

SUPREME COURT OF INDIA

Secretary to Government of India

Vs.

Sawinder Kaur & anr.

C.A.No.2649 of 2013

(K.S. Radhakrishnan and Dipak Misra, JJ.)

21.03.2013

JUDGMENT

Dipak Misra, J.

1. Leave granted.

2. The husband of the respondent No. 1, late Gurnam Singh Dhillon, had applied for grant of freedom fighter pension on the basis that he had participated in the freedom struggle and had joined the Indian National Army or Azad Hind Fauj (for short “the INA”) during 1941-42 in Singapore. His claim for pension was based on the scheme, namely, Swatantrata Sainik Samman Pension Scheme, 1980 (for brevity “the 1980 Scheme”). Prior to the said Scheme, the Freedom Fighters Pension Scheme, 1972 (for short “the 1972 Scheme”) was in vogue from 15.8.1972. The benefit of the 1972 Scheme was extended to certain categories of freedom fighters and their family members and the said Scheme was liberalized in the year 1980. Under the said liberalized scheme, anyone who had participated in the INA and in the Indian Independence League (IIL) was also treated to have participated in the National Liberation Movement. Under the said Scheme, a person, claiming pension on the grounds of being in custody in connection with the freedom movement, could be considered for grant of pension on production of imprisonment/ detention certificate from the concerned jail authorities, District Magistrate or the State Government indicating the period of sentence awarded, date of admission, date of release and various other factors. It also provided that in case official records of the relevant period were not available, secondary evidence in the form of certificates from co-prisoners from central freedom fighter pensioners who had proven jail suffering of minimum one year and who were with the applicant in the same jail could be considered provided their genuineness could be verified and found to be true by the competent authorities. In case of persons belonging to INA category, a certificate from a co-prisoner from the central freedom fighters pensioner was required. As per the 1980 Scheme, the ex-INA personnel who had not suffered formal punishment were not eligible for getting pension but later on, regard being had to their hardships and their patriotism, they

were admitted to the Scheme from the year 1980 in terms of the relaxation provided in the Ministry of Home Affairs circular No. 8/4/83-FF(P) dated 31.1.1983.

3. As is demonstrable from the factual score, when the husband of the respondent No. 1 submitted the application for grant of freedom fighters pension, the army record showed that he was enrolled in the army on 13.6.1939 and released from service on 14.2.1946 due to reduction of the Indian Army, but not due to association with the INA and was also paid service gratuity. His application was initially rejected on 16.8.1980. After expiry of nine years, in 1989, he claimed that he, being an ex-INA, was sent to New Guinea/New British Islands and had suffered immense hardships and, accordingly, sought pension in terms of the Ministry of Home Affairs circular No. 8/4/83-FF(P) dated 31.1.1983. The claim was put forth in accord with clause (v) of para 1 of the said circular which stipulated that the persons of ex-INA who had been sent to New Guinea and adjoining islands and had undergone extreme hardships, starvation, although they did not suffer any formal imprisonment, would be admitted to the 1980 Scheme. His application was not entertained and the prayer was not accepted.

4. Being grieved by the order of rejection, late Gurnam Singh approached the High Court of Punjab and Haryana in CWP No. 11049 of 1992 which was disposed of with the direction to the respondent therein to pass a speaking order in relation to his grievance within a period of six months. As his prayer was not accepted, he invoked the jurisdiction of the High Court again in CWP No. 6393 of 1993 assailing the order of rejection and the High Court issued a direction to determine the issue afresh. Thereafter, the competent authority of the Union of India, after due enquiry, accepted the prayer and directed that he would be entitled to the freedom fighters pension with effect from 9.6.1994.

5. Being dissatisfied with the determination of the date of grant, he visited the High Court in CWP No. 15724 of 1994 claiming that the benefit should be extended to him from the date when the Scheme was made applicable, i.e., from 1.8.1980.

6. The High Court, vide its order dated 13.10.2011, referred to the decision in *Mukund Lal Bhandari and others v. Union of India and others* [1] and earlier decision of the same Court in LPA No. 305 of 2008 and directed that the petitioner therein was entitled to get the benefit of Freedom Fighters Pension Scheme from the date from which the original claim was filed i.e. 22.03.1973 along with interest @ 9 % per annum. It was also observed that as during the pendency, the original claimant had expired and the wife was more than ninety years old, the amount should be paid within the period of six months from the date of the order. It is worth noting that the learned Single Judge took note that though the original petitioner had claimed the benefit w.e.f 1980, yet there was no reason to deprive the benefit of the scheme from the date when the original application was submitted for the reason that the scheme was brought to honour the forgotten heroes of the freedom struggle.

