

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20459 of 2013

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RAJENDRA SINGH S/O LATE MADHO SINGH RESIDENT OF
VILLAGE- RAGHOPUR, P.O.- PATUT, P.S.- RANITALAB (BIKRAM)
DISTRICT- PATNA

... .. Petitioner/s

Versus

1. The Union Of India Through Secretary, Dept. Of Home Ministry, New Delhi-110003
2. The Home Secretary, Govt. Of India, Ministry Of Home Affaris (Ppr Division- C2 Section) Ndcc-Ii Building, 2nd Floor, Sansad Marg, New Delhi- 110001
3. The Senior Accounts Officer, Central Pension Accounting Officer, Trikoot-Ii, Bhikaji Cama Place, (Behind Hyatt Hotel), New Delhi
4. The Senior Accounts Officer, Pay & Accounts Office (Pension & Misc.) Ministry Of Home Affairs, 2/10, Jam Nagar House, New Delhi
5. The State Of Bihar
6. The Joint Secretary, Home (Special) Department, Govt. Of Bihar, Old Secretariat, Patna- 800001
7. The District Magistrate, Patna
8. The S.D.O., Paliganj, Patna
9. The Anchal Adhikari, Bikram, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Chandra Jha
For the Respondent/s : Mr. Jawahar Pd. Karn

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 29-08-2018

Heard parties.

2. This writ petition under Article 226 of Constitution of India has been filed to quash letter dated 08.08.2013 passed by the Under Secretary, Govt. Of India (Respondent No. 9) by which Swatantrata Senani Samman Pension has been cancelled w.e.f. 28.12.1981, and recovery of pension amount has been passed against petitioner.



3. Briefly stated, the facts of the case is that petitioner applied for grant of Swatantrata Senani Samman Pension, 1980, on 11.01.1981 being Swatantrata Senani but when same was not granted, petitioner filed CWJC No. 8437/1994 which was disposed of on 26.07.1995, with a direction to Respondent Authorities to consider the claim of petitioner for grant of Swatantrata Senani Samman Pension and after due consideration petitioner was granted Swatantrata Senani Samman Pension w.e.f. 28.12.1981 vide Memo dated 14.02.1997 (Annexure 3) issued by Ministry of Home Affairs, Govt. Of India.

4. On a complaint being made in the year, 2002, a notice was issued by the Executive Magistrate, Paliganj to the petitioner in respect of his age in the year, 1942, the year in which the petitioner claimed to have participated in Freedom Struggle and after full enquiry made by the Executive Magistrate, claim of the petitioner was found to be genuine and bona-fide and same was communicated to the S.D.O., Paliganj vide Letter dated 13.09.2002 (Annexure 5). For similar allegation, again the District Magistrate, Patna, started making enquiry and notice was issued to the petitioner vide Memo dated 27.02.2005 and it was replied by the petitioner on 13.08.2005



and in the enquiry nothing was found against the petitioner.

5. One Bijesh Kumar neighbour and co-villager who is having land dispute and litigation with petitioner made a complaint dated 25.04.2005 (Annexure-10 series) and upon such complaint being made the District Magistrate, Patna, vide his letter dated 13.05.2005 and 05.04.2006 directed the Sub-divisional Officer, Paliganj, to make an enquiry on the allegation made by complainant-Bijesh Kumar against petitioner Rajendra Singh and his cousin brother Indradeo Singh in which it is alleged that they were aged 12 and 14 years at the time of 1942 Freedom Movement and as such their claim to have participated in said movement is false and they have obtained Swatantrata Senani Samman Pension by playing fraud and on suppression of their actual age.

6. The S.D.O. Paliganj, thereafter held an enquiry on the complaint of Bijesh Kumar and by his enquiry report dated 09.11.2006 (Annexure-10 series) held that petitioner as well as his cousin brother were aged about 12 and 14 years and as such they could not have participated in the 1942 Freedom Movement and have obtained Swatantrata Senani Samman Pension after furnishing wrong information with respect to their age. During enquiry the S.D.O. Paliganj, had gone to the



residence of the petitioner and Indradeo Singh and asked them their explanation with respect to complaint made by Bijesh Kumar. According to enquiry report, petitioner submitted an affidavit in which his date of birth has been recorded as 21.08.1919 and also certificate of being co-prisoner granted by veteran freedom fighters and also a certificate issued by Patna Central Jail of non availability of records of the year 1942-43 in which petitioner claims to have been implicated and undergone imprisonment. These were the certificates on the basis of which petitioner was granted Swatantrata Senani Samman Pension after due verification by the competent authority and his case being recommended by the Advisory Committee as well as State Government.

