

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

% Date of Reserve : 7.2.2008
Date of Decision : 15.2.2008

+ **LPA No.575/2001**

Smt. Khazani Devi
Wd/o Sep. Dhir Singh @ F.F. Dhiru Singh,
(but Dheeru Ram mentioned in writ petition),
2/9 Jat Regiment (INA) HAV,
3 GRLA Regiment,
Vill and PO Dubaldhan
Distt. Rohtak (Haryana) Appellant

Versus

1. Union of India
Through its Secretary
Ministry of Defence
South Block,
New Delhi – 110001

2. The Director,
Ministry of Home Affairs
F.F. Dvn., Lok Nayak Bhavan,
New Delhi

3. Officer-in-charge,
Record Office,
The Jat Regiment,
Bareilly (UP)

4. The Accountant General (A&E)
Haryana, SCO No. 196-197,
Sector 15 C,

Chandigarh - 160017 ... Respondents

Advocates who appeared in this case :

For the Appellant : Mr.S.M.Hooda, Advocate

For the respondents : Major S.S.Pandey

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE J.M. MALIK

- 1 Whether the Reporters of local papers
may be allowed to see the judgment? No
- 2 To be referred to Reporter or not? Yes
- 3 Whether the judgment should be
reported in the Digest? Yes

J.M. MALIK, J.

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1. The whole controversy in this Letter Patent Appeal (LPA) centres around the question whether Dhir Singh, since deceased, husband of Khazani Devi, the appellant is entitled to the grant of pension under the Freedom Fighter Pension Scheme, 1972. The appellant filed a writ petition claiming Freedom Fighters Pension. That writ petition was dismissed by the learned Single Judge vide order dated 31st August, 2000, on the ground that the husband of the appellant was not a freedom fighter. Thereafter, the review petition was also dismissed vide order dated 17th July, 2001. Aggrieved by the above-said orders, the appellant has approached this Court.
2. Adumbrated in brief, the facts of this case are as follows.

The husband of the appellant, Sepoy Dhir Singh, expired on 14th July, 1992. He joined as a soldier in the Indian Army on 5th January, 1930 in Jat Regiment. The Jat Regiment surrendered before the Japan Imperial Forces on 15th February, 1942. Thereafter, the Jat Regiment as a whole joined the Indian National Army (in short "INA") and was renamed as 3 Guerrilla Regiment. The appellant's husband died in action and it was reported in 'who's who of Indian Martyrs'. Two comrade soldiers of Jat Regiment cremated the body of Dhir Singh alias Dhiru Ram on 15th July, 1942 at Singapore. After the death of Dhir Singh, his widow (the appellant herein) applied for grant of Freedom Fighters Pension. She was granted Freedom Fighter Pension with effect from 15th August, 1972 vide letter dated 7th June, 1974. A few villagers, who were having inimical relations with the appellant, drew the attention of the Ministry of Home Affairs that Dhir Singh had never joined the INA. The appellant was called upon to produce the documents in support of her claim. Her Freedom Fighters Pension was suspended vide letter dated 3rd September, 1991. Thereafter, the appellant made a representation before the respondents but it did not ring the bell. Consequently, the above-said writ petition was filed under Article

226 of the Constitution of India, wherein it was prayed that the impugned letters dated 3rd September, 1991 and 8th May, 1996 be quashed and a writ of mandamus be issued directing the respondents to restore the Freedom Fighters Pension with effect from December, 1992 and to pay the arrears along with interest thereon.

3. The respondents listed the following defences in their counter affidavit. The real name of the petitioner is Dhir Singh and not Dhiru Ram as is evident from the voter list and election commissioner card. In her representation dated 31st October, 1973 the appellant submitted that her husband died during July 1942 in Singapore. Subsequently, it transpired from the Army records office letter dated 27th June, 1991 that late Sepoy Dhir Singh had never joined the INA and that he was reported dead on 14th July, 1942. The appellant was granted family pension at the rate of Rs.8/- per month with effect from 15th July, 1942. The Army record also reveals that Dhir Singh died in Malaya on 14th July, 1942 and his name was found published at page No. 6 Serial No.189 in a book "REGISTER OF CASUALTIES INDIAN ARMY WORLD WAR II, VOLUME XIII, 9TH JAT REGIMENT, 1956" which was published by the Government of India. The Indian troops of

British Army deployed in Malaya and Singapore surrendered before the Japanese Army on 15th February, 1942 and were made prisoners of war. In September, 1942, the first INA, comprising of British Army soldiers was raised by General Mohan Singh. However, the said INA was disbanded in May, 1943. The second INA headed by Netaji Subhash Chander Bose was raised only in July, 1943.

