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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6950/2014

RADHA KRISHAN

..... Petitioner

Through: Mr. Jai Bansal, Advocate

versus

UNION OF INDIA & ANR

..... Respondents

Through: Ms. Shubhra Parashar and Mr. V.P.

Singh, Advocates for R-1

Mr. Pancham Lal, Head Clerk for R-2

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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24.02.2015

1. This is a writ petition whereby, in effect, the petitioner seeks quashing of order dated 21.10.2013. The petitioner, who is 97 years old, has been running from pillar to post, at least, since 1989, to get pension under the Swatantrata Sainik Samman Pension Scheme, 1980 (in short Scheme).

1.1 It is the petitioner's case that his father who was working in the British Administration as Collector and District Magistrate asked him to leave the family home as he was bent upon taking part in the freedom struggle.

1.2 The petitioner, avers, that he, participated in the Quit India Movement, and that, in this process, he was imprisoned in Sukkur Jail (Sind), (presently in Pakistan) between 11.08.1942 to 15.02.1943.

1.3 It is also the petitioner's case that apart from incarceration, he was also administered "phatkas"; a colloquial term for whipping.

1.4 The petitioner, in support of his claim, has placed before the respondents, the following documents in the form of primary and secondary evidence :- (i). discharge certificate dated 16.02.1943, issued by the Central Jail, Sukkur (Sind), Pakistan; (ii). certificate dated 12.07.1956, issued by one, Mr. Metharam H.K., Ex-Secretary, Sind Pradesh Congress Committee ; (iii). certificate dated 28.12.1959, issued by one, Mr. Gopaldas Jamiatral, Ex. Secretary, Sukkur District Congress Committee.

1.5 As indicated above, secondary evidence, in the form of: (i) “To Whomsoever Certificate”, dated 06.02.1972, issued by Jairam Das Doulatram, a Member of Parliament (Rajya Sabha); (ii) a certificate issued dated 20.06.1973, issued by Mr. M. Ram Gopal Reddy, Member of the Parliament (Lok Sabha); and lastly, a certificate dated 07.11.1989, issued by Ms. Bijoy Chakravarty, Member of Parliament (Rajya Sabha).

1.6 I am in fact informed by the counsel for the petitioner that Ms. Bijoy Chakravarty, is alive.

2. The respondents, however, vide the impugned order have rejected the petitioner’s application for grant of pension under the aforementioned scheme.

2.1 The operative part of the impugned order reads as follows :-

“..3. The claim of Shri Radha Krishan s/o. Late Shri Sobh Raj r/o. A-60, Shivalik, near Malviya Nagar, New Delhi-110017 has been examined keeping in view the documents provided by Shri Radha Krishan himself and detailed enquiry-cum-recommendation report furnished by the Government of NCT, Delhi vide letter under reference and observed as under :-

(a) That Shri Radha Krishan was given an opportunity to present his case for grant of Central Samman Pension in person or thorough representative along with documentary evidence, if any, by the Government of NCT, Delhi. He

attended the office of the Government of NCT Delhi on 27.09.2013 and stated that he has already submitted the relevant documents and has no other documents to submit.

- (b) That the photocopy of the jail certificate submitted by him was sent to Skkur Jail (Sind) Pakistan for verification through MEA. MEA in its letter dated 28.09.2011 had informed that “the aforesaid certificate could not be verified because of non-availability of record of 1942-43.
- (c) Photocopy of Certificates from Co-prisoners (i). Shri Methram H.K., Ex-Secretary Sind Pradesh Congress Committee and Sh. Gopalda Jamiatrai Ex-Secretary Sukkur District Congress Committee also could not be verified as both the Co-prisoners have already expired.
- (d) That he has not submitted any documentary proof of his claimed jail suffering for the period 11.08.1942 to 15.02.1942 served upon him for his participation in Quit India Movement and also strips / phatkas sometimes in Police Lock up. The certificate he has submitted could not be verified because of non-availability of record of 1942-43 record of Sukkur Jail (Sind) Pakistan.
- (e) That he has submitted applications two time one in 1972 at that time he has mentioned his age as 66 yers, which means he would be 107 years at present and in another one submitted in 1989 he has mentioned again his age as 66 years, which his present age is 90 years, which creates controversy about his correct age at the time of participation in movement.
- (f)The CPCs of (i) Shri Methram H.K., Ex-Secretary Sind Pradesh Congress Committee and Shri Gopalda Jamiatrai Ex-Secretary Sukkur District Congress Committee, cannot be considered as there is no mention in the certifiers about their own jail sufferings.
- (g) That the other two CPCs attached with the application dated 1989 issued by S/S Shri M. Ram Gopal Reddy and

Shri Bijoy Chakravarty, MP Rajya Sabha also could not be considered as both the certifiers has not filled up their personal details as well their jail sufferings, thus they are incomplete. In addition, the authenticity of these certificates also could not be verified.