7. During enquiry the complainant produced admission register and school leaving certificate register of Parvati Uch Vidyalaya from which it appears that Rajendra Sinha son of Madho Sinha of Village-Raghopur, Bikram was admitted in the School on 12.01.1939 and failed in Class-VI and thereafter left the School on 15.01.1942 for which transfer certificate no. 340 was issued in which his date of birth has been recorded as 02.01.1930, as such his age in the 1942 movement was 12 Years and he could not have participated in the Freedom Movement,



however, in the same enquiry report it has been stated that widow of Freedom Fighter Late. Dashrath had stated that in Raghapur Gram there was one more Madho Singh, who had two sons and who are presently residing at Baluchak, Khagaul, as such it cannot be said with certainty as to whose transfer certificate it was on the basis of which S.D.O. Paliganj, held petitioner to be of 12 Years of age.

8. On the basis of said enquiry report dated 09.11.2006 by his order dated 04.12.2006 as contained in Annexure-8, District Magistrate, Patna, stopped the grant of State Freedom Fighters Pension and also suspended the grant of Central Freedom Fighters Pension.

9. Petitioner had earlier filed writ petition in this High Court being C.W.J.C No. 15311 of 2006 challenging the initiation of enquiry proceeding on the complaint of said Bijesh Kumar but during pendency of writ petition the order of District Magistrate, Patna, dated 04.12.2016 was passed and petitioner challenged the said order by filing I.A. in the writ petition, however, this Court disposed of said writ petition by its order dated 19.02.2009 giving direction to respondent-Union of India as well as State of Bihar to take a final decision in respect of entitlement of grant of Swatantrata Senani Samman Pension to



the petitioner.

10. It has been submitted on behalf of petitioner that the order passed by District Magistrate, Patna, dated 04.12.2006 was based upon an enquiry report conducted by S.D.O. Paliganj, and without giving any opportunity or copy of enquiry report the District Magistrate passed the order dated 04.12.2006, which was in complete violation of principles of natural justice and on this ground alone the order of District Magistrate dated 04.12.2006 was fit to be quashed.

11. Petitioner and his cousin brother Indradeo Singh, thereafter represented to the District Magistrate that the enquiry report of S.D.O. Paliganj was based upon hearsay evidence and documents which have been relied upon cannot be held to be proof of age as such their age should be determined by a Medical Board and District Magistrate by his letter dated 13.02.2007 directed Civil Surgeon, Patna to constitute a Medical Board to determine the age of petitioner Rajendra Singh as well as his cousin brother Indradeo Singh.

12. The Civil Surgeon, Patna constituted a Medical Board and petitioner and Indradeo Singh appeared before the Medical Board but no information was provided to petitioner with respect to determination of their age by Medical Board and



as such petitioner approached before the State Information Commissioner where the respondent produced the Medical Board Report dated 07.04.2007 in which the age of petitioner was assessed to be 65-70 Years in the year 2007 when Medical Board examined petitioner according to which his date of birth will be in between 1937 to 1942. The respondents have also submitted their statement with regard to medical examination report of his cousin brother Indradeo Singh held along with petitioner and the age of Indradeo Singh has been assessed by the Medical Board between 63 to 70 Years, according to which the date of birth of Indradeo Singh, who was admittedly older to petitioner will be in between 1937 to 1944.

13. The State Information Commissioner was shocked and puzzled to see the medical examination report according to which the difference of age between petitioner and his son will be only 5 Years as per matriculation certificate the age of his son is recorded as 1949, as such the report of Medical Board was not accepted and the Central Information Commissioner directed the District Magistrate, Patna, to constitute a fresh Medical Board to determine the age of petitioner as well as his son and thereafter a fresh Medical Board was constituted in the year-2009 and the age of petitioner was assessed between 75-85



year and age of his son between 55-60 year and the same was communicated by the District Magistrate, Patna, to petitioner. According to which the date of birth of petitioner will be between 1924 to 1934. The respondents have also made a statement with respect to Indradeo Singh in which it has been stated that as per report of medical examination board of the year-2009 the age of Indradeo Singh was 80-90, as such his date of birth will be between 1919 to 1929.

