

\$~10

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

% Judgement delivered on: 29.01.2015

+ **W.P.(C) 7155/2014 & CM No. 16808/2014**

DEV NARAYAN MISHRA

..... Petitioner

Through: Mr A.K. Thakur, Mr R.K. Mishra & Mr  
M.K. Pandey, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr Bhagwan Sawrup Shukla,, Mr  
Santosh Prasad Chaurasiya & Mr Vinod Tiwari,  
Advs.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**RAJIV SHAKDHER, J**

1. The petitioner is a ninety (90) years old person, who has come to court to seek grant of pension under the Swatantrata Sainik Samman Scheme (hereafter referred to as Scheme), by the Government of India.

2. The pension sought for by the petitioner, has been denied by respondent no.1, i.e., Government of India, vide order dated 28.05.2010. It is this order, which has been assailed in the present writ petition.

2.1 The reason for denial of pension is set out in paragraph 4 of the impugned order, which reads as follows:

“.....4. After examination of the claim, it is found that Shri Dev Narayan Mishra is not eligible for grant of Central Samman Pension due to the following shortcomings/ discrepancies:-

- (i) He has not furnished record-based primary evidence, duly verified by the State Government, in support of his claimed underground suffering.
- (ii) The document, i.e., extract of court record of GR No. 917/42 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 Shri Mishra went on absconsion 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. Mere absconsion does not make a person eligible for grant of Central Samman Pension.
- (iii) He has not furnished prescribed Non-availability of Records Certificate (NARC) from the State Government (i.e, the competent authority), having all ingredients prescribed thereof.
- (iv) In the absence of a valid NARC, secondary evidence, i.e., Personal Knowledge Certificate (PKC), cannot be considered and is not acceptable. However, the PKC submitted by him from Shri Bhagirath Jha has been scrutinized. The same is not acceptable as the certifier has not furnished any record/ evidence of his own jail suffering of minimum period of two years, i.e., he has furnished no evidence to establish that he is an eligible certifier. above). Further, it is also not acceptable as the certifier is confirming underground suffering of the applicant for most of the period when he himself has stated to have been in jail. This view has been upheld by the Hon'ble Patna High Court in C.W.P. No. 10450/2000 in case of Sh. Hari Nandan Singh vs U.O.I. & others vide judgement dated 23.10.2000:

“This court fails to appreciate as to how such a certificate could be granted by Sri Sahdev Singh when during most of the jail period he was himself in jail custody as is evident from his sown

certificate quoted above. This, in my opinion, show 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 grants such certificate for which they cannot be said to be competent in the facts and circumstances aforementioned..”

(v) State Government has not verified the claimed suffering of Shri Mishra from official records.....”

3. Learned counsel for the petitioner has argued that the reasons given in the impugned order are not sustainable as the petitioner was declared an absconder. For this purpose, he relies upon the GR, issued in that behalf, which is appended at pages 68 and 69 of the paper book. The said GR, is numbered as : 917/1942.

3.1 It is also the case of the petitioner that he has been issued a certificate of personal knowledge by, one, Sh. Bhagirath Jha, who suffered detention in and around the time when, the petitioner had remained underground. The petitioner’s case is that the personal knowledge certificate issued by Sh. Bhagirath Jha, in favour of Sh. Rajdhar Jha and Sh. Baidyanath Mahto, has resulted in the said persons being granted pension, under the aforementioned scheme. Based on the aforesaid broad facts, the petitioner seeks similar treatment.

4. The respondents, however, have resisted the petition, on the grounds that are contained in the impugned order.

5. In order to adjudicate upon the petition, the following broad facts need to be noticed.

5.1 The petitioner avers that he participated in the freedom struggle and remained underground between August, 1942 to 1946. It is on that ground,

that arrest warrants were issued qua the petitioner for offences which were punishable under Section 224 and 225 of the Indian Penal Code, 1860. The petitioner, claims that he was declared an absconder, and that, the order issued in that behalf was recalled on 18.06.1968. As indicated above, the extract of the order is appended by the petitioner at pages 68 and 69 of the writ petition.

5.2 Evidently, the Government of India, framed the aforementioned scheme for grant of pension to freedom fighters in an around 31.03.1980. Consequent thereto, the petitioner applied for pension on 31.03.1982.

5.3 Pursuant to the application preferred by the petitioner, the Additional Collector, Madhubani, addressed a communication dated 15.10.1984 to the Home Department, Government of Bihar certifying that the extract of GR No. 917/1942, after due verification, was issued, on the basis of original record available with the concerned department. Since then, the Government of Bihar, it appears, has recommended the petitioner's case for grant of pension on four occasions. The communications, issued by the Government of Bihar, in this behalf, are dated : 02.11.1998, 10.05.2011, 13.06.2013 and 20.12.2013. As would be obvious, the recommendations of the Government of Bihar have been issued both pre and post the date of the impugned order.

5.4 Notwithstanding the aforesaid facts obtaining in the case, the respondents seek to oppose the present petition on the grounds, as indicated above, in the impugned order.

6. Having heard the learned counsels for the parties, what comes to fore is that, in order to be eligible for pension, the provisions of scheme need to be complied with. As per the scheme, in so far as this case is concerned, the

petitioner claims that he falls under clause 2.3 (B) and / or 2.3 (ii) of the said Scheme. For the sake of convenience the same are extracted below:

“.....2.3 Underground:- 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 was announced; or

C. One for whose detention, order was issued but also served.

Explanation : Voluntary underground suffering or self-exile suffering for party work under command of the party leaders, are not covered as eligible sufferings for pension under the Central Scheme.

