

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

CWP No.26329 of 2013 (O&M)

Date of Decision:22.04.2016

Nishan Singh (deceased) through his LRs

. . . .Petitioner

Versus

Union of India and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Gurnam Singh, Advocate,
for the petitioner.

Mr.Udit Garg, Advocate,
for respondent No.1.

Mr.V. Ramswaroop, Addl. A.G. Punjab.

RAKESH KUMAR JAIN, J.

The petitioners are the legal heirs of Nishan Singh (deceased), who filed this petition for quashing of the orders dated 20.08.1992, 02.12.2004 and 23.09.2013 rejecting the prayer for grant of freedom fighter pension.

The Freedom Fighter Pension Scheme, introduced by the Government of India in 1972, was meant for pension to the freedom fighters participated in the freedom struggle. The scheme was modified and renamed as Swatantrata Sainik Samman Pension Scheme, 1980 [for short 'the Scheme'], introduced on 15.8.1980, made applicable w.e.f. 01.08.1980, as per which pension was extended to all the freedom fighters as token of samman (respect).

Nishan Singh (deceased) allegedly participated in the Quit India Movement and suffered imprisonment in Central Jail

Lahore w.e.f. 20.10.1942 to 25.09.1943 along with his co-prisoners, namely, Om Parkash Gir s/o Sh. Natha Ram, r/o Village and Post Office Ghanur, Tehsil Rajpura, District Patiala and Sher Singh s/o Mehtab Singh r/o Vilalge Baswan, Tehsil Rajpura, District Patiala, who have been granted freedom fighter pension by the Government of India as well as Government of Punjab and also awarded Tamra Patra.

Nishan Singh (deceased) submitted an application on a prescribed proforma on 18.12.1981 to the Freedom Fighter Division of the Government of India which was received in the Department of Freedom Fighter of the State Government on 24.12.1981. His case was referred for an enquiry to the Deputy Commissioner, Patiala and was recommended to the State Government for grant of freedom fighters pension under the Scheme. The State Government also recommended the case of the petitioner to the Government of India for grant of freedom fighter pension by them after verifying his *bona fide* on the ground that the official record relating to his imprisonment was not available but his co-prisoners, who themselves had undergone imprisonment for more than one year, testified this fact. The letter was sent on 26.5.1989, followed by another letter dated 10.1.1997, in which the recommendation made by the Government of Punjab was reiterated. Nishan Singh (deceased) was also granted freedom fighter pension on 6.5.1997 w.e.f. 16.1.1997 @ ₹1100/- per month with medical allowance of ₹40/- and assigned PPO No.8115/SS/Punjab, however, the Government of India, Ministry of Home Affairs, informed Nishan Singh that his case has been put up before the Punjab Committee

consisting of prominent persons, who had an intimate knowledge of the freedom struggle movement but the said authority did not recommend his case and was thus rejected. This communication was issued on 20.8.1992, against which Nishan Singh filed CWP No.649 of 2000 before the Apex Court, where his petition was disposed of on 15.1.2001 with the following order: -

“Heard Shri Goodwill Indoovar, learned counsel for the petitioners. The writ petition is disposed of with the order that of the recommendation sent by the State Government in favour of the claim of pension by petitioners has not yet been disposed of, the competent authority of the Central Government will dispose of the same in accordance with law and communicate the result thereof to the petitioners expeditiously, if possible within a period of four months of receipt of a copy of this order at its end.”

Thereafter, the case of the petitioner was reconsidered by the Government of India and rejected on the ground that the Punjab Committee, constituted for verification of his claim, has not recommended his case. The petitioner, who had been receiving the freedom fighter pension from the Punjab Government, received a notice from the Government of Punjab as to why the pension being awarded to him be not stopped/cancelled because his case has been rejected for pension by the Government of India. It is, at this stage, Nishan Singh (deceased) filed this petition.

The case set up by the petitioner is that the provisions of the Scheme have been misread by the respondents. A person

would be a freedom fighter if he had suffered a minimum imprisonment of six months in the mainland jail before the Independence, which can be proved by him either by way of primary evidence or secondary evidence. The 'primary evidence' would be the imprisonment/detention certificate from the concerned jail authority, District Magistrate of the State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release and the 'secondary evidence' would be in a case where the records of the relevant period are not available but the detention could be proved in the form of two Co-Prisoners Certificates, who have proven jail suffering of minimum one year and were with the alleged applicant/freedom fighter in the jail. It is submitted that the petitioner has been awarded freedom fighter pension by the State Government, having been satisfied about his imprisonment suffering of more than six months on account of his participation in the freedom struggle during the Quit India Movement when he was allegedly in Lahore Jail (Mainland) Jail before partition along with his two co-prisoners, who also had suffered imprisonment for more than a year, awarded Tamra Patra by Government of India and paid freedom fighter pension both by the Government of India as well as Government of Punjab. It has further submitted that the case of the petitioner has been rejected by the Government of India on the ground that the Punjab Committee, setup by it, consisting of prominent persons, have not recommended the case of the petitioner. It is submitted that the recommendation of the Committee cannot be applied to the case of the petitioner as even

