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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2018

C O R A M

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.20495 of 2003

L.Kathayee Ammal

... Petitioner

Vs

The Union of India,
by Secretary,
Ministry of Home Affairs,
Freedom Fighters Pension Division,
Lok Nayak Bhavan,
New Delhi.
Respondent

...

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the respondent's order dated 14.01.2003 made in Ref.No.29/7741/73-FF(INA), Ministry of Home Affairs, Union of India, and quash the same and to further direct the respondent herein to grant Central Freedom Fighters Family Pension in favour of the petitioner herein with effect from the year 1973.

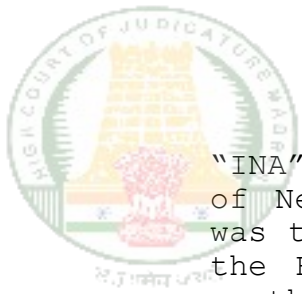
For Petitioner	: Mr.R.N.Kothandaraman
For Respondent	: Mr.A.Kumaraguru, CGSPC

O R D E R

The prayer sought for in this writ petition is for a Writ of Certiorarified Mandamus, to call for the records relating to the respondent's order dated 14.01.2003 made in Ref.No.29/7741/73-FF(INA), Ministry of Home Affairs, Union of India, and quash the same and to direct the respondent herein to grant Central Government Freedom Fighters Family Pension in favour of the petitioner herein with effect from the year 1973.

2.The necessary facts, which are required to be noticed for the disposal of the writ petition, are as follows:-

The petitioner's husband one Lakshmana Thevar was an Ex. Indian National Army (hereinafter referred to as



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"INA") personnel, who joined in INA under the Leadership of Nethaji Subash Chandra Bose, in Malaysia. While he was there at the time of World War II, he was captured by the British troops and he underwent imprisonment for 6 months in the Chitra Camp Jail, Malaysia from 15.08.1945 to 28.02.1946. Thereafter, the World War ended and he returned home to his native place at India and led a peaceful civilian life.

3. Since, the petitioner's husband was the freedom fighter, he was eligible to get Freedom Fighters Pension of the State Government as well as the Central Government. Therefore, during his life time, he made an application to the State as well as the Central Government for getting pension. However, before the said applications were to be considered, it is claimed by the petitioner that, her husband died on 04.04.1969.

4. Thereafter, the petitioner applied for Freedom Fighters Family Pension to the State Government which was duly considered and sanctioned by the State Government Authorities vide order dated 28.03.1970. In the same line, the petitioner also applied to the respondent i.e., the Central Government for getting the Central Government Freedom Fighters Family Pension, in the year 1973 itself, in a prescribed proforma, with all available documents and informations.

5. In support of the said application, the petitioner had also annexed the order sanctioning Freedom Fighters Family Pension of the Government of Tamil Nadu to the petitioner, dated 28.03.1970, and the history sheet of the petitioner issued by the Tamil Nadu INA Forum.

6. Since, the said application had not been considered and it was kept pending for consideration for some years, the petitioner, obtained co-prisoner certificates from two co-prisoners who had also been imprisoned along with the petitioner's husband, during the year 1945 - 1946 and that co-prisoners certificates given by them in the year 1977 had also been forwarded to the respondent for consideration. The petitioner also forwarded the death certificate of her husband issued on 07.09.1982 for the easy process of her application by the Central Government.

7. In spite of all the necessary documents had been forwarded, the application submitted by the petitioner in the year 1973 had not at all been considered by the respondent and therefore, the petitioner having waited for several years had sent a representation dated 24.11.1998. Since, that representation also was not considered, the petitioner made further representation on 16.05.2000, and the same was also not considered. The



petitioner made another representation on 05.01.2002

8.Only after sending these representations and especially triggered by the last such representation given by the petitioner dated 05.01.2002, the respondent had acted upon and rejected the claim of the petitioner for sanctioning Central Government Freedom Fighters Family Pension under Swatantrata Sainik Samman Pension Scheme, 1980, by the impugned order dated 14.01.2003. Challenging the said order dated 14.01.2003, the petitioner has filed this writ petition with the aforesaid prayer.

