorative rather than technical and obstructive. Learned counsel appearing on behalf of the petitioner also relied upon the case of Gurdial Singh Vs. Union of India and Others, where the Supreme Court while considering the standard of proof that was required in cases of grant of the freedom fighters pension observed as under:-

"7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed which determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of "beyond reasonable doubt". Once on the basis of the evidence it is probalilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favor unless the same is rebutted by cogent, reasonable and reliable evidence."

5. On the basis of the aforesaid observations of the Supreme Court, learned counsel for the petitioner submitted that the evidence that has been offered by the petitioner would establish that in all probability the claimant had undergone the suffering of remaining underground in the cause of the country during the freedom struggle. Therefore, a presumption was required to be drawn in the petitioner's favor and this presumption would hold until and unless the same was rebutted by cogent, reasonable and reliable evidence produced by the respondent. In the absence of such rebuttal, learned counsel for the petitioner submits that the evidence produced by him ought to be accepted and the pension ought to be granted.

6. Learned counsel for the petitioner further submits that one Shri Vijayandra

Kumbra who was the camp in charge had given a list of 121 persons who according to him, were eligible for freedom fighters samman pension in view of the fact that all those persons were members of the camp and for one reason or the other qualified for the pension. It is the learned counsel's contention that 120 out of these 121 persons have granted pension. This fact is stated in the writ petition and is not categorically denied in the counter affidavit. The only person that has not received the pension is the petitioner. So on this ground also he submits that there is a clear case of preponderance of probabilities that the petitioner would be eligible for pension under the scheme. Learned counsel further submits that the petitioner is, in any event, getting the State pension under the freedom fighters scheme from the state of Maharashtra.

7. While considering the merits of the case, it must also be borne in mind that in the Mukund Lal Bhandari's case (supra) itself the Supreme Court in paragraph 4 had indicated that the question of sufficiency of proof and examination of scrutiny of documents was best left to the Government and it was not the function of the Court to enter into this arena. In this regard, the Supreme Court observed as under:-

"As regards the sufficiency of the proof, the Scheme itself mentions the documents which are required to be produced before the Government. It is not possible for this Court to scrutinize the documents which according to the petitioners, they had produced in support of their claim and pronounce upon their genuineness. It is the function of the Government to do so. We would, Therefore, direct accordingly."

Furthermore, the learned counsel for the Respondent has referred to the decision of the Supreme Court in Union of India (UOI) Vs. Mohan Singh and Others, where the same sentiments as indicated in Mukund Lal Bhandari's case (supra) are reiterated in paragraph 4 thereof. It is clearly indicated that it is not possible for the court to scrutinize the documents which, according to the petitioner, had been produced by the petitioner in support of the claim and to pronounce upon their genuineness. It is the function of the Government. In that case the Supreme Court directed the Government to do so accordingly. Learned counsel for the respondent also referred to the decision in Union of India Vs. R.V. Swamy alias R. Vellaichamy, . In that decision the pointed question was whether the High Court was right in appreciating evidence and coming to the conclusion that the respondent therein was a freedom fighter entitled to claim the pension. The Supreme Court answered the question by concluding in paragraph 10 thereof that the same being a questionable proposition of evidence the High Court was not justified in granting of freedom fighter pension to the respondent. However, noting the large number of cases that had been coming up frequently for grant of freedom fighter pensions on the basis of certificates issued by some persons with the status of freedom fighters, the Supreme Court directed that it was for the Government of India to reconsider the matter and to lay down appropriate and clear guidelines for the freedom fighters to issue certificate to persons which

covers freedom fighters pension. The respondents could not indicate as to whether any such guidelines have been issued or not.

8. Be that as it may, in the present case, as indicated above, the representation of the petitioner dated 11.9.2000 (after the order of the Court dated 2.5.2000) has neither been accepted nor rejected. Therefore, it would be in the fitness of things that the Government of India should take a decision in the matter within three weeks of the date of this order in accordance with the principles indicated by the Supreme Court in the aforesaid decision and particularly the decision in the case of Gurdial Singh (supra) and keeping in view the object of the Scheme which is to honour and to mitigate the suffering of those who had given their all for the country. A liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme.

9. With these directions, the writ petition is disposed of.

10. dusty to both the parties.