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**(2014) 09 SC CK 0017**

**In the Supreme Court Of India**

**Case No : Civil Appeal No. 6651 of 2008**

Union of India & Anr (UOI)

APPELLANT

Vs

Jai Kishun Singh (D) through L.Rs. & Ors

RESPONDENT

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**Date of Decision : 10-09-2014**

**Acts Referred:**

**Citation :** (2015) 1 AD (SC) 526 : (2014) 6 ALD 193 : (2014) 6 ALD(Cri) 193 : (2014) 6 ALLMR 438 : (2014) 4 JLJR 80 : (2014) 4 PLJR 238 : (2014) 10 SCALE 422 : (2014) 10 SCC 352 : (2014) 8 SCJ 169 : (2014) 4 SCT 442

**Hon'ble Judges :** Vikramajit Sen, J;Arun Mishra, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

### JUDGMENT

Arun Mishra, J.—In the case in hand, the Court is required to adjudicate upon the issue whether Freedom Fighter pension had been undeservingly extended to Respondent No. 1 inspite of the fact that he did not participate in freedom struggle as he was a child of 7 to 8 years in the year 1942.

Initially, original Respondent No. 1's case for granting such pension was declined by the Appellant vide letter dated 19.06.1995. However, original Respondent No. 1 was successful in getting released pension on second attempt and it was ordered to be released on 26.12.1997 with retrospective effect from 28.07.1981.

The matter did not set at rest at that. The High Court at Patna directed suo motu inquiry in the rampant complaints that large persons in the State of Bihar were availing such benefits inspite of not having participated in freedom struggle as contemplated under the Swatantrata Sainik Samman Pension Scheme, 1980 (for short "the Scheme"). The Deputy Collector conducted inquiry into the matter and recorded evidence. He found that claim of the deceased Respondent No. 1 was not genuine. On that basis, the Union of India issued show-cause notice and thereafter took decision on 19.05.2004 to cancel pension with effect from the

date it was initially sanctioned, i.e. 28.07.1981 and the amount of pension already drawn by him be recovered.

2. The deceased Respondent No. 1 unsuccessfully impugned the aforesaid order in writ petition filed before the Single Bench. However, the Division Bench of the High Court in the appeal has quashed the order. Hence, the Union of India has come up in appeal before us. The operation of order passed by the Division Bench of the High Court was stayed by this Court on 10.11.2008.

3. The learned Counsel for the Appellants submitted that pension was rightly withdrawn. The age of the deceased Respondent No. 1 was 7 to 8 years in 1942. Thus, his participation in the incident of August 1942 was rightly disbelieved. He was unable even to give details of the incident in the course of inquiry. The reliance placed by the Division Bench on the determination of age by the Medical Board at 73 years in 2001 was uncalled for as the Medical Board has not conducted scientific tests and has opined on the basis of physical appearance of the original Respondent No. 1. He had also submitted that the original Respondent No. 1 had stated his age on 06.06.1977 to be 40 years while deposing in Criminal Case No. 1018/1974 (Trial No. 381/77). Apart from this, in the Voter List of 1975, his age has been mentioned as 42 years.

4. Thus, at the age of 7 to 8 years, the claim that he participated in freedom struggle could not be said to be believable.

5. Per contra, the counsel for L.Rs. of the deceased Respondent No. 1 would submit that pension had been rightly sanctioned in 1997. Thereafter, in view of the report of Medical Board, there was no reason to withdraw it as the age at the relevant time in 1942 would have been 13 years.

6. The main question for consideration is what was the approximate age of deceased Respondent No. 1 on 15th August, 1942. He has claimed that his age was 13 years when he went underground for a year w.e.f. 14th August, 1942 to 15th August, 1943.

7. The enquiry officer recorded oral statement indicating that his age was much less. We discard such statement as oral statement cannot be a safe criteria for arriving at conclusion. However, the documentary evidence of the years 1975 and 1977 in the form of Voter List and deposition-sheet clinches the issue and establishes that the claim is not genuine. Documentary evidence has to prevail, more so as there was no such dispute as to age at the relevant time. As per deposition-sheet of criminal case, age was approximately 40 years in 1977. If the said date is taken as correct, the date of birth would come to the year 1937. As per Voter List of 1975, his age was 42 years. From aforesaid documents in consideration, age in 1942 would have been above 5 years and below 10 years. At such an age, participation in the incident in question is highly improbable as such cancellation of the pension in the facts and circumstances of the case, could not be said to be unwarranted at all.

