

(2012) 11 PAT CK 0080

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.20355 of 2012

Vipin Kunwar @ Bipin Kunwar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Citation : (2013) 2 BBCJ 143 : (2013) 2 BLJud 161

Hon'ble Judges : Mr. V.N. Sinha, J.

Bench : Single Bench

Advocate : Mr. Girish Chandra Jha and Mr. Prashant Kumar, Advocate, for the Petitioner; Mr. Lalit Kishore, A.A.G.-I and Mr. Harendra Pd. Singh, G.A. VIII, for the Respondent Nos. 3 and 7; Mr. N.A. Shamsi, Asstt. Solicitor General, for the Respondent Nos. 1 and 2

Final Decision : Disposed Off

Judgement

Mr. V.N. Sinha, J. (Oral)—Heard learned counsel for the petitioner, Union and the State.

2. Petitioner is aggrieved by the order dated 26.07.2011 (Annexure-5) passed by competent authority of the Ministry of Home Affairs, Government of India, addressed to the Deputy Secretary, Home (Special) Department, Government of Bihar, where under request of the petitioner for grant of Swatantrata Sainik Samman Pension (hereinafter referred to as "Pension") in terms of Swatantrata Sainik Samman Pension Scheme 1980 (hereinafter referred to as the "Scheme") has been rejected.

3. It is submitted on behalf of the petitioner that the aforesaid rejection order has been passed on 4 grounds i.e.

(i) State Government had not made its specific recommendation for grant of pension to the petitioner.

(ii) Petitioner failed to furnish primary evidence duly verified from official records

to establish that he was declared a proclaimed offender or an award for his arrest/on head was announced or a detention order was issued against him but was not served and that he remained underground for more than six months.

(iii) The State Government has not furnished Non-availability of Record Certificate in the format prescribed under the Scheme.

(iv) Though Personal Knowledge Certificate issued by S/Sri Ganga Singh, Yamuna Singh cannot be considered in the absence of a valid Non-availability on Record Certificate from the State Government yet the same has been scrutinized and the signature of Sri Ganga Singh made on 21.10.2009 for verifying the Personal Knowledge Certificate issued by him earlier does not match with his earlier signature on the Personal Knowledge Certificate. The other ground with respect to the Personal Knowledge Certificate issued by Sri Yamuna Singh is that Sri Yamuna Singh has mentioned his own jail suffering which is less than the prescribed period of two years and the thumb impression on the P.K.C. issued by Sri Yamuna Singh is not clear.

4. In the light of the aforesaid 4 grounds the request of the petitioner for grant of Pension has been rejected. Aforesaid order is challenged with reference to the recommendation made by the State Government under Memo No. 225 dated 19.5.2011, Annexure-4 on the basis of which the impugned order rejecting the claim of the petitioner for grant of pension was passed. It is submitted on behalf of the petitioner that perusal of the order passed by the State Government dated 19.5.2011 would indicate that while forwarding the request of the petitioner for grant of Pension, matter could not be considered by the State Advisory Committee as the same was not constituted yet the Personal Knowledge Certificate given by S/Sri Ganga Singh, Yamuna Singh was forwarded to the Union for being considered by the competent authority for grant of pension to the petitioner. It is submitted that Government of India rejected the request of the petitioner for grant of pension with reference to the recommendation of the State Government dated 19.5.2011 as the said recommendation was made by the State Government without the opinion of the State Advisory Committee which stood dissolved by the State Government itself and for dissolution of the State Advisory Committee petitioner cannot be held responsible.

5. In the light of the aforesaid submission petitioner has not only challenged the order passed by the Government of India dated 26.7.2011, Annexure-5 but also the recommendation made by the State Government dated 19.5.2011, Annexure-4.

6. In the light of the fact that State Government dissolved the State Advisory Committee to consider the case of the freedom fighters for grant of pension, this Court under orders dated 1.11.2012 called upon the Advocate General to inform this Court as to why the State Advisory Committee is not being constituted to consider the case of the freedom fighters in response to such query this Court has been informed by A.A.G.-1 that in terms of the Scheme the matter is

required to be considered by the State Government but to expedite the consideration the State Government earlier constituted State Advisory Committee in course of time the number of pending cases under the Scheme became nil and to curb the expenditure on the Committee the State Government thought it appropriate to dissolve the State Advisory Committee under Resolution No. 347 dated 2.8.2006 issued by the Home (Special) Department which be taken on record. He further submitted that case of the petitioner for grant of pension under the Scheme came for consideration by the State Government in 2011 the recommendations were made under letter dated 19.5.2011, Annexure-4 in the light of the Personal Knowledge Certificate granted by M/s Ganga Singh and Yamuna Singh, the two freedom fighters. It is also submitted by the counsel for the State that fresh recommendation shall be made in favour of the petitioner by the State Government for grant of pension along with Non-Availability of the Records Certificate in the format prescribed under the Scheme.

7. In view of the submission made by the learned A.A.G.-1 that State Government shall recommend the case of the petitioner for grant of pension along with the N.A.R.C. in the prescribed format, I not only set aside letter dated 19.5.2011, Annexure-4 as also the order passed by the competent authority of the Union of India dated 26.7.2011 (Annexure-5) rejecting the claim of the petitioner for grant of pension under the Scheme and direct the Union to consider the case of the petitioner for grant of pension in the light of the N.A.R.C. received from the State Government in the prescribed format together with the Personal Knowledge Certificate issued by S/Sri Ganga Singh, Yamuna Singh, the two recognised freedom fighters. In case there is any confusion about the signature or the L.T.I. of the two recognised freedom fighters i.e. S/Sri Ganga Singh, Yamuna Singh, they may be personally called for verification of the Personal Knowledge Certificate issued by them. In compliance of my order the State Government should submit appropriate recommendation along with the N.A.R.C. in prescribed format within one month of the receipt/service of this order before the Deputy Secretary, Home (Special) Department, Govt. of Bihar and the competent authority of the Government of India should consider this matter afresh in the light of the fresh recommendation issued by the State Government and the N.A.R.C. in the prescribed format within a reasonable time not exceeding three months from the date of receipt of the recommendation from the State Government by the competent authority of the Government of India in the Ministry of Home Affairs Freedom Fighter Division.

8. The writ petition is, accordingly, disposed of.