

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8255 of 2012

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Bageswari Devi, wife of Triveni Kant Jha R/O Village & P.O.- Sonupur, P.S.-
Rosera, District- Samastipur

.... Petitioner/s

Versus

1. The Union of India through the Ministry of Home Affairs Government of India,
Freedom Fighter Section, Lok Nayak Bhawan, Khan Market, New Delhi
2. The Under Secretary, Ministry of home Affairs (FFR Division-CZ Section), First
Floor, Lok Nayak Bhawan, Khan Market, New Delhi
3. The State of Bihar - through the Joint Secretary Home (Spl.) Department, Bihar,
Patna
4. District Magistrate, Samastipur
5. Treasury Officer, Samastipur
6. Accountant General (A&E), Jharkhand, P.O.- Doranda, Ranchi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar

For the Respondent/s : Mr. Sunil kr. Mandal, SC24

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 23-09-2016

Heard Mr. Mukesh Kumar learned counsel for the petitioner,
Mr. Sunil Kumar Mandal, learned S.C.24 for the State and Mr.
Anshuman Singh learned Central Government Counsel.

The petitioner has deceased and stands substituted by his
widow who is pursuing the matter on his behalf as any order passed in
the present proceedings would also govern the rights and
responsibility of the substituted petitioner.

With the consent of the parties, the matter has been taken up for
consideration and final disposal at the stage of admission itself.



The petitioner is aggrieved by the order dated 13.3.2012 as contained in Annexure-1 passed by the respondent- Under Secretary, Ministry of Home Affairs, Government of India, New Delhi whereby the Swatantrata Senani Samman Pension sanctioned to the petitioner has been cancelled and orders have been passed for recovery of the pension drawn by the deceased petitioner. The order of cancellation passed by the Government of India is resting on a recommendation made by the Home (Special), Department, Government of Bihar as contained in the letter of the Joint Secretary dated 28.12.2011 placed at Annexure-2 to the writ petition.

The facts are not in dispute, it is an admitted position that the deceased petitioner was sanctioned Swatantrata Senani Samman Pension vide order dated 2.5.1989 placed at Annexure-4 with effect from 1.8.1980. On an objection subsequently being raised as to how the petitioner claiming to be a freedom fighter, was also in the service of the British Government soon after his release, that an enquiry was initiated and which has finally culminated in the recommendation of the State Government in its Home (Special) Department whereby the recommendation is made for cancellation of the freedom fighter pension to the deceased by the Joint Secretary and which has been accepted by the Government of India as reflected form the letter of the Under Secretary dated 14.3.2012 impugned at Annexure-1. The

petitioner being aggrieved is before this Court.

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

The sole objection raised by the respondents to cancel the grant is, that whereas the petitioner on one hand claims to have suffered incarceration in connection with freedom struggle for the period 18.8.1942 to 19.2.1943 and on the other hand he has joined the British service on 3.1.1944, which is incomprehensible. The explanation given by the petitioner before the authorities is that, whereas the selection process was completed before his custody, it is after his release that he joined the services. However this stand of the deceased petitioner was not accepted and on a suspicion that the petitioner as a traitor was rewarded with the police service, that his freedom fighter pension has been cancelled. There is complete absence of any evidence on record to disapprove the stand taken by the deceased petitioner and the explanation given by him as regarding his service.

Mr. Mukesh Kumar has relied upon a resolution of the Cabinet Department of the Government of Bihar present at Annexure-10 which is dated 13.8.1992. The term 'Government servant' stands explained at paragraph 3 of the circular to mean all such Government servants who before or after release from incarceration, had joined Government service at any time. The term '**any time**' has not been explained and it is submitted by Mr. Mukesh Kumar that in absence of

any explanation, the joining of Police Service after release from custody cannot be doubted and a mere circumstance that the petitioner joined service after suffering incarceration *ipso facto* cannot be a ground for cancellation of freedom fighter pension in absence of any document confirming the suspicion so raised by the respondents.

The second issue which is sought to be canvassed by learned counsel for the State as well as the Union of India is the period of incarceration. In my opinion since no doubt in this regard is expressed in the recommendation of the Home (Special) Department dated 28.12.2011 rather the Joint Secretary has clearly mentioned that the period of incarceration from 18.8.1942 to 19.2.1943 stands confirmed, any objection being raised by the respondents, is beyond the objection raised and thus cannot be accepted and is rejected.

The order of cancellation has to be decided on the basis of the objection raised and the objection herein is that there is absence of explanation to the joining of service by the deceased petitioner after his release from incarceration. The objection stands explained in the circular of the Government present at Annexure-10 dated 13.2.1982 and which takes into fold all such Government servants who have joined Government service after their release from incarceration.

In view of the circumstances discussed and in absence of any evidence which would confirm the petitioner as a traitor in the

freedom struggle, a mere suspicion raised and a doubt created would not be sufficient to cancel the freedom fighter pension so granted to the deceased petitioner.

For the reasons aforementioned, the orders impugned at Annexure-2 passed by Joint Secretary, Home (Special), Government of Bihar dated 28.12.2011 together with the order passed by Under Secretary, Ministry of Home Affairs, Government of India dated 13.3.2012 impugned at Annexures- 1 cannot be upheld and is accordingly set aside. Since the original petitioner has since deceased the widow of the deceased petitioner would be entitled to the arrears of the freedom fighter pension as admissible to the deceased petitioner till his death and thereafter to the family pension so admissible to her under the Scheme.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR	
CAV DATE	
Uploading Date	7.10.16
Transmission Date	