7. The aforesaid order was assailed by the Government in L.P.A. No. 578 of 2012 and the Division Bench, vide order dated 26.04.2012, after narrating the history of the litigation,

concurring with the view expressed by the learned Single Judge as a result of which the appeal stood dismissed. Hence, the present appeal by special leave.

8. The question that emerges for consideration in this appeal by special leave under Article 136 of the Constitution is from which date the wife of the freedom fighter would be entitled to get the pension under the 1980 Scheme.

9. From the exposition of facts, it is quite clear that initially the benefit was not extended to the husband who was the petitioner as he belonged to a different category. After relaxation, the same was extended on certain conditions to certain categories but the husband was found to be ineligible and, hence, the claim was rejected. After direction of the High Court to consider his case, the authorities, after considering all the facts including the certificate, extended the benefit on the basis of secondary evidence as there was no clinching material on record that he was covered under the scheme as relaxed vide Circular dated 31.01.1983. On a perusal of the scheme, it is manifest under no circumstances the respondent would have got the benefit from 1973, that is, the date of application as he could only be covered under the scheme after the circular dated 31.01.1983. Thus, the direction relating to his entitlement from the date of the application is absolutely erroneous.

10. The heart of the matter is whether the respondent would be entitled even from the date, i.e., 1.08.1980 when the scheme came into existence. To appreciate the said issue, we may usefully refer to certain authorities in the field. In *State of Orissa v. Choudhuri Nayak (Dead) through LRs and others*[2], a two-Judge Bench referred to the decisions in *Mukund Lal Bhandari (supra)*, *Gurdial Singh v. Union of India*[3] and *State of M.P. v. Devkinandan Maheshwari*[4] wherein the object of the Freedom Fighters' Pension and what should be the approach of the authorities in dealing with the applications for pension under the Scheme was stated, summarized the principles laid down therein and thereafter proceeded to state that the Government should weed out false and fabricated claims and cancel the grant when bogus nature of the claim comes to light.

11. In *Union of India v. Avtar Singh*[5], it has been observed that the genuine freedom fighters deserve to be treated with reverence, respect and honour, but at the same time, it cannot be lost sight of the fact that the people who had no role to play in the freedom struggle should be permitted to benefit from the liberal approach to be adopted in the case of freedom fighters. Be it noted, all this was said in respect of availing the claim by producing false and fabricated documents as genuine to avail the pension.

12. In *Union of India v. Surjit Kaur and another*[6], this Court was dealing with a situation where the husband's application was rejected for grant of freedom fighters' pension and the respondent-husband did not challenge for two decades and the wife, two years after his death, filed a suit claiming the pension. This Court observed that the claim was barred under the Limitation Act, 1963.

13. In *Union of India and another v. Kaushalya Devi*[7], the Court referred to the decision in *Government of India v. K.V. Swaminathan*[8] where the claim was allowed on the basis of

benefit of doubt and, therefore, pension was granted not from the date of the application but from the date of the order. Further analyzing, this Court opined as follows: -

“In the present case, we have perused the record and found that it is stated therein that the claim was allowed on the basis of secondary nature of evidence. In other words, the claim was not allowed on the basis of jail certificate produced by the claimant but on the basis of oral statement of some other detenu. Hence, we are of the opinion that the pension should be granted from the date of the order and not from the date of the application.”

14. In *Union of India & others v. Kashiswar Jana*[9], the issue arose from which date the respondent therein was entitled to pension. In the said case, the pension was released w.e.f 4.8.1993. The claim of the respondent was that he was entitled to the pension from the date of the application which was allowed by the High Court directing that pension should be awarded from the date of application, i.e., 28.7.1981. This Court, relying on the decision in *Kaushalaya Devi (supra)*, ruled that pension is to be granted from the date of the order passed by the High Court, i.e., 4.8.1993.

15. In the case at hand, as is evincible, the claim was not allowed on the basis of the jail certificate produced by the claimant but on the basis of the oral statement of some other detenu. The competent authority was not satisfied as regards the fulfilment of the conditions. There was no primary evidence available in the official records as required under the scheme to establish the claim of the respondent-husband that he was an Ex- INA member and suffered in New Guinea/New Britain Islands to prove his eligibility for pension under the scheme. However, regard being had to the totality of the circumstances; he was extended the benefit under the scheme as it was a case of benefit of doubt. As is evident from the orders passed by the learned Single Judge as well as the Division Bench, there is no discussion in that regard but pension has been granted from the date of the application in an extremely mechanical manner. In our considered opinion, the approach is erroneous and it has resultantly led to an unsustainable order.

16. Consequently, the appeal is allowed, the orders passed in the Writ Petition and affirmed in the Letters Patent Appeal are set aside. There shall be no order as to costs.