9.I have heard Mr.R.N.Kothandaraman, learned counsel for the petitioner who would submit that, the petitioner's husband had been the member of INA and during the year 1945, at the time of World War - II, the petitioner's husband along with the other members of INA were captured in Malaysia and they had been imprisoned in Chitra Camp Jail, Malaysia from August 1945 to February 1946. The learned counsel would further submit that, based on such imprisonment, when both the Central and State Governments announced a Scheme for sanctioning of Freedom Fighters Pension, the petitioner's husband applied for the same. The said applications were not considered at that time or before those applications were considered, the petitioner's husband was died on 04.04.1969. Therefore, the petitioner being the widow of the Freedom Fighter, had made an application to the State Government for getting State Government Freedom Fighter's Family Pension, which was duly sanctioned to her on 28.03.1970.

10.Thereafter, when the petitioner made an application in the year 1973 to the respondent/the Central Government seeking for Central Government Freedom Fighter's Family Pension, the said application had been kept pending for 30 years and ultimately, by the impugned order dated 14.01.2003, the petitioner's plea was rejected.

11.The learned counsel for the petitioner would further submit that, the reasons stated in the rejection order dated 14.01.2003 for non sanctioning of Freedom Fighter's Family Pension are totally untenable. He would submit that, in order to substantiate the detention period of the petitioner's husband, between August 1945 and February 1946, two co-prisoners certificate had been annexed. Apart from that, having considered the period of petitioner's husband was in jail in Malaysia, the State Government had sanctioned Freedom Fighters Family Pension for the petitioner on 28.03.1970. When that being the position, based on the sanctioning of the State Government Freedom Fighters Family Pension to the petitioner and also based on two co-prisoners certificate



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which could be treated as secondary evidence for the purpose of sanctioning Freedom Fighters Family Pension of the Central Government, even under their Scheme, the plea made by the petitioner for sanctioning of such pension could have been accepted at the earliest by the respondent. However, the respondent had chosen to keep the application of the petitioner pending for decades together and ultimately, rejected the same by stating the reason that the petitioner has not filed the relevant documents to substantiate her claim.

12.The learned counsel for the petitioner would further submit that, the reasoning given in the impugned order would on no stretch of imagination can be considered as a valid reason for rejecting the claim of the petitioner and therefore, the impugned order has to be set aside and a direction to that effect to sanction Central Government Freedom Fighters Family Pension to the petitioner from the date of her application, can be granted.

13.Per contra, Mr.A.Kumara Guru, learned Central Government Senior Standing Counsel appearing for the respondent would submit that, the Central Government had already framed a Scheme called "Swatantrata Sainik Samman Pension Scheme, 1980". Under the Scheme, in clause 2.2 in the heading "Imprisonment" it is stated that : "a person who had suffered minimum imprisonment of six months on account of the participation in freedom struggle shall be an essential one. The following evidences are required to substantiate the imprisonment which means imprisonment/detention certified the concerned authorities, District Magistrate or the State Government indicating the period of sentence awarded and the date of admission and date of release of the freedom fighter."

14.The learned Standing Counsel would further submit that, along with the said Scheme, there had been number of annexures wherein Annexure B IV speaks about what are all the other relevant Circulars and Instructions issued by the Government relates to the Scheme. Accordingly, the Circular No.8/25/77-FF (P) dated 12.08.1977 makes it clear that no Central Pension except on the basis of the State Government's verification and recommendation, could be sanctioned.