4. The question now to the fore is whether Dhir Singh was a member of the INA? The learned counsel for the appellant vehemently argued that as a matter of fact, General Mohan Singh had started the INA in the year 1940 and not in the year 1942. He pointed out that once the appellant was getting Freedom Fighters Pension, there was no cause for cancelling it. Now the documents produced by the appellant deserve a look. Annexure P1 is the copy of a extract of book known as “The roll of honour – Anecdotes of Indian Martyrs” written by Kali Charan Ghose. Entry No. 385 runs as follows:-

S.No.	Name	Rank	Unit	Rank	Unit	Home Address	Remarks
xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
385	Dhiru Ram	Sep	2/9 Jat Regt.	Hav	3 Grla Regt.	V.&P.O. Dt.Rohtak	Killed in action

Again Annexure P2 is the who's who of Indian Martyrs

written by DHEHRA DHOGE page 94 entry about one Dhiru Ram reads:-

Dhiru Ram : b. at v. Dubaldhan, Distt. Rohtak, Haryana; Soldier in the Jat Regiment, Indian Army; Joined the Indian National Army as a Havildar in the 3rd Guerrilla Regiment. Died in action.

5. No value can be pinned with these two documents for a variety of reasons. Firstly, there is no evidence on the record to show that these are authentic documents or approved by a recognized agency or Government of India. Secondly, these pertain to one Dhiru Ram and not Dhiru Singh. Lastly, there is no evidence or document, worth the name, to show that Dhiru Singh had left the British Army and joined the Indian National Army. The value of these documents is too exiguous to warrant intervention in this LPA.

6. Annexures P3 and 4 are the letters sent by Deputy Secretary, Government of India, to the appellant wherein she was called upon to adduce evidence. Letter P3(a) dated 18/6/74 is a very crucial letter sent by Freedom Fighter Association, Government of Haryana, wherein appellant was unambiguously informed that her husband was not a freedom fighter. This is most valuable evidence for the purpose of present controversy.

Annexure P5 dated 3rd September, 1991 and Annexure P6 dated 31st December, 1991 are the letters sent by the Under Secretary of Govt. of India, and one Shri Rup Chand, Secretary, the Jat records, Jat Regiment, Bareilly, respectively, wherein the provisional pension granted in favour of the appellant was suspended and he was informed that her husband was not a freedom fighter.

7. Letters, Annexures P7 dated 10th September, 1991, P8 dated 13th September, 1991, P9 dated 22nd February, 1993, P10 dated 3rd March, 1994, P11 dated 2nd June, 1994, P12 dated 20th April, 1995 and P13 dated 2nd May, 1995 are the letters written by Captain S.S. Yadav, I.N.A., General Secretary, allegedly appointed by AICC(All India I.N.A. Committee) in 1945 which have supported the case of appellant on the basis of evidence already discussed above but these have failed to cite any new evidence. These letters have no value in the eyes of law and have to be left out of consideration.

8. Annexures P14 and P15 are the affidavits of Pirthee Singh and Partap Singh respectively, who along with Dhir Singh surrendered before the Japanese Imperial Force and joined I.N.A. along with Dhir Singh on 15th February, 1942. However, they

have not produced any record or made reference of the same. Annexure P 16 dated 6th March, 1999 is the certificate of Mr.Bhoopinder Singh Hooda, the then member of Parliament, which is based on the above-said documents but nothing new evidence was referred to. Annexure P17 is the representation made by the appellant. Annexure P18 dated 8.5.1996 is the order whereby Smt. Khazani Devi was informed that the sanction of family pension be treated as cancelled with effect from the date it was sanctioned and about the amount in the sum of Rs.76,310.40, drawn by her from 15.8.1972 to 31.10.1992 was ordered to be recovered.

