

CWP No.1363 of 2013

KUMAR MANOJ
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CWP No.1363 of 2013
Date of Order: 20.07.2016**

Darshan Lal (since deceased) through his LRs.

....Petitioners

Versus

Union of India and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Rajeev Anand, Advocate for the petitioners.

Mr. Vivek Singla, Advocate for UOI.

RAKESH KUMAR JAIN, J (ORAL)

Petitioner-Darshan Lal (since deceased), through his legal heirs, has challenged the order dated 11.1.2013 by which grant/restoration of Pension from Central Revenues under the Swatantrata Sainik Samman Pension Scheme of 1980 has been cancelled w.e.f 11.01.2011.

It is pertinent to mention that the petitioner was receiving pension both from the Centre and State, which was stopped in view of an order dated 11.1.2011. Said order was challenged by the petitioner in writ petition bearing No.20657 of 2011, which was disposed of by this Court vide order dated 19.10.2012, the relevant portion of which read as under:

“Once the State of Punjab recommended the case of the petitioner, then if the UOI has to decline the prayer, it ought to have sufficient material to state that recommendation made by the State of Punjab on the basis of material referred to in the recommendatory letter is erroneous or false. Without establishing this fact, it would be erroneous to accept the reasoning adopted by the respondents. Consequently, the

impugned order is set aside and the respondent-UI is directed to reconsider the matter in the light of what has been stated above. Needful be done within a period of 6 weeks from the date of receipt of certified copy of this order. The writ petition is, accordingly, disposed of.”

Pursuant to the aforesaid order, respondents have passed the impugned order dated 11.1.2013 holding that even the co-prisoner's Certificate, which is considered as secondary evidence, in the absence of record of Jail sufferings, does not make him eligible as the Certificate of one of the co-prisoners, namely, Des Raj has not been found acceptable being ineligible certifier. After notice was issued in this case, this Court passed the following order on 24.2.2016:

“Counsel for the respondent has submitted that the certificate given by the co-prisoner namely Des Raj has been found unacceptable because he has not been found eligible certifier as he had undergone only 8 months imprisonment and does not qualify.

However, counsel for the petitioner has submitted that the said Des Raj who was a co-prisoner with the petitioner, has been issued Tamra Patra and is also getting pension both from the State of Punjab and the Union of India.

Counsel for the respondent prays for an adjournment to seek instructions in this regard, as to whether Des Raj has been accepted as a freedom fighter and is being given pension by the State of Punjab and Union of India.

Adjourned to 14.03.2016.”

The learned counsel appearing on behalf of Union of India has admitted before this Court, during the course of hearing that “Des Raj/co-prisoner of the petitioner is getting pension both from the State and the Central Revenue, as a Freedom Fighter, on the basis of order passed by this Court.

I have heard learned counsel for the parties and perused the

available record from which it is found that the only objection raised by the respondent in stopping the payment of pension to the deceased-Darshan Lal is about the validity of secondary evidence led by him by way of a Certificate of the co-prisoner Des Raj, which was not accepted as he was not found to be an eligible certifier, for having suffered imprisonment for eight months instead of one year. However, it is not out of place to mention here that the said Des Raj/co-prisoner of the petitioner is getting pension both from the State and the Central Revenue, may be under the order of this Court as the Court has found him to be a genuine freedom fighter.

Thus, as a sequel to what has been discussed hereinabove, it does not lie in the mouth of respondent No.1 to decline the benefit of grant of pension to the petitioner only for the reason that his co-prisoner Des Raj is not eligible certifier though he has been accepted as a freedom fighter and is getting pension both from the State and the Central Revenue.

Consequently, present petition is hereby allowed and directions are issued to respondent No.1 to pass an appropriate order for grant of pension to the petitioner along with arrears, if any and interest thereon. The entire exercise shall be completed within a period of two months from the date of receipt of certified copy of this order.

July 20, 2016
manoj

(RAKESH KUMAR JAIN)
JUDGE