according to the Government of India, the said committee has to examine the case of those freedom fighters, who remained underground or were interned in their home or externed from their District under the order of the competent authority for a period of six months or more.

On the other hand, learned counsel for the respondents has submitted that the case of the petitioner has been duly considered by the Punjab Committee, constituted by the Government of India, who had found that the petitioner was not entitled for the freedom fighter pension.

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

There is no dispute that the petitioner had been receiving freedom fighter pension from the Government of Punjab after having been satisfied with the certificates of two co-prisoners, who had certified that the petitioner had suffered political suffering during Quit India Movement from 20.10.1942 to 25.09.1943 in the Central Jail, Lahore for a period more than one year. The co-prisoners are Tamra Patra holders and are getting pension from both Government of India and Government of Punjab. The case of the petitioner was strongly recommended by the Government of India but it has been rejected on the ground that the Punjab Committee, consisting of prominent persons by the Government of India has not recommended the case of the petitioner. The only issue, thus, in this case is as to whether in a case where the petitioner has claimed freedom fighter pension on account of his suffering of jail, during freedom struggle, in the mainland, for more

than six months, is entitled on the basis of secondary evidence and whether the case of the petitioner can be rejected by the respondents on the recommendation of the committee, who would look into the case of the person remained underground/interned or externed as per Circular No.8/12/95-FF(P) dated 13.4.1982.

In order to appreciate the issue involved, it would be relevant to refer to the following provisions of the Scheme, which read as under: -

“(a) A person who had suffered minimum imprisonment of six months in the mainland jails before independence. Ex-INA personal are also eligible for pension if the imprisonment/detention suffered by them was outside India for six months or more. In case of women and SC/ST freedom fighters, the minimum period of actual imprisonment for eligibility is three months.

(b) 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 not served.*

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.

(c) A person who, on account of participation in the freedom struggle, was interned in his home or externed from his district under the order of the competent authority for six months or more.

(d) A person whose property was confiscated or attached and sold due to participation in the National Freedom Struggle under the orders of the competent authority.

(e) A person who permanently incapacitated during firing or lathi charge.

(f) A person who lost his Government job (Central or State Government, including job in local bodies) and thus deprived means of livelihood for participation in the National Freedom Struggle.

(g) A person who was awarded the punishment of 10 strokes of caning/flogging/whipping.”

“(a) in case of imprisonment a certificate from the concerned jail authority, District Magistrate or the State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release. In case records of the relevant period are not available, a Non-Availability of Records Certificate (NARC) from the concerned State Government along with two Co-Prisoner Certificates (CPC) from freedom fighters who had a proven jail sufferings of minimum 1 year and who were with the applicant in the jail for a minimum period of six months. In case the certifier happens to be a sitting M.P. or MLA or Ex M.P. M.L.A, only one Co-Prisoners’ Certificate in place of two is required.

(b) For claims of underground suffering, documentary evidence by way of Court's Government's order proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention. Where records of the relevant period are not available, a Non-Availability of Records Certificate (NARC) from the concerned State Government along with a personal knowledge Certificate (PKC) from the prominent freedom fighter who has proven jail suffering of minimum two years and who happened to be from the same administrative unit, is required.

(c) For claims of internment or externment, orders issued by the competent authority from the official records. In the absence of official records, a Non-Availability of Records Certificate (NARC) from the concerned State Government along with a certificate from prominent freedom fighters who had themselves undergone suffering of imprisonment for two years or more.

(d) In case of confiscation and sale of property, orders of dismissal or removal from service for taking part in the National Freedom Struggle, orders of the competent authority is required.

(d) For claims of permanent incapacitations:-

(i) Certificate from the District Magistrate stating that permanent incapacitation was done by bullet injury/lathi charge sustained during participation in the National Freedom Struggle.