The claim of underground suffering is considered subject to furnishing of the following evidence :-

(i). Documentary evidence by way of court's / Govt.'s orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention. OR

(ii). Where records of the relevant period are not available, a non-availability of records certificate (NARC) from the concerned State / Union territory Administration along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit..”

6.1 As would be evident from the above, a person, who claims pension on the ground that he participated in the freedom struggle, while he remained underground for a period of more than six months, he would have to demonstrate that he was declared, a proclaimed offender or, was one on whom an award for arrest was announced or, was one whose detention was

ordered but not served. In order to establish the claim of underground suffering, the concerned applicant would have to furnish either of the following evidence: (i) 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.

6.2 It is only in the event of the aforementioned evidence not being available, the applicant can be granted pension if, the following conditions are fulfilled, which is: a certificate of non-availability of records is issued by the concerned State/ Union Territory Administration along with a personal knowledge certificate from a prominent freedom fighter, who has proved his jail suffering for a minimum period of two years and who happened to be from the same administrative unit.

7. Having regard to the aforesaid conditions, what comes to fore, is as follows:

- (i) That petitioner's claim that he participated in the freedom struggle as an underground fighter between the period 1942 till 1946.
- (ii) That the order declaring him as an absconder was outstanding which was only recalled on 18.06.1968.

7.1 In so far as these two facts are concerned, these are facts which emanate from the extract of the order sheet in the case of Emperor vs Sita Ram Mahto & Ors., in GR No. 917/1942. The Additional Collector, Madhubani, has issued a communication dated 15.10.1984, which establishes that extract of order sheet passed in GR 917/1942 which was issued on the basis of the original record available with the concerned department. In the said order sheet, the petitioner's name appears at serial no. 16.

7.2 In so far as the period is concerned, the remark at the end of the order sheet is relevant, which reads as follows: **“The reply to letter no. 1453 dt. 2.12.46 regarding disposal of the cases of the freedom fighter for the year 1942 to 1946 has been sent to Govt. of Bihar, Home Department Patna vide letter no. (illegible) dt. 20.1.47”**.

7.3 It is quite clear, therefore, that not only was the petitioner an absconder but that the period in issue spanned, between, 1942 to 1946.

8. In these circumstances, as contended by Mr Thakur, learned counsel for the petitioner, the first condition is met. Quite logically, therefore, the petitioner would not have to rely upon the alternative condition, which is non-availability of record. Even if I were to consider alternative condition, according to me, even that is substantially satisfied. The reason for the same is that, Sh. Bhagirath Jha, who undisputedly was a freedom fighter, and even according to the respondents obtained pension, has issued a certificate of personal knowledge in favour of the petitioner. It is also not in dispute before me that two persons, who were issued personal knowledge certificates by Sh. Bhagirath Jha, i.e., Sh. Rajdhar Jha and Sh. Baidyanath Mahto, also received pension from the Government of India, under the same scheme.

8.1 The argument of the respondents that the GR numbers which pertained to Sh. Rajdhar Jha and Sh. Baidyanath Mahto were different, is according to me, of no relevance as the condition prescribed is that, the personal knowledge certificate should be issued by a prominent freedom fighter who has endured jail suffering for a minimum two years, and who happened to be from the same administrative unit. The fact that Mr Bhagirath Jha is a prominent freedom fighter, is established by virtue of the

fact that his certificate has been accepted vis-a-vis Sh. Rajdhar Jha and Sh. Baidyanath Mahto. Therefore, in so far as Sh. Bhagirath Jha is concerned, he fulfils conditions required under clause 2.3 (ii) of the Scheme. In so far as whether or not he was from the same administrative unit, the same cannot be established either way from the number of the GR itself. It is the common case of the parties before me that Sh. Bhagirath Jha was in jail, while the petitioner was participating in the freedom fight by undertaking underground activities. It is quite possible that this was, information, which was available to his colleague, Sh. Bhagirath Jha, who was an active participant in the freedom struggle.

8.2 In these cases, unless the courts come to a conclusion that it is clearly a case of a false claim, the court's discretion should be employed in favour of the applicant. I intend to do that. I have no difficulty in accepting the petitioner's case that he remained underground for the prescribed period and more, while participating in the freedom struggle.

8.3 The other limb of the condition, i.e., in so far as non-availability of the record is concerned, the fact that the State Government has recommended the petitioner's case, at least on four occasions, substantially establishes that they are satisfied and they have no further records available with them except the extract of the order sheet referred to above.

9. For all these reasons, I intend to set aside the impugned order. It is ordered accordingly. The petitioner will be given pension hereafter as also arrears of pension, as applicable under the scheme, from the date of the application for the said purpose was first filed. The petitioner has also prayed for interest. Though the interest sought is at the rate of 18% per annum, according to me, since the period for which arrear obtain spans more

than two decades, the interest of justice will be served, if simple interest at the rate of 9% is ordered. It is ordered accordingly. The arrears of pension will be paid to the petitioner within six weeks from today, failing which, interest will run at the rate of 12 % per annum.

10. The petition and the application are, accordingly, disposed of.

11. Dasti.

**RAJIV SHAKDHER, J**

**JANUARY 29, 2015**

kk