15.Relying upon the import of the salient features of the said Scheme as well as the circular referred to above, the learned Standing Counsel appearing for the respondent would submit that, in so far as the petitioner's case is concerned, she claimed that her husband had been the member of the Indian Independence



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League (IIL) and further claimed that he had been imprisoned from August 1945 to February 1946 in Chitra Camp Jail, Malaysia. In order to substantiate the said statement, no certificate had been produced by the petitioner and even the co-prisoner certificate issued in the year 1977 by two co-prisoners, produced by the petitioner would not support the case of the petitioner because, there is no acceptable evidence in the said certificates. The two co-prisoners had stated that, they had been in jail only during the relevant period i.e., from August 1945 to February 1946. In this context, the learned Standing Counsel would submit that the minimum imprisonment period must be 6 months for making a freedom fighter eligible to get freedom fighters pension. However, at the same time, as the secondary evidence, if a freedom fighter wants to rely upon the co-prisoners certificate, such co-prisoners certificate should have been given by the co-prisoner who must have undergone one year imprisonment. In this context, the learned Standing Counsel would further submit that, since the co-prisoners certificates relied upon by the petitioner, admittedly stated that the co-prisoners also had been in jail for only 6 months, therefore, eventhough, they might have been sanctioned freedom fighters pension, but the certificates issued by them cannot be accepted as the valid certificates for the reason that admittedly they have not served minimum one year imprisonment.

16. In the absence of the documents and proof as has been contemplated under the Scheme, the petitioner cannot seek for any indulgence from the respondent for sanctioning of Central Government Freedom Fighters Pension or the Freedom Fighters Family Pension. The learned Standing Counsel would also submit that, merely because the State Government sanctioned Freedom Fighters Family Pension to the petitioner, that would not ipso facto makes the petitioner eligible to claim Central Government Freedom Fighters Family Pension, automatically. Therefore, for all these reasons, the respondent after having considered the merits of the claim made by the petitioner, has rightly concluded that the petitioner is not entitled to claim Central Government Freedom Fighters Family Pension and accordingly, her request was rejected with the aforesaid reasons.

17. The learned Standing Counsel, in fact, relied upon the recent decision of the Hon'ble Supreme Court of India in the case of Jagdamba Devi vs. Union of India and Ors. in Civil Appeal No.1260 of 2017 dated 31.01.2017. In the said judgment, the learned Standing Counsel relied upon the following view taken by the Hon'ble Apex Court:



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Pension Scheme, 1980 is a document based Scheme and the documents required for eligibility for Samman Pension as mentioned in the Scheme are to be produced by the applicant in support of his claimed suffering, duly verified and recommended by the concerned State Government. Due to the discrepancies and ambiguities relating to the documents and also due to non-production of NARC, benefit of the Scheme could not be extended to the appellant. As held in Raghunath Gajanan's Case, it is not possible for this Court to scrutinize the documents as to its sufficiency or otherwise.

17. In C.W.J.C. No.9903 of 2001, the Single Judge has made certain observations to the effect that "Hari Kant Jha was absconding" and that the same was sufficient under the provisions of the Scheme to declare him "as remaining underground for more than six months", thereby making him entitled for the pension. As rightly observed by the Division Bench of the High Court, the said observation in C.W.J.C. No.9903 of 2001 was without reference to the Scheme. Be it noted that in C.W.J.C. No.9903 of 2001, the learned Single Judge only remanded the matter to the Central Government for reconsideration, giving liberty to the Central Government to reappraise the documents. Upon reappraisal of the matter, the Central Government has clearly pointed out that Shri Hari Kant Jha did not meet the eligibility criteria of either being an underground within the meaning of the Scheme for more than six months or undergoing sentence for more than six months and as such he was ineligible. The High Court, in our view, has rightly held that the Central Government was well within its power to hold that Hari Kant Jha was ineligible to seek pension under the Swatantrata Sainik Samman Pension Scheme, 1980. We do not find any reason warranting interference with the impugned order."



the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent.

