

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10891 of 2013

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Shyam Sundar Prasad Son Of Late Mahavir Prasad Resident Of Village -
Audan Bigha, Police Station - Makhdumpur, District - Jehanabad

.... Petitioner

Versus

1. The State Of Bihar Through The Commissioner Cum-Secretary Home (Special) Department, Bihar Patna
 2. The Under Secretary Home (Special) Department, Freedom Fighter Cell, Government Of Bihar
 3. The Union Of India Through The (Home Secretary) Ministry Of Home Affairs, Government Of India, New Delhi -3
 4. The Joint Secretary, Government Of India, Ministry Of Home Affairs, Freedom Fighter Division, Lok Nayak Bhawan Khan Market, New Delhi -3
 5. The Under Secretary, Government Of India Ministry Of Home Affairs, Freedom Fighter Division Lok Nayak Bhawan, Khan Market, New Delhi -3
- Respondents

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Appearance :

For the Petitioner/s : Mr. Pawan Kr.Singh, Advocate
For the Respondent/s : Mr. N.Huda khan, SC 18
Babita Kumari, AC to SC 18
For the UOI : Mr.M.Kr.Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

5 01-10-2015 The petitioner seeks quashing of the order dated 23.2.2012, passed by respondent no.1 rejecting his claim for grant of Freedom fighter pension.

Before I consider the rival submission of the parties it would be necessary to notice the facts of the case.

The petitioner has claimed freedom fighter pension under scheme 2.2(b) of the Swatantrata Sainik Samman Pension Scheme, 1980. As per clause 2.2 of the Scheme, if a person who had suffered minimum imprisonment of six months on



account of participation in freedom struggle, he would be entitled to freedom fighter pension if he produces the documents mentioned in sub-clause (a) and (b) of Clause 2.2 of the Scheme. As per sub-clause (a), the person claiming the freedom fighter pension would procure imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release, whereas sub-clause (b) states that in case records of the relevant period are not available, secondary evidence in the form of 2 co-prisoners certificates (CPC) from freedom fighters, who have proven jail suffering of minimum 1 year and who were with the applicant in the jail could be considered provided the State Government/Union Territory Administration concerned, after due verification of the claim and its genuineness.

The petitioner's claim is based on sub-clause (b) of the Scheme. The petitioner submits that the State Government has duly recommended his case for grant of the pension, which is also apparent from its recommendation contained in Annexure 5. The petitioner had earlier moved this court in C.W.J.C.No. 17696 of 2008 which was disposed of on

17.12.2011 with direction to the Union Government to dispose of his representation in accordance with the law. The Union Government vide order dated 23.3.2012 has rejected his application on the ground of non availability of the records by the State Government, as required under Scheme, 1980.

Union Government has filed counter affidavit justifying its action. Counsel for the Union Government, in particular, has referred to paragraph 7 of its counter affidavit which states that the State Government did not furnish Non availability of Record Certificate (NARC). Further, the State Government also has not confirmed that Shri Gulzar Prasad is an eligible certifier. However, in paragraph 6 of the reply rejoinder, the petitioner has stated that the State Government vide its recommendation letter dated 4.2.1993 (Annexure 5) stated that the matter was placed before the Advisory committee and on the basis of the positive recommendation, it recommended petitioner's case to the Union Government. Furthermore the SDO, Jehabanad vide resolution dated 5.5.1981 (Annexure 3 series) stated that the court records with respect to freedom movement of the year 1942 stands misplaced.

In my view, the Union Government should reconsider its decision in view of Annexure 3 series, granted by

the SDO, Jehanabad and the letter of the State Government dated 4.2.1993, within a period of three months from the date of receipt of a copy of this order.

It goes without saying that if the Union Government takes a decision in favour of the petitioner, it would take appropriate steps for granting him freedom fighter pension.

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(Samarendra Pratap Singh, J)