(h) Government of NCT Delhi has not recommended the case of Shri Radha Krishan for grant of pension.

4. In view of the above, the claim of Shri Radha Krishan does not meet the eligibility criteria and evidentiary requirements of Swatantrata Sainik Samman Pension Scheme, 1980. It is, therefore, not possible to accept the claim of Shri Radha Krishan for grant of Central Samman Pension from Central Revenues. Hence, the same is, hereby, rejected. The applicant may also be informed accordingly..”

2.2 A perusal of the aforesaid would show that the first ground trotted out for rejecting the primary evidence submitted in the form of a discharge certificate from Sukkur Jail, was that, the Ministry of External Affairs, could not get the certificate verified, in view of the response received via its counter- part in Pakistan, that the, record for the period 1942-43, was not available.

2.3 The second reason, furnished by the respondents, is that, the certificate issued by Mr. Methram H.K., Ex-Secretary Sind Pradesh Congress Committee and Mr. Gopalda Jamiatrai, Ex-Secretary, Sukkur District Congress Committee, could not be verified as they had expired, in the meanwhile.

2.4 The third ground given, is that, the petitioner, who claims that he suffered a jail sentence between 11.08.1942 to 15.02.1943, could not furnish proof of his suffering. It is also stated, that there is no proof

furnished of the petitioner having administered the “phatkas”, as claimed by him.

2.5 The fourth ground, articulated, in the said order, is that, in so far as, certificates issued by Mr. Methram H.K. and Mr. Gopalda Jamiatrai, are concerned, they do not mention their own jail suffering; even though admittedly they fall in the category, which the respondents refer to as, certified certifiers.

2.6 In so far as the certificates furnished by Mr. M. Ram Gopal Reddy and Ms. Bijoy Chakravarty are concerned, those certificates, have also been not considered because they have also, not indicated, in the certificates issued to the petitioner, the details of their own jail suffering.

2.7 There is also, albeit a passing reference to the fact, that the petitioner had submitted an application in 1972 wherein, he had indicated that his age was 66 years and if, that the age, was to be taken as correct, he would be as on the date (that is, when the order was passed) about 107 years and not 90 years, as he is sought to be portrayed.

3. In my view, none of the grounds incorporated in the impugned order are tenable. The reason for the same is that in so far as the petitioner is concerned, he has furnished to the respondents, the relevant documents which are available with him. As a matter of fact, the petitioner claims that he not only suffered incarceration, between 11.08.1942 to 15.02.1943, but was also subjected to phatkas. These are physical sufferings, which the petitioner claims that he endured during the period of his incarceration. These are physical injuries suffered on account of incarceration, which could have been verified by the respondents.

3.1 In so far as documentary evidence is concerned, the petitioner discharged his burden with the submission of a certificate received from

Sukkur Jail. If, for some reason, the record is not available with a foreign Government, the blame for the same cannot possibly be laid at the doorstep of the petitioner.

3.2 The petitioner, in addition has also, furnished the certificates, from the co-prisoners. It is for the respondents, to come to a definitive conclusion, as to whether the persons, whose names, have been indicated therein, actually suffered imprisonment and if, they did, what was the period of their imprisonment. This exercise could have been carried out very easily. The respondents could have delved into their database and found out as to whether the certifiers, had received pension under the aforementioned scheme or, even better, as to whether they had been incarcerated. This enquiry ought to have been made when the certifiers, who were evidently Members of Parliament, were still alive.

3.3 As indicated above, one of the certifiers, Ms. Bijoy Chakravarty, I am told, is alive. The respondents, have made no attempt to establish contact with her and ascertain as to whether the claim of the petitioner is accurate.

3.4 In the petitioner's case, a lot of time was spent in ascertaining as to whether the petitioner had kept back information with regard to receipt of pension from the State of Madhya Pradesh. This aspect is adverted to in a letter dated 04.08.1997 issued by the Ministry of Home Affairs, Government of India.

3.5 A perusal of this letter shows that the respondents were carrying on an impression that the petitioner was being granted State pension by the Madhya Pradesh government pursuant to the assertion, supposedly, made by him that he had participated in, what was known as *Praja Mandal Movement*, which was triggered in the former Princely State of Indore, and that in this connection he was arrested and remained in Indore jail from

01.05.1947 to 31.05.1947.

3.6 The said letter is also indicative of the fact that the respondents carried an impression, erroneously though, that the petitioner was transferred to Mahidpur Jail (in the former Holkar State) where he remained in incarcerated till 07.07.1947.

