

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 6545 of 2010 (O&M)

Date of Decision: January 30, 2017

Surjit Kaur

.....Petitioner

Vs.

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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

Mr. Parminder S. Kanwar, Sr. Standing counsel,
for UOI, respondent No.1.

Mr. P.S. Bajwa, Addl.A.G., Punjab.

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M.M.S. BEDI, J.

Petitioner Surjit Kaur is widow of Gurbachan Singh who had applied for grant of freedom fighter pension on August 17, 2000 claiming that he participated in the freedom struggle of the country during Quit India Movement and had undergone imprisonment in Lahore Jail w.e.f. February 21, 1941 to August 13, 1942. Gurbachan Singh disclosed in this application that Anup Singh and Dhara Singh were his co-prisoners. Husband of the

petitioner had submitted an affidavit of said co-prisoners. The Deputy Commissioner, Patiala, had summoned the husband of the petitioner and his co-prisoners; verified the documents and recommended the case of the husband of the petitioner for grant of freedom fighter pension. On the basis of the recommendation of the Deputy Commissioner, case of husband of the petitioner was recommended by the State to the Government of India for the grant of freedom fighter pension under Swatantra Sainik Sanman Pension Scheme, 1980 on April 24, 2002, stating that the original record pertaining to the jail suffering of Gurbachan Singh was not available. The Department of General Administration of Punjab Government granted freedom fighter pension to Gurbachan Singh under Swatantra Sainik Sanman Pension Scheme, 1980 w.e.f. May 7, 2002 vide annexure P-2, dated June 28, 2002. Name of the husband of the petitioner was included at Sr. No.1522 of the approved list of freedom fighters of District Patiala. Pension Payment Order was issued by the Treasury Charitable Endowments, Punjab, vide letter annexure P-3 dated June 28, 2002. The Treasury Charitable Endowments, Punjab wrote a letter annexure P-4 dated July 25, 2002 to the District Treasury Officer, Patiala regarding the freedom fighter pension of husband of the petitioner stating therein that Gurbachan Singh has been issued PPO No. 8362 and the freedom fighter pension has been sanctioned to him at the rate of Rs.2000/- w.e.f. May 7, 2002. However, vide letter annexure P-5, dated March 12, 2009, husband of the petitioner was held not eligible for the

grant of Swatantra Sainik Sanman Pension. The operative part of the order annexure P-5, dated March 12, 2009 reads as under:-

- “5. On examination of the claim, it is found that Shri Gurbachan Singh is not eligible for grant of Samman Pension due to the following discrepancies/ shortcomings:
- i) He has not produced any primary evidence in support of his sufferings.
 - ii) He has claimed that he take part in the Quit India Movement and remained in jail from 21.2.1941 to 13.8.1942 is doubtful as Quit India Movement started in August.
 - iii) The State Government recommendation is doubtful because the Quit India Movement started in August, 1942 and they are verifying that he participated in Quit India Movement.”

On receipt of communication annexure P-5, the Government of Punjab, Department of General Administration vide letter annexure P-6 dated December 23, 2009 communicated to the Treasury, Punjab, that the Government has decided to stop the freedom fighter pension in favour of Gurbachan Singh forthwith, the same having been refused by the Government of India on the grounds mentioned in letter annexure P-5.

Aggrieved by the orders annexures P-5 and P-6, the petitioner has filed the present petition for seeking a direction for grant of freedom fighter pension under the Scheme floated by Government of India mainly on the ground that one Bhagwan Singh, similarly circumstanced, had been granted pension w.e.f. August 1, 1980 but the same was suspended on the ground that he was not bonafide freedom fighter. Bhagwan Singh had filed a CWP No.12554 of 1993 for a direction to the respondent authorities to consider his claim for the grant of freedom fighter pension. A direction was issued to consider the claim of the petitioner within a period of 3 months vide order annexure P-7 dated March 22, 1994. Through the present petition, the petitioner seeks quashing of annexures P-5 and P-6 and for grant of Swatantra Sainik Sanman Pension under the Scheme of 1980.

In the reply filed on behalf of respondents No.1 and 2, the claim of the petitioner has been contested, inter-alia on the ground that the name of husband of the petitioner was recommended by the Government of Punjab to the Union of India but his claim had been rejected vide order dated March 12, 2009 as he did not fulfill the requirements.

In the reply filed on behalf of respondent No.3, reliance has been placed on instructions annexure R-1 dated December 2, 2004 on the subject of grant of pension under the Punjab Government Swatantra Sanman Pension Scheme, 1982, laying down that in cases where the documents / co-prisoner's certificates are submitted by the applicant. The case is recommended by the Punjab Government to the Government of India; and

that the application can be rejected in case the documents are not acceptable by the Government of India. The freedom fighter pension in those cases will be stopped.

The short question which is required to be determined in the present case is whether the rejection of the claim of the husband of the petitioner vide order annexure P-5 dated March 12, 2009 is illegal, unreasonable or discriminatory.

The claim of husband of the petitioner for grant of Swatantra Sainik Sanman Pension has been declined on the ground that he has not produced any primary evidence in support of his sufferings and his claim that he had taken part in Quit India Movement and remained in jail from February 21, 1941 to August 13, 1942 was doubtful as Quit India Movement had started in August, 1942. Another ground for rejection of the claim of the husband of the petitioner was that the recommendations of the State Government was doubtful because Quit India Movement was started in August 1942 and that they were verifying whether husband of the petitioner had participated in Quit India Movement.