8. The freedom fighter pension is a form of gratitude extended by an indebted nation in recognition of the sacrifice made by the freedom fighters to achieving independence. We are conscious of the fact that liberal approach has to be adopted in such matters so that rightful persons are not deprived of deserving benefit for lack of evidence, after a lapse of long time. It has been laid down by this Court that such cases have to be decided on preponderance of probabilities and standard of proof beyond reasonable doubt is not to be applied.

9. Relying upon *Gurdial Singh Vs. Union of India and Others*, in *Kamalbai Sinkar Vs. State of Maharashtra and Others*, this Court has laid down thus:

6. Having perused the above materials on record, at the very outset, we wish to refer to the observations made by this Court in regard to the grant of freedom fighters' pension in the decision in *Gurdial Singh v. Union of India*. In para 7 of the judgment, this Court has highlighted the manner in which such claims are to be considered for grant of freedom fighters' pension. It will be worthwhile to make a reference to the said passage before expressing our conclusion with regard to the claim of the Appellant's husband in the case on hand.

7. Para 7 reads as under: (*Gurdial Singh case*)

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 while 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 probalised 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 favour unless the same is rebutted by cogent, reasonable and reliable evidence.

(Emphasis added)

10. We are unable to rely upon determination of age by the Medical Board as it is based upon physical appearance only and not based upon any scientific medical test like ossification test and radiological examination. When it is based on such scientific tests as laid down in *Om Prakash Vs. State of Rajasthan and Another*, it is of strong corroborative value. The Medical Board held on 11.4.2002 has opined on physical appearance basis age about 73 years. It is not based on scientific tests hence it cannot be accepted, more so in view of other documentary

evidence on record.

11. This Court in *State of Orissa Vs. Choudhuri Nayak (dead by LR) and Others*, has adversely commented on undeserving candidates availing the benefits of such welfare schemes, thus:

9. It is of some interest to note from the statistics furnished by the Central government in their additional affidavit, that 1,70,813 freedom fighters/dependants have been sanctioned freedom fighters pension (as on 31.5.2010). At present as many as 60000 persons are getting pension or family pension as freedom fighters/dependants. The average pension of a freedom fighter and after his/her death to the spouse is Rs. 12400/- p.m. and the average pension paid to a dependant unmarried daughter is Rs. 3000 per month. The expenditure for the year 2009-2010 under the scheme was Rs. 785 crores. We have referred to these figures only to show that when false claims come to the notice of the Central Government, it is bound to take stern action. Any complacency on the part of the Government in taking action against bogus claims under any scheme would encourage bogus claims under all schemes, by undeserving candidates who are "well connected and influential". False claimants walking away with the benefits meant for genuine and deserving candidates has become the bane of several welfare schemes.

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11. Grant of freedom fighters' pension to bogus claimants producing false and fabricated documents is as bad as genuine freedom fighters being denied pension. The only way to respect the sacrifices of freedom fighters is to ensure that only genuine freedom fighters get the pension. This means that the Government should weed out false and fabricated claims and cancel the grant when the bogus nature of the claim comes to light. In *Union of India (UOI) Vs. Shri Avtar Singh*, this Court therefore cautioned:

8..... The genuine freedom fighters deserve to be treated with reverence, respect and honour. But at the same time it cannot be lost sight of that people who had no role to play in the freedom struggle should not be permitted to benefit from the liberal approach required to be adopted in the case of the freedom fighters, most of whom in the normal course are septuagenarians and octogenarians.

12. In the facts and circumstances of this case, we have no hesitation to restore the judgment and order passed by the Single Bench of the High Court at Patna. The judgment and order of the Division Bench is set aside. As the Respondent has been wrongly allowed pension after rejecting claim at the first instance by the Appellant, the High Court has directed suo motu inquiry and on this basis pension had been withdrawn, and also considering the fact that the recipient of pension Respondent No. 1 has died, we direct that the amount paid to him shall not be recovered from his legal representatives.

13. The appeal is accordingly allowed. No costs.