
(2005) 04 OHC CK 0051
In the Orissa High Court
Case No : Writ Petition (C) No. 2361 of 2004

Sri Baji Badajena

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-04-2005

Acts Referred:

Citation : (2005) 100 CLT 80

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : Pradeep Mallick, for the Appellant; S.K. Jee, Addl. Stg. Counsel, for the Respondent

Judgement

1. Heard Mr. Mallick, Learned Counsel for the petitioner and Mr. S. K. Jee, Learned Addl. Standing Counsel for the Union of India.

2. The petitioner claiming to be a Swatantrata Sainik and having taken active part in the freedom fight had undergone imprisonment from 13.3.1945 to 10.10.1945 in Jigar Ghacha and Nilganja Jail filed an application under the Swatantrata Sainik Samman Pension Scheme, 1980 for grant of pension. The said application was duly considered by the Government of India, Ministry of Home Affairs and by letter dated 13.5.2003 the request made to grant the Swatantrata Sainik Samman Pension was rejected. Being aggrieved the petitioner has approached this Court, inter alia, challenging the order dated 13.5.2003, vide Annexure-5. According to the Learned Counsel for the petitioner, the petitioner had taken active part in the Freedom Fight and had undergone imprisonment. The period for which he suffered imprisonment was prior to the independence and necessary documents in support of such imprisonment are not available. The petitioner however filed a certificate issued, by one of his co-prisoners being Sri Manguli Bhatta, son of Late Krishna Bhatta. It is asserted that the said Manguli Bhatta had also undergone imprisonment along with the petitioner and he is receiving pension under the Scheme. According to the petitioner the ground for non-acceptance of the certificate issued on the ground

that he has not undergone imprisonment for more than one year is not tenable as such the clause was not there under the old scheme and was introduced only in the year 1980 whereas the petitioner had submitted his application in the year, 1976. According to the petitioner as the application was filed in the year 1976 the authorities should have disposed of the said application in the light of the Rules, which were in vogue on the date of filing of the application.

3. After receiving rule, a counter affidavit has been filed by the opposite parties 1 and 2. In paragraph-6 of the counter affidavit, it has been specifically averred that the application said to have been filed by the petitioner was received by the authorities only on 16.3.2001. The averment that the application was filed in the year 1976 is strongly denied. In the counter affidavit, it is further submitted that in consonance with the Scheme which was introduced in the year 1980 the petitioner was required to submit certificate from two co-prisoners who were also Freedom Fighters and who were enjoying the Freedom Fighter Pension and had proven jail suffering of one year. The petitioner having failed to do so is not entitled to any pension.

4. I have heard Learned Counsel for the parties at length. I have also perused the documents annexed to the Writ Petition and the counter affidavit. The Swatantrata Sainik Samman Pension Scheme, 1980 is a full-fledged one. It has provided the modalities for filing of application and has also prescribed the methodology for considering such application and granting pension in genuine cases. The Scheme also stipulates as to how claim for pension should be proved. The relevant provision reads as follows :

"(A) imprisonment/Detention : Certificate from the concerned Jail Authority, District Magistrate or the State Government, indicating period of sentence awarded, date of admission, date of release and reasons for release. In the absence of such certificates from official records, a Non-availability of Records Certificate (NARC) from the concerned authorities along with Co-prisoners" Certificate (CPC) as under:

(i) Two Co-prisoners" Certificates from the freedom fighter pensioners who had a proven jail suffering of one year; or

(ii) One Co-prisoners" Certificate from a sitting MP or MLA or from an ex-MP or an ex-MLA specifying his jail period and that of the applicant (Annexure-1 in the application form).

(B) Documentary evidence by way of Court's/ Government's orders proclaiming the applicant as an offender, announcing an award on his head or for his arrest or ordering his detention. In the absence of such certificates from official records, a Non-availability of Records Certificate from the concerned authorities along with a certificate from a prominent freedom fighter who had undergone imprisonment for a period of at least two years or more.

5. Admittedly, the petitioner failed to produce any document with regard to his

jail suffering. Further admittedly the petitioner has furnished co-prisoner's certificate only from one person i.e., Sri Manguli Bhatta, son of Late Krishna Bhatta. As it appears from the impugned order the prayer of the petitioner for pension was rejected only on the ground that the proven jail suffering of said Manguli Bhatta was only for a period of seven months. It would be apparent from the relevant provision of the Scheme supra that to establish the claim certificates of two co-prisoners who were freedom fighters and had proven jail suffering of one year are to be filed. The petitioner had not done so. Thus the certificate filed by the petitioner in support of his claim was not strictly in consonance with the Rules prescribed under the Scheme.

6. Learned Counsel for the petitioner relying upon a decision of this Court in the case of Smt. Ambei Rath v. State of Orissa and Ors. reported in 74 (1992) CLT 515 submitted that a liberal attitude has to be adopted to see that really eligible persons are not denied the benefit of the scheme for want of full proof (proof beyond reasonable doubt) of their case. To expect such a proof after expiry of about 45 years would really not advance the laudable object of the scheme. But then in the said case, it appears that the co-prisoner's certificate was granted by a person whose words must be taken carrying weight. The said fact is also observed in the policy itself. In the present case, the petitioner furnished only one imprisonment certificate granted by Manguli Bhatta, who it is asserted, is receiving Swatantrata Sainik Samman Pension. The materials produced reveal that a person whose words carry weight should give such certificate.

7. After going through the materials available, hearing Learned Counsel for the parties and considering the ratio of the decision in the case of Ambei Rath (supra) this Court is satisfied that the petitioner failed to establish that in fact he had undergone jail suffering in freedom fight by producing cogent materials. In the absence of such material, it would not be possible to extend the benefits under the Scheme.

8. In view of the aforesaid, I do not find any infirmity or illegality in the conclusion arrived at by the authorities, vide Annexure-5 and I am not inclined to interfere with the said order. However, liberty is given to the petitioner to file an application before the concerned authorities once again by enclosing relevant documents as per the modalities prescribed in the Scheme within a period of two months from today. If such an application is filed, the authorities shall reconsider the same strictly in consonance with law and pass necessary orders.

9. With the aforesaid observation the Writ Petition is disposed of.