

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10445 of 2012

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Awadh Bihari Singh, S/O Late Ram Badan Singh, R/O Village- Gidha, P.S.-
Koilarwar, District- Bhojpur At Ara.

.... Petitioner/s

Versus

1. The Union of India through its Secretary Ministry of Home Affairs, North Block, New Delhi – 110001.
2. The Under Secretary, Government of India, Ministry of Home Affairs, Jaisalmer House, Man Singh Road, New Delhi – 110001.
3. The Deputy Secretary, Government of India, Ministry of Home Affairs, Freedom Fighters Division, Lok Nayak Bhawan, New Delhi – 110001.
4. The State of Bihar through its Secretary, Home Department, Old Secretariat Building, Patna.
5. The Director, Home Department (Special), Government of Bihar, Secretariat Building, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nikunj Shekhar, Advocate Mr. Ajay Kumar Singh, Advocate
For the Respondent-State	:	Mr. Birju Prasad, GP-13 Mr. Ravi Kumar, AC to GP-13 Mr. Ashok Kumarr, AC to GP-13 Mr. Amressh, AC to GP-13
For the Union of India	:	Mr. Awadhesh Kumar Pandey, SPCGC Mr. Ravindra kumar Sharma, CGC

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 25-11-2016

A supplementary counter affidavit is being filed. Let it be kept on record.

Heard Mr. Nikunj Shekhar, learned counsel appearing for the petitioner, Mr. Birju Prasad, learned Government Pleader No.13 for the State and Mr. Awadhesh Kumar Pandey, learned Senior Panel Central Government Counsel who appears along with Mr. Ravindra Kumar Sharma, learned Central Government Counsel.

The petitioner is aggrieved by the order dated 4.1.2012 of the



Under Secretary, Government of India in the Ministry of Home Affairs, whereby in reference to an earlier order dated 27.11.2000 (Annexure-7), the claim of the petitioner for freedom fighters pension has again been rejected, inter alia, on grounds of absence of supportive documents confirming the participation of the petitioner in the freedom struggle. A copy of such order is impugned at Annexure-11 to the writ petition.

This is third round litigation by the petitioner for the relief so prayed i.e. for payment of freedom fighter pension.

Facts of the case briefly stated is that on an application in this regard being made by the petitioner, his case was considered by the Advisory Committee and recommended for payment of freedom fighter pension but was being delayed by the Union of India and when the petitioner came before this Court in CWJC No.9930 of 2000. A Bench of this Court vide order passed on 28.9.2000 present at Annexure-6 disposed of the writ petition with a direction to the Government of India and its officials to dispose of the claim of the petitioner by a reasoned order.

The claim of the petitioner under *Swatantrata Sainik Saman Pension Scheme*, 1980 (hereinafter referred to as 'the Pension Scheme') rested on underground suffering and the petitioner in support thereof had produced a Non-availability of Record Certificate ('NARC' for the sake of brevity) together with the Personal Knowledge Certificate granted by a freedom fighter, namely Sri Ram Nagina Tiwari. The State Government in its Home (Special) Department had recommended the



case of the petitioner vide Annexure-4. It is following the order of this Court present at Annexure-6 that the case of the petitioner was considered by the Government of India and was rejected on two grounds, namely:

- (a) The Non-availability of Records Certificate did not refer to any final decision of the case in which the petitioner was found involved; and
- (b) The Personal Knowledge Certificate granted by Sri Ram Nagina Tiwari certifying the underground suffering by the petitioner from 14.8.1942 to 16.3.1943 was not acceptable because Sri Tiwari himself was in custody during the said period.

The petitioner while representing for a review of the order before the Government of India vide Annexure-8 also filed a writ petition in this Court giving rise to CWJC No.3253 of 2010 and a Bench of this Court taking note of the circumstances, while quashing the rejection order remitted the matter to the Government of India for a fresh consideration of the grievance. A copy of the order passed by a Bench of this Court is present Annexure-10. It is thereafter and finding no fresh material that the claim of the petitioner has again been rejected and the petitioner feeling aggrieved is before this Court.

While Mr. Nikunj Shekhar, learned counsel appearing for the petitioner has relied upon the recommendation of the State Government to submit that once the claim has been examined by the State



Government and upheld, the Union of India cannot enter into the technicalities to reject the same. He submits that conformingly the court records were not available and in the circumstances the certificate granted by Sri Ram Nagina Tiwari confirming the underground suffering should have been accepted.

The same submissions have also been advanced by Mr. Birju Prasad, learned Government Pleader No.13 to uphold the recommendation made by the State Advisory Committee and the Home (Special) Department, Government of Bihar.

These arguments have been contested by Mr. Pandey learned Senior Panel Central Government Counsel appearing for the Union of India to submit that in absence of the details as regarding the involvement of the petitioner in the freedom struggle, a mere production of a Personal Knowledge Certificate would not be sufficient to accept the claim especially where it is based on underground suffering.

I have heard learned counsel for the parties and I have perused the records.

It is under the order of this Court that the records of the proceedings have been produced by the Home (Special) Department and what I find from the records is that the claim is based simply on the statement made by the petitioner for having undergone underground suffering for the period from 14.8.1942 to 16.3.1943. The application form is present at page 1 of the file and except for a statement of remaining underground as stated above, there is no discussion in the



application form regarding the case in which the petitioner had gone underground. In my opinion, in absence of any details of the case in which the petitioner had gone underground, a simple production of a Personal Knowledge Certificate would not suffice the requirements. Even though the 'Pension Scheme' brought in force by the Union of India is a beneficial scheme in recognition of the participation of the freedom fighters but then the extension of benefits has to be on satisfaction of the essential requirements, otherwise there is all possibility of a misuse of the benefits so extended.

In so far as the present case is concerned, even though the petitioner claims to have remained underground for a period ranging 14.8.1942 to 16.3.1943 there is no discussion of the case in which he went underground and whether it was in relation to the freedom struggle. Even the Personal Knowledge Certificate of the freedom fighter, Sri Ram Nagina Tiwari makes no such mention of the case in which the petitioner was found involved as manifest from the certification present at page 20 of the file. Though the said Sri Ram Nagina Tiwari mentions that prohibitory orders were issued against the petitioner and he evaded arrest but as I have said, the petitioner has not given details of the case in which the said prohibitory order was issued nor it is mentioned in the Personal Knowledge Certificate granted by said Sri Ram Nagina Tiwari.

In the circumstances discussed where the details of the case in which the prohibitory orders were issued against the petitioner and in which connection he had gone underground, are not present either in the



application of the petitioner or in the Personal Knowledge Certificate granted by freedom fighter Sri Ram Nagina Tiwari, in my opinion the claim of the petitioner in absence of supportive documents could not have been accepted and was correctly rejected on 27.11.2000 and which opinion has been again endorsed in the order dated 4.1.2012 impugned in the writ petition.

For the reasons so discussed, I am not persuaded to interfere with the order dated 4.1.2012 of the Government of India rejecting the claim of the petitioner impugned at Annexure-11 and the writ petition is accordingly disposed of.

Let the records so produced by Mr. Birju Prasad, learned Government Pleader No.13 be returned to him.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08-12-2016
Transmission Date	NA

