

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 19183 of 2014

Date of Decision: January 18, 2017

Chameli Devi

.....Petitioner

Vs.

State of Haryana and ors.

.....Respondents

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

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Present:- Mr. Sushil Bhardwaj, Advocate
for the petitioner.

Mr. A.K. Yadav, Addl.A.G., Haryana.

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M.M.S. BEDI, J.

Through the instant petition Chameli Devi, the petitioner, widow of Jagan Nath who had been granted Swatantra Sainani Samman Pension in the year 1994 and from whom the pension has been withdrawn after the death of Jagan Nath on the ground that the benefit had been obtained on the basis of forged documents, has challenged the order/ letter dated October 3, 2013 (annexure P-7).

Brief facts relevant for adjudication of the present writ petition are that Jagan Nath as a member of Azad Hind Fauj having participated in

the freedom movement of the country was included at Sr. No. 285 at page 25 of the list of freedom fighters of District Sonapat. He had been issued identity card by Government of Haryana. The said identity card was signed by Tehsildar Sonapat and countersigned by the Deputy Commissioner, Sonapat. The said Jagan Nath who was husband of the petitioner was granted Swatantra Sainani Samman Pension by Government of Haryana vide Pension Order No. 102/ PPO No.E8196FF which number is mentioned on the identity card of the husband of the petitioner, copy of which has been placed on record as annexure P-1. The husband of the petitioner died on November 19, 1995, as is apparent from the death certificate annexure P-23. After the death of Jagan Nath, he was honoured with Tamarpatra by Chief Minister of Haryana on October 21, 1997.

After the death of the husband of the petitioner, the petitioner was not aware of the freedom fighter pension having been disbursed to her husband during his life time but in 2011, she incidentally came across the pension pass book and being an illiterate had shown the said documents to the family members and came to learn that the documents were of Swatantra Sainani Samman Pension which was being paid to her husband in his bank account No.6426 of Punjab National Bank, Murthal. Thereafter the petitioner made a representation to respondent No.3 by a registered letter dated April 19, 2011. The Deputy Commissioner, Sonapat had inquired into the matter. The petitioner being widow of Jagan Nath, freedom fighter, who died on November 19, 1995, was held entitled to pension and it was

recommended that she be disbursed the amount of pension, copy of the letter dated March 29, 2013 is appended with the petition as annexure P-6. Respondent No.4 had been directed to release the pension in favour of the petitioner. But despite specific direction, the pension was not released but a letter dated October 3, 2013 was sent to respondent No.4 stating therein that earlier memo dated July 29, 2013 in favour of petitioner widow of Jagan Nath be treated as withdrawn. It is mentioned in the letter that name of Jagan Nath, husband of the petitioner, had been omitted from the list of freedom fighters of District Sonapat.

The contents of the letter annexure P-7 sent by Chief Secretary to the Government of Haryana to the Treasurer, Charitable Endowments, Haryana, Manimajra, Chandigarh, read as follows:-

“Subject: Regarding transfer of Pension in favour of
Smt. Chameli Devi W/o Late Sh. Jagan Nath
Freedom Fighter.

Reference to your memo No. 285/SNP/714
dated 31.7.2013 on the subject cited above.

2. The Government vide order No 46/128/94-2PP dated 17/7.1997 had stopped the pension of late Sh. Jagan Nath r/o village Murthal District Sonapat after the verification of his documents submitted for sanction of Haryana Swatantra Sainik Samman Pension which were found bogus

and also waived off an amount of Rs.51841 in view of the report received from the Deputy Commissioner, Sonapat. Hence the pension sanction transfer order issued vide Govt. memo of even number dated 29.7.2013 in favor of Smt.Chameli Devi widow of late Sh. Jagan Nath R/o Murthal District Sonapat is hereby treated as withdrawn.

3. The name of late Sh. Jagan Nath R/o Murthal District Sonapat mentioned at Sr. No. 285 at Page No. 25 has also been omitted from the list of Freedom Fighters of District Sonapat.

Sd/-Under Secretary Protocol

For Chief Secretary to Govt. Haryana.”

The petitioner had sought information regarding the stoppage of pension under the RTI Act by filing representation annexure P-9, dated August 5, 2014 but the information was declined claiming privilege under Section 8 (e) of the RTI Act, 2005. It was also mentioned therein that no larger public interest was involved, however, partial information had been supplied.

In response to the notice issued to respondent No.2-Deputy Commissioner, the Deputy Commissioner submitted that the husband of the petitioner had been wrongly receiving the Swatantra Sainani Samman

Pension and other benefits from the State Government. It is highlighted that he never joined INA and as per letter of ASE Record Aurangabad to the Secretary Zila Sainik Board, Sonapat, he was enrolled in the Army on June 20, 1942. He was dismissed but not discharged from service on August 6, 1945 having caught red-handed supplying weapons to Indian National Army. The then Deputy Commissioner, Mr. Rajesh Khullar, on November 15, 1995 intimated the Chief Secretary to Government of Haryana regarding freedom fighters and their dependents pension from Central Revenue reporting that the husband of the petitioner was found having forged certificate on the basis of which he had received such pension and it was found bogus in an inquiry on the representation made by petitioner seeking transfer of such pension in her favour and omitting the name of his husband in the list of freedom fighters of District Sonapat.

A perusal of the above said sequence of facts clearly indicates that it is admitted fact that the husband of the petitioner was in Army. The dismissal of the husband of the petitioner for having supplied weapons to Indian National Army is an act of the protest and part of the struggle of the freedom. The documents submitted by the husband of the petitioner during his life time have been found to be false after his death by giving no opportunity of hearing to the petitioner. As a matter of propriety, the inquiry should have been conducted during the life time of the husband of the petitioner regarding his status as freedom fighter. After having permitted a person to receive Swatantra Sainani Samman Pension, the rules of natural

justice should have been followed which would include at least issuance of a notice to the person who was likely to be affected. The order annexure P-7 having been passed regarding stoppage of the pension is bad being violative of rules of natural justice. The petitioner has been deprived of all the benefits of the pension whereas no inquiry was conducted during the life time of the husband of the petitioner.

In the written statement, it has been denied that Jagan Nath was member of Azad Hind Fauj and participated in the freedom movement pleading that he was enrolled in the Army on June 20, 1942 and was dismissed from service on August 6, 1945 after having been Court marshaled. The revolutionary and rebellion act of members of the Army was part of the freedom movement.

In view of the above circumstances, I am of the considered opinion that pension which had been released to the husband of the petitioner cannot be stopped after his death on the ground that the documents on the basis of which he was granted the pension as status of a freedom fighter was obtained fraudulently on the basis of forged documents. The finding regarding fraud having been played by the deceased husband of the petitioner is not based upon any inquiry having been conducted by following the rules of natural justice, as such any order passed on the basis of presumption that the husband of the petitioner was not entitled to Swatantra Sainani Samman Pension is not sustainable in law and deserves to be set aside.

The petition is, thus, allowed and the order dated October 3, 2013 passed by respondent No.1 withdrawing Swatantra Sainani Samman Pension to the deceased husband of the petitioner is hereby set aside and a direction is issued to the respondents to restore all the benefits, such as, all arrears of pension with interest at the rate of 6% per annum from the date of filing of the petition, and the same be disbursed to the petitioner within a period of two months after the receipt of certified copy of the order.

January 18, 2017
sanjay

(M.M.S.BEDI)
JUDGE

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