With the assistance of counsel for the petitioner and State counsel, I have gone through the policy for grant of Swatantra Sainik Sanman Pension, copy of which has been placed on record as annexure P-1. I have considered the facts and circumstances of this case. The Freedom Fighter Pension Scheme, 1972 was started from August 15, 1972 providing for grant of pension to living freedom fighters and their families, and in

cases where they were no more alive, to the family of the martyrs. The Freedom Fighters Pension Scheme, 1972 was further liberalized in 1980 and was named as Swatantra Sainik Sanman Pension Scheme, 1980. Under the said scheme, a person is eligible for Swatantra Sainik Sanman Pension if he had undergone at least one of the sufferings prescribed in the Scheme i.e. imprisonment/ detention against an executive order/ underground sufferings/ externment/ internment etc. on account of his participation in the freedom struggle. Participation in Indian National Army (INA) and the Indian Independence League was also treated as participation in the National Liberation Movement. Under the provisions of Swatantra Sainik Sanman Pension Scheme, 1980, every applicant, who claims to have suffered the sufferings is required to produce the documentary evidence in support of his claimed sufferings. As per the provisions of Swatantra Sainik Sanman Pension Scheme, 1980, any applicant who claims jail suffering is eligible for grant of Central Samman Pension subject to the fulfillment of the following conditions:-

“2.1 Imprisonment suffering:- A person who had suffered minimum imprisonment of six months (3 months in case of women, SC/ST freedom fighters) on account of participation in freedom struggle subject to furnishing of the following evidences:-

- (a) **Primary Evidence:-** Imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Govt. indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release.
- (b) **Secondary Evidence:** In case records of the relevant period are not available, the secondary evidence in the form of 2 co-prisoner certificates (CPC) from freedom fighters who have proven jail suffering of minimum 1 year and who were with the applicant in the jail could be considered provided the State Government/Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available. In case the co-prisoner was a sitting or Ex. M.P./ M.L.A., only one certificate in place of the two is required. In the case of persons belonging to INA category, only one CPC is required.”

The claim of the husband of the petitioner has been rejected mainly on the ground that he has not produced the primary evidence of his sufferings and that the Quit India Movement had started in August 1942 after the alleged imprisonment of the husband of the petitioner.

A perusal of the claim indicates that in case the primary evidence is not available regarding detention of a person, the secondary evidence in the shape of imprisonment suffering can be produced which would be in the form of certificate of two co-prisoners who have proven jail sufferings of minimum one year and who were with the claimant in the jail. In the present case, the affidavits of two co-prisoners had been submitted in the year 2002.

The Division Bench of this Court in **Jagat Singh Vs. Union of India and others**, 2008 (12) RSJ 734 has held that once two certificates of co-prisoners have been submitted, the authority cannot compel the applicant to submit a fresh affidavit as it is very difficult in number of cases to find out even any co-prisoner after such a long time. The secondary evidence has been produced by the husband of the petitioner which has been ignored on another flimsy ground that the husband of the petitioner remained in Jail from February 21, 1941 to August 13, 1942 but the Quit India Movement started in August 1942.

So far as Quit India Movement is concerned, it was a civil disobedience movement launched at the Bombay session of the All-India Congress Committee by Mahatma Gandhi on 8 August 1942, during World

War II, demanding an end to British Rule of India. It was on August 8, 1942 when Cripps Mission had failed, Gandhi ji made a call to 'Do or Die' in his Quit India speech delivered in Bombay at the Gowalia Tank Maidan. The All-India Congress Committee launched a mass protest demanding "An Orderly British Withdrawal" from India. Quit India Movement was part of struggle of independence. The status of husband of the petitioner being a freedom fighter cannot be taken away on the ground that he had suffered imprisonment in freedom struggle prior to the date of Quit India Movement. The struggle for freedom by the freedom fighters cannot be said to have been initiated on one particular date and finished on August 15, 1947. Even otherwise, on the date of launching of Quit India Movement, the husband of the petitioner was in jail, as has been deposed by his two co-prisoners.

In view of the above said circumstances, the approach of the respondents is too technical with an objective to classify the freedom fighters in an unreasonable manner. It is not out of place to mention here that a liberal and not a technical approach is required to be followed while determining the merits of claims made by those who have sacrificed for the country. It will not be appropriate to require standard of proof in such cases comparable to the standards required in a criminal case to establish that a particular individual remained lodged in a jail during freedom struggle,. Quit India Movement being part of India's struggle for independence. The reasoning adopted by the respondents in declining Swatantra Sainik Sanman Pension to the husband of the petitioner is illegal.

The petition is allowed. Annexures P-5 and P-6 are hereby set aside. A direction is issued to respondent No.3 to restore the freedom fighter pension of the husband of the petitioner to the petitioner on the basis of merits of her husband Gurbachan Singh within a period of two months after the receipt of a certified copy of this order, with effect from the date it was stopped i.e. December 23, 2009. Respondents No.1 and 2 are also directed to sanction the freedom fighter pension of the husband of the petitioner to the petitioner w.e.f. the date of application i.e. September 17, 2000.

January 30, 2017
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.