19. It is the claim of the petitioner that, her husband was a freedom fighter as he joined in the Indian National Army (INA) headed by Netaji Subash Chandra Bose in Malaysia. It is the further claim of the petitioner that, her husband during the World War - II time, was captured by British Army and accordingly, he had been imprisoned for six months in Chitra Camp Jail, Malaysia from 15.08.1945 to 20.02.1946. Based on this imprisonment, even though during the life time of the petitioner's husband, he claimed to have made an application seeking Freedom Fighters Pension from the State Government and Central Government, since, he died on 04.04.1969, nothing was sanctioned to him and thereafter, on the application of the petitioner, the State Government sanctioned Freedom Fighters Family Pension to the petitioner by order dated 28.03.1970. The said order of the State Government reads as follows:

"PUBLIC (GENERAL) DEPARTMENT
FREEDOM FIGHTERS' PENSION - FORM IV
ORDER OF SANCTION OF PENSION

F.F.P.O.NO.5312/70 DATED 28.03.1970

Abstract-PENSION-Grant of Freedom
Fighters'
Pension to/Ex.I.N.A.-.

Thanjavur district Applicant Thirumathi
Kathayee Ammal w/o Late Lashmana Thevar
Ordered.

Reference - (1) From Thiru Lashmana
Thevar application dated 10.11.1968
Tmt.Kathayee Ammal, W/o Lashmana Thevar
application dated 2.9.1969.

(2) From the Collector of Thanjavur
Letter No.K.Dis.10609/70-G4 dated
8.3.1970

ORDER:- Sanction is accorded to the
payment of a pension of Rs.50/- (Rupees
Fifty Only) per mensem to Thirumathi
Kathayee Ammal, W/o. Late Lakshmana
Thevar, residing at North Street,
Melavasal (Post), Mannargudi (Taluk),
Thanjavur (District) with effect from
10.11.1968 till death from the Treasury
Officer Thanjavur and payable by the Sub



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Treasury Officer Mannargudi.

2.The identification marks of the pensioner are-

1. A Scar on the Left wrist
2. A white scar on the left Knee.

3.The pensioner should intimate any change of address at any time to the Collector, Government and to the Treasury Officer or Sub-Treasury Officer without delay. Delay will result in the payment of Pension being postponed.

4.This order is liable to cancellation if it is found that the pension was sanctioned on mistaken grounds or on false information.

V. Sankaran
C.A. Ramakrishnan
Joint Secretary to

Government"

20.On the strength of the order of sanction passed by the State Government as well as the other related documents and informations, the petitioner made an application in a prescribed form in the year 1973 to the respondent seeking Central Government Freedom Fighters Family Pension. In the proforma application, the petitioner had given the available informations where the State Government Pension Sanctioning order has been mentioned and in the column "Any other relevant informations", the petitioner had stated that, in the Trial conducted at New Delhi Fort, all the Freedom Fighters of INA, under the Leadership of the Nethaji (Subash Chandra Bose), were released.

21.On 26.07.1973, the Public Department of State Government has issued a communication to the petitioner stating that a copy of the original INA certificate is enclosed as requested in the reference second cited. The relevant portion of the said communication reads thus:

"REF: 1. F.F.P.O.No.5312/70, dated
28.03.70
2. From Thirumathi L.Kathayee
Ammal petition dated nil.

A copy of the original I.N.A.
Certificate is enclosed as requested in



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the reference second cited.

V.KRISHNASWAMY,
Assistant Secretary to
Government

To

Thirumathi L.Kathayee Ammal/
S/o. Late Lakshmana Thevar,
Melavasal Post,
Mannargudi Taluk, Thanjavur District

Copy to the Collector of
Thanjavur.

/Forwarded/

Sd/-

Section Officer."

22.With all these certificates and documents as well as particulars, such an application in proforma was submitted by the petitioner on 25.09.1973 to the Central Government/respondent. The copy of the said application reads thus:

"Sir,

Sub: Grant of pension from Central Revenues to freedom fighters and their families submission of the proforma with necessary particulars.

Ref: Your No.29/7741/73 F.F.XI
(INA cell)

Dated 25 Sep. 1973

In accordance with your instruction I am submitting the particulars in the prescribed proforma along with necessary documents for favour of sanction of pension as early as possible.

