

CASE NO.:
Appeal (civil) 6718 of 2001

PETITIONER:
GURDIAL SINGH

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 25/09/2001

BENCH:
M.B. Shah & R.P. Sethi.

JUDGMENT:

SETHI, J.

Leave granted.

The appellant who claims to be a freedom fighter states to have been subjected to harassment and embarrassment by the respondent Authorities for his fault of preferring claim for the grant of pension under the scheme known as Freedom Fighters Pension Scheme, 1972 (hereinafter referred to as "the Scheme"). After he succeeded, with the assistance of judicial process, in obtaining an order for the grant of pension at the rate of Rs.3000/- per month with effect from 29th April, 1998 (Annexure P-1), he was deprived of the same allegedly for his fault of again approaching the court for the grant of aforesaid pension with effect from the date of his application in terms of the mandate of this Court in *Mukund Lal Bhandari & Ors. vs. Union of India & Ors.* [1993 Suppl. (3) SCC 2]. The respondent-Union of India not only cancelled the pension sanctioned in favour of the appellant but also directed the recovery of the amounts paid to him in pursuance to the earlier orders passed in his favour. His petition for redressal of grievances was dismissed by the High Court vide the impugned order, allegedly on the ground of there being disputed questions of fact.

The facts emerging from the documents filed with this appeal are that the appellant, claiming to be a freedom fighter, preferred a claim for the grant of pension vide his letter dated 13.3.1973. In support of his claim, the appellant produced a copy of the driving licence issued in Thailand. It is pertinent at this stage to note that the appellant had claimed to be a driver in the Indian National Army (hereinafter referred to as "INA") raised by Netaji Subhash Chander Bose. As no action was taken, he sent a reminder on 20.8.1974 to the Secretary, Ministry of Home Affairs, Government of India. In response to the information sought to be furnished in terms of the letter of the respondent dated 7th September, 1974, the appellant sent the requisite proforma on 9.2.1975. On 11.2.1977, the appellant also sent his personal affidavit mentioning the names of the detention camps in Bangkok and Singapore where he was kept as INA prisoner of war for more than six months. He also sent two affidavits of the co-prisoners who were also detained in the said prison, besides furnishing of photostat copy of the INA driving licence No.13/1206. The appellant despatched, in original, the certificate issued in his favour by Captain Bishan

Singh Sanghai of INA regarding his training in weapon in 4th company of the INA. Despite furnishing of all information, his case was rejected by the Director, Ministry of Home Affairs on 7.4.1995 (Vide Annexure P-7). As despite service of notice he was not granted the relief, the appellant was forced to file a Writ Petition No.12350 of 1996 in the High Court which was disposed of by setting aside the impugned order (Annexure P-7) with a direction to the respondents to re-decide his case in the light of the documents produced in the High Court. Thereafter he appeared before the concerned authorities. The Government of Punjab vide its order dated 29th April, 1998 accorded the grant of provisional 'Swatantrata Samman Pension' to the appellant at the rate of Rs.1500/- per month w.e.f. 25.4.1998 (Annexure P-9). It was mentioned in the aforesaid order that the pension will be for the life time of the recipient and would be in addition to the pension, if any, sanctioned by the Central Government. The Central Government vide its order dated 22nd May, 1998 (Annexure P-10) also conveyed to the appellant the sanction of the President to grant him provisional pension at the rate of Rs.3000/- per month with effect from 29.4.1998. It was provided that the pension shall be for the life time of the recipient and be in addition to the pension, if any, sanctioned by the State Government.

Not satisfied with the grant of pension with effect from 29.4.1998, instead of from the date of the application i.e. 12.3.1973, the appellant filed Writ Petition No.12863 of 1999. The aforesaid writ petition was allowed with directions to the respondents to consider the appellant's case for grant of pension from the date of his application in the light of the observations made in the order of the court and decide his claim within two months. Instead of granting relief to the appellant for the grant of pension with effect from the date of his application, the respondents issued a show cause notice on 23rd February, 2000 calling upon him to show cause as to why his pension be not cancelled. He filed his detailed reply on 6th March, 2000 and the Government of India on 1.11.2000 cancelled its earlier order by which the appellant was granted pension with effect from 29.4.1998.

Justifying their action, the respondents have filed counter affidavit stating therein that as discrepancies and contradictions were found in the claim of the appellant, the order granting him pension was cancelled. The respondents further submitted that pension had earlier been wrongly granted to the appellant. The discrepancies and contradictions noticed by the authorities have been detailed as hereunder:

"(a) He indicated in his application that he joined Indian National Army in Sept 1942. It is a historical fact that Indian National Army headed by Netaji came into existence only in Jul/August in 1943, when civilians were also admitted to it.

(b) Regarding his claim of being the personal driver of Netaji he subsequently clarified that he is an illiterate person and the typist had included "personal driver" by mistake. However, he did not clarify as to why he repeated the same mistake in a Press Interview appearing in "The Tribune" dated 10.9.96.

(c) His claim that before joining Indian National Army he was working with the PWD Department Government of Malaya in 1937. This claim does not appear to be correct, as he was only 15 yrs of age at the time.

(d) He enclosed his original driving licence issued at Bangkok on which "INDIAN NATIONAL ARMY" was found to be inserted later and his photograph on it was also appeared

to have been fixed later. A Driving Licence is issued for the qualification of the school of driving and not for participation in a particular organisation.

(e) He submitted two photographs in support of his claim, which show him wearing Khaki uniform and standing besides a Malayan vehicle. He also produced a medal. These cannot be considered proof of his suffering of the kind and the period recognized by Swatantrata Sainik Samman Pension Scheme. The copy of the Swatantrata Sainik Samman Pension Scheme is annexed as Annexure R-1."

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."

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.

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.

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.

We are satisfied that the order of the respondent Authorities impugned before the High Court (Annexure P-14) dated 1.11.2000 is liable to be set aside and the appellant entitled to the grant of relief of pension. However, keeping in view the lapse of time and peculiar circumstances of the case, we are not inclined to grant him the pension with effect from 12.3.1973 as claimed and feel that the ends of justice would be met if the appellant is granted pension with effect from March, 1996 when he was forced to file Writ Petition No.12350 of 1996.

Accordingly the appeal is allowed by setting aside the order of the High Court impugned in this appeal and the order of the respondents dated 1.11.2000 (Annexure P-14). The appellant is held entitled to the grant of pension by the State of Punjab and the Union Government as determined vide Annexures P-9 and P-10 but with effect from March, 1996. The arrears shall be calculated and paid to the appellant positively within a period of six weeks from today, failing which he is held entitled to interest at the rate of 12% per annum from March, 1996 till the date, arrears are actually paid. The appellant is also held entitled to the payment of costs quantified at Rs.5,000/-

.....J.
(M.B. SHAH)

.....J.
(R.P. SETHI)

SEPTEMBER 25, 2001

JUDIS