3.7 The interesting aspect of this letter, was that, though a copy of the same was addressed to the petitioner, at his address, he was shown as the progeny of, one, Mr Ghasi Ram, whereas the petitioner's father's name is, admittedly, Shobh Raj. The fact that this was a mis-information, came to light only when Ministry of Home Affairs, Government of India, conducted an inquiry pursuant to a direction issued by the Central Information Commission (CIC) under the Right to Information Act, 2005.

3.8 The enquiry revealed that the petitioner never lived in Indore, and that his namesake was drawing State pension from Indore. In other words, it was a case of forgery, which had nothing to do with the petitioner.

3.9 It also got revealed that the said person, as indicated above, had asserted that he had participated in the *Praja Mandal Movement*, whereas the petitioner was laying a claim based on his participation in the Quit India Movement.

3.10 As would be evident, in the entire process, nearly twelve (12) years were spent in unravelling the correct facts. In such like case, there is an urgent need for the respondents to carry out an inquiry, as quickly as possible as material evidence, if any available, is likely to be lost. However, as noticed by courts from time to time, an inexplicable apathy is displayed by the respondents to the dismay and exasperation of the applicants. Undoubtedly, the respondents have the necessary wherewithal available with them, even so, they expect, the applicants, to gather the relevant material,

knowing fully well that they are not necessarily persons of means and wherewithal.

3.11 The learned counsel for the petitioner, in my view, has correctly relied upon the judgment of the Supreme Court in *Gurdial Singh Vs. Union of India and Ors., (2001) 8 SCC 8* to bring to fore the standard proof that the respondents are required to apply in such like cases. The Supreme Court in paragraphs 6 to 9 of the said judgment has indicated as to the manner in which the respondents are required to approach such cases. The Supreme Court in *Gurdial Singh's* case has indicated that the respondents are required to test the material placed before them by applying the standard of proof of preponderance of probability, and not, as is often erroneously done, on the touchstone of “beyond reasonable doubt”. I can do no better than to extract the relevant observations made by the Supreme Court in that behalf.

“6. The scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from the foreign country is very cumbersome and expensive. Keeping in mind the object of the scheme, the concerned authorities are required that in appreciating the scheme for the benefit of freedom fighters a rationale and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the scheme are supposed to be such persons who had given the best part of their life for the country. This Court in Mukand Lal Bhandari's case (supra) observed:

"The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependents. The preference in employment, allotment of accommodation and in admission to schools and colleges of their kith and kin etc., are also the other benefits which have been made available to them for quite sometime now."

7. The court categorically mentioned that the pension under the scheme should be made payable from the date on which the application is made whether it is accompanied by necessary proof of eligibility or not.

8. 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 scheme have 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 touch-stone 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.

9. We have noticed with disgust that the respondent Authorities have adopted a hyper-technical approach while dealing with the case of a freedom fighter and ignored the basic principles/objectives of the scheme intended to give the benefit to the sufferers in the freedom movement. The contradictions and discrepancies, as noticed hereinabove, cannot be held to be material which could be made the basis of depriving the appellant of his right to get the pension. The case of the appellant has been disposed of by ignoring the mandate of law and the Scheme. The impugned order also appears to have been passed with a biased and close mind completely ignoring the verdict of this Court in Mukund Lal Bhandari's case. We further feel that after granting the pension to the appellant, the respondents were not justified to reject his claim on the basis of material which already existed, justifying the grant of pension in his favour. The appellant has, unnecessarily, been dragged to litigation for no fault of his. The High Court has completely ignored its earlier judgments in CWP No.3790 of 1994

entitled Mohan Singh vs. Union of India decided on 1.6.1995 and CWP 14442 of 1995 decided on 11.12.1995...”

(emphasis is mine)

4. Accordingly, in my opinion, the petitioner is entitled to the relief that he seeks. Consequently, the respondents are directed to grant pension to the petitioner from the date of the application. The application was, admittedly, preferred by the petitioner on 09.10.1989, as reflected in this court’s order, in the earlier round, dated 19.07.2013, passed in WP(C) 4154/2011.

4.1 The interest on arrears of pension, even though not specifically prayed for, in a case like this, and I agree with Mr. Bansal in this regard, that the residuary prayer made in the writ petition should be taken recourse to by the court. Accordingly, simple interest @ 9% p.a. is granted to the petitioner. In case the arrears of pension are not paid within six weeks from today, interest will run at the rate of 12% p.a. (simple).

5. The necessary consequences of the aforesaid would be that order dated 21.10.2013 will fall by the wayside. It is accordingly set aside.

6. With the aforesaid observations in place, the captioned petition is disposed of.

7. Dasti.

RAJIV SHAKDHER, J

FEBRUARY 24, 2015

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