9. Annexure R-1 is the copy of the service documents in respect of deceased husband of the petitioner. Perusal of the same suggests that Dhir Singh was the member of 2/9 Jat Regiment and he was discharged on 14.7.1942 by reason of death. Annexure R-2 is the representation by the petitioner wherein it is stated that the petitioner's husband died in July, 1942 at Singapore. Annexure R-4, R-5 & R-6 are the Army record according to which No.10199 late Sepoy Dhir Singh had never served I.N.A. and he died in Mallaya on 14.7.1942.

10. The plea raised by the appellant is mere palliative and does

not delve deep enough to the roots of malady. It must be borne in mind that this is the appellant and nobody else who is to carry the ball in proving her case. The arguments advanced on behalf of the appellant are incongruous. On the one hand, it is stated that Dhir Singh was a member of the British Army till the year 1942 and on the other hand, it is stated that the Jat Regiment as a whole joined the INA and was renamed as 3 Guerrilla Regiment. There is not even an iota of evidence which may go to show that Dhir Singh had joined the new unit which was known as 3 Guerrilla Regiment or that late Dhir Singh was promoted to the rank of Havaladar by the INA. It is difficult to fathom as to how late Dhir Singh became a member of the INA while he was a member of the British Forces. The appellant was asked to produce the proof in support of her case but the needful was not done. The appellant has failed to produce proof of dismissal or discharge of Dhir Singh from the Army due to INA activity, OR, number, rank and unit of Regiment/Battalion of Indian National Army with which he lastly worked OR proof of any aid, allowance, and 'Bhatta' on being Ex. INA personnel. It is thus clear that she did not bolster her case with evidence. In absence of verifiable evidence, her case does not stand proved.

11. In a recent authority reported in *West Bengal Freedom Fighters' Organization Vs. Union of India and Ors.* [AIR 2004 SC 5143] many authorities were referred to and it was observed,

13. Reliance was placed upon the case of **Mukund Lal Bhandari v. Union of India** reported in (1993) Supp. (3) SCC 2, wherein it has been held that the scheme mentions documents which are required to be produced before the Government. It has been held that it is not for Courts to scrutinize the documents. It is held that it is for the Government to scrutinize the documents and pronounce upon their genuineness.

14. Reliance was also placed upon the case of **Union of India v. Mohan Singh**, (1996) 10 SCC 351 In this case also the applications had been made only supported by a certificate from a MLA and a co-prisoner. The Government found the certificate to be insufficient to sustain the claim. The High Court, however, held that the certificates were sufficient and directed payment of pension. Setting aside the Judgment of the High Court, this Court noted the observations in **Mukund Lal Bhandari's case** (supra) and held that it was not for the High Court to embark upon the appreciation of the evidence. It was held that once the Government concludes that the documents are not sufficient the High Court cannot interfere.

15. Our attention is also drawn to an unreported Order of this Court dated 24th September, 2003 in Civil Appeal No. 1850 of 1999. In this case, an application had been made under this very Scheme. There was no jail record and only an affidavit of a person who had visited him in jail and a certificate from the Head Master of a school had been submitted. This Court taking note of the observations in **Mukund Lal Bhandari's case** (supra) held that proof as required under the Scheme had to be submitted. It was held that if proof as required under

the Scheme was not submitted benefit could not be granted.

16. Reliance was also placed upon the case of **State of Maharashtra v. Raghunath Gajanan** reported in 2004 (6) SCALE 478, wherein it has again been reiterated that it is for the Government to be satisfied regarding genuineness of the claim and that the Court cannot sit in judgment over the decision of the State Government like an Appellate Authority. It has been held that the Court cannot, while exercising writ jurisdiction, enter into a re-appreciation of evidence and/or reverse findings arrived at by the State Government, unless they be perverse or be such as no reasonable man acting reasonably could arrive at. In this case, the Court noted the observations **Gurdial Singh's case** (supra) and held that the observations in **Gurdial Singh's case** (supra) do not negate the standards laid down in **Mukund Lal Bhandari's case** (supra) and that those standards continue to apply."

12. In the absence of evidence the position does not begin to jell. We find no illegality in the order passed by the learned Single Judge. The appeal is meritless and therefore, the same is dismissed.

J.M. MALIK, J.

February 15, 2008
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A.K. SIKRI, J.