

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 19894 of 2004(O&M)

Date of decision: 26.02.2015

Kashmir Singh Arya and another

... Petitioners

versus

Union of India and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Puneet Gupta, Advocate for the petitioners.

Mr. Gurinder Pal Singh, Addl. Advocate General, Punjab.

Mr. V.K. Kaushal, Advocate for Union of India.

K.Kannan, J.

The petitioners' case for freedom fighter's pension under Swatantrata Sainik Samman Pension Scheme was rested on alleged co-prisoner certificate that he was detained in the jail at Lahore during the Indian freedom struggle between 15.01.1941 to 14.01.1942. The petitioner was trying to explain the absence of proof of incarceration by securing the certificate from prison on the plea that the certificate from the jail authorities or the District Magistrate of the State Government were not available. The benefit of the claim which was launched in the year 1980, was sought to be claimed by the petitioners in the year 2003 by relying on the certificate issued by the co-prisoner from Khanna, Punjab. The petitioners were residents of Uttar Pradesh. The claim was denied on the ground that the secondary evidence could not be admissible without proof of detention from the jail authorities themselves and that further the person who had issued the certificate claiming to be a co-prisoner was found to be guilty for issuing such certificates and hence, even criminal case was lodged and he was being

prosecuted.

The petitioners would try to explain that the scheme that details the manner of proof and the evidence that was required was set out in Clause IX and it merely contemplates the non-availability of such a certificate from jail authorities, District Magistrate or State Government as a justification for production of a co-prisoner certificate. If the petitioners were to assert that the jail certificate was not available then the person could always rely on a co-prisoner certificate.

I would find the contention to be not tenable at all. The non-availability of such certificate, namely, of a certificate from the concerned jail authorities etc. must be the non-availability due to loss of records or destruction of records. A person cannot merely declare that records are not available for it is even possible that a person who is not imprisoned at all may not also be able to secure a certificate and it would just turn out to be a case of non-availability of such certificate. It will give room to spurious claims if such an interpretation is to be made. The rejection of the claim without proper proof of the reason for unavailability of the certificate from jail authorities was justified and would require no intervention by the Court.

The counsel for the petitioners relies on a judgment passed by this Court in Union of India Vs. Gurdev Singh and another, 2014 (1) RCR Civil, held that when the petitioners state that the records of imprisonment could not be found, it need not be doubted and hence this reason must be adopted. I will find the decision as not laying down any particular law that the mere assertion of non-availability of jail certificate could provide the ground for production of co-prisoner certificate. As a matter of fact, the Division Bench referred to the judgment of Hon'ble the Supreme Court in Gurdial Singh Vs. Union of India, 2001 (8) SCC 8, that clarifies that the standard of proof was not the same as in the criminal case or in a case adjudicated upon rival contentions of evidence of parties. The standard of proof may not be

strict but there means to be some proof of unavailability of jail records and if an argument must be accepted that an assertion would amounts to such a proof, then such an argument is rejected as outlandish and untenable.

The petition is dismissed with the above observations.

(K.KANNAN)
JUDGE

26.02.2015
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