Jai Hind.

Yours truly,

Left hand Thumb
impression of
Shirmathi.L.Kathayee Ammal
W/o. Late Lakshmanan."



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23. Thereafter, in the year 1977, the petitioner was able to obtain co-prisoners certificate from two co-prisoners/Freedom Fighters, who had been imprisoned at Chitra Camp Jail, Malaysia, along with the petitioner's husband. One such co-prisoner (V.Vadivelu) certificate by way of affidavit is extracted hereunder for easy reference:

"I know Smt.L.Kathayee Ammal, W/o. Late Lakshmana Thevar, at present residing at Melavasal Village, and post, Mannargudi Taluk, Thanjavur District, Tamil Nadu, personally. The said Sri Lakshmana Thevar had been a member of the defunct Indian National Army constituted by Nethaji Subash Chandra Bose in the Far East. I was arrested by the British forces at Chitra and imprisoned at Chitra camp jail for the period from August 1945 to 28th February 1946 and the said Sri Lakshmana Thevar was a co-prisoner with me in the Chitra camp jail for the period of 15th August 1945 to 28th February 1946. She had applied for the Central Government Pension vide Ministry of Home Affairs letter No.29/7741/73 FF.INA., and he is a holder of Tamil Nadu I.N.A., Forum History Sheet No.0161. She is getting Tamil Nadu State Government Freedom Fighter's pension."

I am getting I.N.A., pension from Central Government vide Ministry of Home Affairs order No.29/7670/75 FF.I.N.A., dated 15.1.77."

24. Similarly, another co-prisoner by name Packirisamy, also has given co-prisoner certificate to the petitioner in 1977.

25. The petitioner also annexed the death certificate dated 07.09.1982 confirming the death of her husband on 04.04.1969. Along with the said certificate, the legal heirship certificate issued by the concerned Taluk Officer dated 14.02.1983, whereby the petitioner's name has been shown as wife of the Freedom Fighter, has also been annexed.

26. In spite of all these documents and correspondences, the application submitted by the petitioner on 25.09.1973 had not been considered and



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no orders have been passed either accepting or rejecting the plea of the petitioner. After having waited for several years, on 24.11.1998, the petitioner made a representation requesting the respondent, by considering her husband's freedom struggle to sanction the Central Government Freedom Fighters Family Pension to her. Since, there was no response from the respondent, on 06.05.2000, the petitioner made further representation. This time, through the Hon'ble Minister for Home Affairs, Government of India. Thereafter, yet another representation was given on 05.01.2002. This time also addressed to the Hon'ble Minister for Home Affairs, Government of India and a copy was marked to so many dignitaries. The said representation dated 05.01.2002 is extracted herein for easy reference:-

"I beg to submit that I am the poor widow of late S.Lakshmana Thevar, Ex.INA Freedom Fighter. My husband joined the INA, under the supreme leadership of Nethaji Subash Bose, in far east, and did his best for India's Freedom, and suffered a lot and he had undergone 6 months imprisonment in Chitra camp jail, in Malaya from Aug, 45 to till end of Feb.1946.

Considering my (Husband) INA service and sufferings, I was granted Tamil Nadu State Government Freedom Fighter's Family Pension, and I am getting the same. I had applied for Central Pension, for which I am eligible, as my husband suffered 6 months detention.

In the absence of any jail certificate (as it was not given INA freedom fighters) as per Government Orders, I submit co-prisoner affidavit from a Central Government Pension, who suffered imprisonment with my late father (Husband).

I wish to that my son is in Indian Territorial Army and in doing National Service. Ours is a national family. It is a pity that I am yet to be granted Central Government Freedom Fighter's Pension.



My Central Government Freedom Fighter's Pension application file has been pending for a long number of years. Many widows like me are getting it.

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Hence I pray your honour to kindly help me and get the Central Government Pension sanctioned to me early and help this poor widow. Jai hind."

