

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

-:-

C.W.P No. 1330 of 2008(O&M)

Date of Decision: February 03, 2016.

Mohan Singh

..... Petitioner

Versus

Union of India & Ors.

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. G.P.S.Bal, Advocate, for the petitioner.

Mr. Shivoy Dhir, Advocate, for respondent No.1.

Mr. B.M.Vinayak, Deputy Advocate General, Punjab.

Rajesh Bindal, J.

This is an unfortunate litigation in which a freedom fighter, who remained in jail at the time of Quit India Movement, 1942 from October 20, 1942 to July 24, 1943 is before this Court as his pension under the Swatantarta Sainik Sanman Pension Scheme (for short 'the Scheme') was withdrawn vide, order dated 31.12.2007.

The petitioner is stated to be 97 years of age at present. It is claimed that from October 20, 1942 to July 24, 1943, he remained in Central Jail, Lahore, consequent upon the sentence (Najarbandi) awarded by the Special Magistrate, Lahore. He was granted Swatantarta Sainik Sanman pension, however, the same was withdrawn by order dated 31.12.2007 on the ground that he could not establish that he remained in jail for six months as is the condition in the Scheme.

Learned counsel for the petitioner submitted that in the earlier round of litigation in C.W.P. No. 3790 of 1994 titled as “Mohan Singh Vs.

Union of India & Ors.”, decided on 01.06.1995, Union of India in reply to Para – 9 of the petition admitted that period during which the petitioner was kept in jail was verified from the State of Punjab. Hence, rejection of the claim of the petitioner on the ground that he could not establish the period during which he remained in jail, cannot be sustained. He further referred to the judgment of Hon'ble Supreme Court passed in Civil Appeal No. 6718 of 2001, titled as **Gurdial Singh Vs. Union of India & Ors.**, to submit that it is beneficial policy providing for certain benefits to the persons who suffered during independence movement for the country, hence, liberal construction is required.

Learned counsel for respondent No.1- Union of India could not dispute the facts stated in the reply dated 07.12.1994 earlier filed by it in C.W.P. No. 3790 of 1994.

Heard learned counsel for the parties and perused the paper-book.

In the case in hand, the case of the petitioner for grant of pension under the Scheme has been rejected by the Government of India on the ground that as per para 3 of the Scheme a person claiming pension should have suffered minimum imprisonment of six months on account of participation in freedom struggle. It was subject to furnishing of documents in support thereof and the petitioner could not prove this fact. However, if the contents of the reply earlier filed by the Union of India in C.W.P. No. 3790 of 1994 are considered, the ground on which claim of the petitioner was rejected, cannot be legally sustained. It clearly states that on

verification from the State Government, it was found that the petitioner suffered imprisonment from October 20, 1942 to July 24, 1943. The relevant extract from reply reads as under:-

“ As such, the verification from the Government of Punjab was sought and the State Government of Punjab verified his sufferings from 20.10.1942 to 24.07.1943 ”

Once period of suffering of imprisonment of more than six months had been admitted in the reply filed by the Union of India in C.W.P No. 3790 of 1994 filed by the petitioner earlier, order rejecting pension of the petitioner under the Scheme cannot be legally sustained.

Hon'ble the Supreme Court in **Gurdial Singh's** case (supra) had opined that the grant of benefits under the scheme has to be liberal and technical approach is not required to be taken for examining the claims of the persons, who have suffered more than six months of imprisonment. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. Their cases are required to be examined on the basis of probabilities and not on the touch stone of the test of 'beyond reasonable doubt'. The relevant extract from the judgment passed by the Hon'ble Supreme Court in **Gurdial Singh's** case (supra) reads as under:-

“The standard of proof required in such cases is not such standard which is required in criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the scheme is to honour and to mitigate the sufferings

of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. It should not be forgotten that the persons intended to be covered by scheme have suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of the claimants under this scheme is required to be determined on the basis of the probabilities and not on the touch-stone of the test of 'beyond reasonable doubt'. Once on the basis of the evidence it is probabalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."

For the reasons mentioned above, impugned communication dated 31.12.2007 (Annexure P/16) declining the benefit of pension to the petitioner cannot be legally sustained. The petitioner is held entitled to pension under the Scheme. The amount be calculated and paid to the petitioner within three months from the date of receipt of copy of this order.

Disposed of accordingly.

February 03, 2016
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(RAJESH BINDAL)
JUDGE