(ii) *Medical Certificate from the Civil Surgeon in support of the handicap.*

(f) *For claims of punishment of 10 strokes of caning/flogging/whipping, copies of orders passed by the competent authority from the official records.*

(g) *For claims of martyrdom, evidence from official records or news papers of the relevant time in support of killed in action or in detention etc.”*

“Government of India vide its Circular No.8/12/81-FF(P) dated 13.04.82 laid down the detailed instructions in case of underground / internment / externment sufferings, it is reproduced as follows: -

- a. Before recommending the cases for sanction on the basis of secondary evidences, the State Government must satisfy themselves that the applicant was a genuine freedom fighter and the official records of that period were not available;*
- b. The certifier issuing PKC should ordinarily belong to the same district as that of the certified;*
- c. There should be no complaints about indiscriminate certification against the certifier;*
- d. All cases based on secondary evidence like PKC should be submitted for consideration to the State Advisory Committee and extract of the proceedings of the State Advisory Committee should be forwarded along with the*

recommendation to the Central Government for consideration.”

A perusal of the aforesaid provision shows that the Scheme recognizes various categories of the freedom fighters, which may be summed up as under: -

- (i) Imprisonment for more than six months in the mainland Jails.*
- (ii) Ex-INA personal, who suffered imprisonment/detention outside India for six months.*
- (iii) Women and SC/ST freedom fighters, who suffered actual imprisonment of three months.*
- (iv) A proclaimed offender,, one on whom an award for arrest/head was announced, one whose detention order was issued but not served, remained underground for six months or more, it should not be a case of voluntary underground suffering or self-exile for party work under the command of the party leaders.*
- (v) Who had been interned in his home for participation in the freedom movement or externed from his District for six months under the orders of the competent authority.*
- (vi) whose property was confiscated or attached, sold due to participation in the National*

Freedom Struggle under the orders of the competent authority.

(vii) who is permanently incapacitated during fire or lathi charge.

(viii) Who has lost his Government job (Central or State Government, including job in local bodies) and deprived of livelihood.

(ix) who was awarded punishment of 10 strokes of caning/flogging/whipping.

The aforesaid categories of freedom fighters have to prove their case by leading relevant evidence as prescribed.

In the case of imprisonment for more than six months in the mainland jail, the alleged freedom fighter has to prove his case either by way of primary evidence or if it is not available then by secondary evidence, which I have already mentioned in the earlier part of this order and in case of underground suffering, internment or externment, separate set of evidence is required to be tendered and by virtue of the Circular No.08/12/81-FF(P) dated 13.04.1982, relied upon by the Government of India and from the aforesaid facts and circumstances, it is very much clear that the Committee has only to look into the evidence tendered to examine the case of underground/internment or externment to declare a person claiming himself to be a freedom fighter and in a case in which the certificate has been given by the co-prisoners of the political suffering of a person, who had been with them in the mainland jail on account of their participation in the freedom struggle for a period more than six months and such co-prisoners

have already adjudged as freedom fighters holding Tamra Patra and are being paid freedom fighter pension both by the Government of India and Government of Punjab. In the case of 'underground suffering' if the alleged freedom fighter have documentary evidence by way of the Court's/Government's order, proclaiming himself as an absconder, having an award on his head or for his arrest or ordering his detention where the record of relevant period are not available, then it has to be proved by the prominent freedom fighter who had proven jail suffering of minimum two years and who happened to be from the same administrative unit. In the case of 'internment or externment', if the alleged freedom fighter has no order issued by the competent authority then again a certificate from a prominent freedom fighters, who had themselves undergone suffering of imprisonment for two years or more, is required to be proved. Thus, in view of this background, a Circular No.08-12/81-FF(P) dated 13.4.1982 was issued as per which a committee is ordered to be constituted of prominent freedom fighters, which is not a requirement in the case where a freedom fighter has claimed pension on the basis of his sentence for more than six months in the mainland jail, who had only to prove the said fact by way of certificate of two co-prisoners, who had proven jail suffering for minimum one year and were with the said applicant in the jail for a minimum period of six months and in case the said certificate is of M.P. or MLA or Ex M.P. M.L.A, then his own affidavit/certificate is sufficient instead of certificate by two co-prisoners.

Thus, in view of the aforesaid facts and circumstances, this Court is of the considered opinion that the impugned orders

are patently illegal and are thus quashed. Respondent No.1 is directed to pay freedom fighter pension to the present petitioners, who are the legal heirs of Nishan Singh (deceased), from the date of the application along with arrears and respondent No.2, who has been influenced by the order of rejection passed by respondent No.1, is further directed to continue to pay its freedom fighter pension to the legal heirs of Nishan Singh (deceased), who have been impleaded as a party in this case, along with arrears, if any.

22.04.2016*Vivek***(RAKESH KUMAR JAIN)
JUDGE**