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

% *Judgment delivered on: 11th April, 2012*

+ W.P.(C) 2022/2012

SUKHAI THAKUR

..... Petitioner

Through : Mr.C. Mishra, Adv.

versus

UOI AND ORS.

..... Respondents

Through : Ms. Sweety Manchanda, CGSC for R1.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the instant petition, the petitioner has sought issuance of writ of mandamus to direct the respondents to grant the SSS Pension to the petitioner from the date of application i.e. 15.09.1981 and to quash the impugned rejection letter dated 14.12.2007.

2. It is further prayed that respondent No. 1 be directed to take the appropriate action against the erring officer who has exercised the power malafidely and beyond the Benavent Scheme despite the several orders from the Apex court and also by various High Courts.

3. On perusal of the impugned letter dated 14.12.2007, the petitioner has claimed underground suffering during 18.08.1942 to 30 September. He has submitted a copy of extract of order sheet of GR No. 834/42 and Personal Knowledge certificate (PKC) of Sh. Yamuna Singh.

4. As per the provisions of the SSS Pension Scheme, 1980, any applicant who claims underground sufferings is eligible for Samman pension, provided the following conditions are fulfilled :-

Underground Suffering :- A person who on account of his participation in freedom struggle remained underground for more than six months, provided he was :

- A. a proclaimed offender; or
- B. one on whom an award for arrest or heard was announced; or
- C. one for whose detention, order was issued but not served.

5. It also defines the terms Primary evidence and Secondary evidence, which reads as follows:-

Primary evidence : Documentary evidence by way of Court's/Government's orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention. According to SSS Pension Scheme, 1980, absconsion on issue of warrant of arrest is not an eligible suffering for grant of SSS pension, unless the same is followed by the order of proclaimed offender/or award for arrest on head or detention order.

Secondary evidence: In the absence of primary record-based evidence, a Non-availability of Records Certificate (NARC) from the concerned State Government/Union Territory Administration along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering minimum of two years

and who happened to be from the same administrative District can be submitted as supporting evidence to the claim.

Where records of the relevant period are not available, Non-availability of Records Certificate (NARC) from the concerned authority is a mandatory pre-requisite for secondary evidence. The NARC should not be general or vague, but should conform to the instructions, inter-alia, require the State Governments to issue on NARC, only after due verification from all sources. The NARC is treated valid only when it is furnished by the State Government in the following manner:-

“All concerned authorities of the State Government who could have relevant records in respect of the claim of the applicant, have been consulted and it is confirmed that the official records of the relevant time are not available.

The claims of Samman pension can be considered by the Central Government only when these are duly verified and recommended by the State Governments/Union Territory Administrations concerned alongwith the basis such recommendation in accordance with the provisions of the Scheme. As per the Scheme, the verification and recommendation report of the State Government/Union Territory Administration is mandatory in view of the fact that the documents and other evidences of the claims are in the possession of the State Governments/Union Territory Administrations and not with the Central Government. However, it is also to mention that the Central Government has to keep all

documents/reports/evidence in view and to take a decision strictly in accordance with the eligibility criteria and evidentiary requirements of the Central Scheme. A positive recommendation of the State Government is, therefore, not binding on the Central Government (if the claim does not satisfy the eligibility criteria and evidentiary requirements prescribed in the Central Scheme).

The respondent/UOI, Ministry of Home Affairs, while rejecting the application of the petitioner found following shortcomings/discrepancies, which are reproduced as under:-

(I) He has not furnished record-based primary evidence, duly verified by the State Government, in support of his claimed underground suffering. He has submitted a copy of extract of order sheet of GR No. 834/42 which is not acceptable as the State Government has not verified the document from official records.

(II) In addition, the document i.e. extract of GR No. 834/42 furnished by the applicant in support of his claimed underground suffering, does not indicate the exact period of his underground suffering. It does not indicate whether Sh. Sukhai Thakur absconded on being (i) a proclaimed offender (ii) one on whom an award for arrest/head was announced; or (iii) one whose detention order was issued but not served, which is a mandatory requirement for sanction of pension under the provisions of the Scheme. It also does not indicate the parentage of the claimant to ensure the genuineness of the person. As such, this cannot be accepted as a record based document for establishing his eligibility for grant of pension.

(III) He has not furnished a valid Non-availability of Records Certificate (NARC) from the State Government (i.e. the competent authority), having all ingredients prescribed therefore (as indicated in para 4 above)

(IV) In the absence of a valid NARC, secondary evidence, i.e. personal Knowledge Certificates (PKCs) cannot be considered and are not acceptable. However, a copy of the PKC submitted by him from Sri Yamuna Singh has been scrutinized. The same is not acceptable as the certifier has not furnished any record/evidence of his own jail suffering of minimum two years (i.e., he has furnished no evidence to establish that he is an eligible certifier) (as indicated in para 4 above). Further, it is also not acceptable as the certifier is confirming underground suffering of the applicant for the period when he himself has stated to have been in jail. This view has even been upheld by the Hon'ble Patna High Court in CWP No. 10450/2000 in case of Sh. Hari Nandan Singh Vs. UOI and others vide judgment dated 23.10.2000.

This court fails to appreciate as to how such a certificate could be granted by Sri Sahdeo Singh when during most of the said period he was himself in jail custody as is evidence from his own certificate quoted above. This, in my opinion shows that the scheme for the grant of Samman pension is being completely misused so much so that even freedom fighter who has been granted Samman pension also grants such certificate for which they cannot be said to be competent in the facts and circumstances aforementioned.

(V) State Government has not given its specific recommendation for grant of Samman pension in his case. (Earlier recommendation dated 18.02.1993 cannot be treated as valid since GR could not be verified by the State Government in its later report).

6 Ld. Counsel for the petitioner has failed to satisfy the court that the petitioner comes under the provisions of Swatantra Sainik Samman Pension Scheme, 1980. He has only relied upon the GR No. 834/42, which does not speak about the suffering of 6 months. Therefore, it does not support the petitioner. There is no certification from the State Govt. to the effect that record qua the petitioner not available. Even the certificate of personal knowledge issued by Sh. Yamuna Singh is irrelevant, because the petitioner failed to produce the proof of suffering for two years of the above named person. Therefore, the petitioner neither has primary evidence nor secondary evidence as per scheme to prove his case.

7. In view of above discussion, I do not find any infirmity or discrepancy in the impugned order dated 14.12.2007.

8. Accordingly, the petition is hereby dismissed.

9. No order as to costs.

SURESH KAIT, J

APRIL 11, 2012

j/jg