14. In compliance of order dated 19.02.2009 passed in C.W.J.C No. 15311 of 2006, Central Government asked the State Government to submit its report with respect to entitlement of petitioner for grant of Swatantrata Senani Samman Pension, however, in its report submitted by the State Government to the Central Government, the District Magistrate, Patna, and Deputy Secretary, Home (Special), Patna, submitted their report relying upon the enquiry report of S.D.O. Paliganj, and held that petitioner is not entitled for grant of pension and thereafter the Central Government in its final order dated 08.08.2013 has rejected the claim of petitioner for grant of Swatantrata Senani Samman Pension and also directed to recover the pension amount paid to petitioner whereas in case of his cousin brother Indradeo Singh the District Magistrate, Patna,



as well as Deputy Secretary, Department of Home (Special), Govt. of Bihar in their report date 12.08.2010 have held that since the Medical Examination Board Report is based on scientific method in order to determine the age by expert medical team as such it is more reliable and authentic vis-a-vis other documents and recommended to grant Swatantrata Senani Samman Pension to Indradeo Singh and a report has been submitted by the Central Government that Swatantrata Senani Samman Pension of Indradeo Singh has been resumed.

15. It is quite surprising that the Central Govt. had made two queries on the report submitted by the State Govt. and reply filed by petitioner disputing the report of State Govt. in which petitioner had produced the matriculation certificate of his elder son in which his date of birth was recorded as 1949. The query was made by the Central Govt. by its letter dated 20.12.2010 as to whether Madan Dhari Singh is son of petitioner Rajendra Singh or not as in his application dated 11.09.1981 petitioner has not mentioned name of Madan Dhari Singh as his dependant son, however, in the records the report send by S.D.O. Paliganj that Madan Dhari Singh is son of petitioner Rajendra Singh is available but same was not considered either by the State Govt. or the Central Govt. while



passing the final order. The second query made by the Central Govt. was with respect to complainant Bijesh Kumar and same was also answered in the report of S.D.O. Paliganj which forms part of record that there is land dispute between petitioner and complainant but this fact has also not been considered either by the State Govt. or the Central Govt.

16. This Court is surprised in the manner two similarly placed Swatantra Senani has been dealt by the State and Central Govt. where allegations against both were similar and complainant was also the same person and it has come in enquiry that the difference of age between them is 2 years and complainant had also alleged that their age in 1942 was 12 years and 14 years but different parameters and yardsticks have been adopted although enquiry report of S.D.O. Paliganj is same against both as well as medical examination report is also same against both yet in case of Indradeo Singh, the State Govt. has found the report of Medical Board to be more authentic and has discarded the enquiry report of S.D.O. Paliganj, whereas in case of petitioner, State Govt. has found the enquiry report of S.D.O. Paliganj, to be more authentic and have not taken into account the medical report of the petitioner. The only complaint which was made against both i.e. petitioner and his cousin brother



Indradeo Singh was with respect to their age in the year 1942 and two conflicting recommendation has been made although both stand on the same footing.

17. This Court had directed the Central Govt. to produce the original records with respect to grant of Swatantrata Senani Samman Pension to the petitioner as well as his cousin brother Indradeo Singh as similar complaint was made against both and complainant was also same, the enquiry against both were also common and a common report was submitted by the S.D.O. Paliganj, however, the Swatantrata Senani Samman Pension was resumed in case of Indradeo Singh whereas in case of petitioner it was ordered to be cancelled. The Central Govt. had send the original records of petitioner, however, as regards Indradeo Singh is concerned, it was reported that original records are misplaced and missing but a report with respect to Indradeo Singh was submitted and it was confirmed that on the basis of favourable report submitted by the State Govt. his Swatantrata Senani Samman Pension has been resumed.

18. After hearing learned counsel for the petitioner, learned counsel for the State as well as learned counsel for the Union of India and perusing the original records of petitioner, as well as report in respect of Indradeo Singh, this Court finds that



State Government as well as Central Govt. has taken a conflicting stand and has discriminated between the two although both petitioner and Indradeo Singh are similarly placed and if the State Govt. had recommended the case of Indradeo Singh on the basis of second medical examination report and Central Govt. had resumed the Swatantrata Senani Samman Pension in case of Indradeo Singh, then similar recommendation ought to have been made by the State Govt. on the basis of second medical examination report in case of petitioner also and he was also entitled for his resumption of pension. The conduct of State Govt. as well as Central Govt. is highly condemnable and deplorable and as a result of above discussion the normal course would have been to remand the matter to the Central Govt. to take a fresh decision on the basis of materials available before it as was done in the case of Indradeo Singh but since petitioner will be entering in his 100th year, as such this Court is not inclined to remit the matter to the Central Govt. as after considering the materials available on record, this Court does not find that case of petitioner is distinguishable from that of Indradeo Singh and accordingly, the order dated 08.08.2013 as contained in Annexure-1 is quashed and respondent nos. 1, 2, 3 and 4 are directed to resume the pension of the petitioner within



three months from the date of receipt/production of a copy of this order.

19. The writ petition stands allowed.

20. The records produced by the counsel of the Central Govt. is directed to be returned to him forthwith.

(S. Kumar, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	25.10.2018
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