27. After all these correspondences, the application of the petitioner made in the year 1973 had been taken up for consideration by the respondent, only pursuant to the last such representation made to the Minister concerned on 05.01.2002 by the petitioner. Accordingly, the respondent has rejected the said application of the petitioner by making a reference about the petitioner's representation dated 05.01.2002 received through the then Hon'ble Minister of State For Finance (Revenue) New Delhi. In the said order of rejection dated 14.01.2003, the respondent has stated the reason primarily that, the petitioner had not furnished any documentary evidence in support of her claim that her husband had been in Jail at Chitra Camp Jail, Malaysia, from August 1945 to February 1946. Further reason had been stated by the respondent in the impugned order that, the claim of the petitioner's husband that he had been in jail for six months cannot be accepted because Senior Officers of the INA including General late Shah Nawaz Khan had opined that a member of a Branch of Indian Independence League was not likely to have been imprisoned for six months and more. Further reason also had been given by the respondent in the impugned order that, INA comprised of personnel joined from British Indian Army who had taken oath of allegiance to the British Crown, the others were the personnel who were recruited locally and they were called as civilians. Since, the petitioner's husband was a civilian, after the defeat of Japan, allied forces took over the camps of INA and the INA personnel stationed in the camps taken over by the allied forces had been segregated, from them, only those from British Indian Army were taken to prisons as they had acted against their oath of allegiance but the civilians were not taken for such oath of allegiance or imprisoned by the allied forces.

28. By stating these reasons, the respondent has rejected the claim of the petitioner for grant of Central Government Freedom Fighters Family Pension to the petitioner.

29. It is to be noted that, the petitioner's claim is

<https://hcservices.ecourts.gov.in/hcservices/> that her husband had been in Chitra Camp Jail, Malaysia,



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between August 1945 and February 1946. The two co-prisoners certificate as referred to above make it abundantly clear that, between August 1945 and February 1946, the INA personnel had been jailed in Chitra Camp Jail, Malaysia. The co-prisoners had certified that the petitioner's husband also, during the said period, had been in the said camp jail for six months. After having appreciated the jail period of said co-prisoners, who gave the certificates referred to above, the Central Government granted the pension to both of them by order dated 12.01.1977 and 15.01.1977. Therefore, it become clear that, those who had been in jail i.e., Chitra Camp Jail, Malaysia, for the period of six months between August 1945 and February 1946 were taken into consideration for sanctioning of the Freedom Fighters Pension by the very same respondent/Central Government. When that being the position, the claim made by the petitioner for her husband's jailed term for the very same period which has been certified by the co-prisoners, has been rejected by the respondent.

30.Further, a wing of All India Congress Committee headed by its Chairmain, Mrs.Indira Gandhi, (the then Prime Minister) had given a certificate on 29.10.1968 certifying that, the petitioner's husband was a member of the Indian National Army and he was a political sufferer therefore, he is entitled to all the sanction allowed to other political sufferers vide Government of India Home Affairs letter dated 23.05.1961. In order to appreciate the said contents made in the certificate, it is extracted herein :-

"This is to certify that Sri S.K.Lakshamana Thevar was a member of the Indian National Army. He is a political sufferer and as such is entitled to all the concessions allowed to other political sufferers vide Government of India, Ministry of Home Affairs, letter No. 4/6/61 Ests. (C) dated 23rd May 1961.

His particulars are as under :

Father's Name : Sri Samiappa Thevar
INDIAN ARMY : INDIAN NATIONAL ARMY
Regtl.No. : 56472
Rank: Civilian : Sepoy
Unit : : No.7, Guerilla
Regt.



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Village : Melavasal
Post Office : "
Taluk : Mannargudi
District : Tanjore
Character while in the INA
VERY GOOD

Sd/-----

(Jagdev Singh)

Col. INA.

Joint Secretary

/true copy/

Sd/-

Section Officer."

31.It is also to be noted that, pursuant to the application made by the petitioner dated 25.09.1973, a communication has been given by the respondent in the year 1973 itself (no date has been mentioned) whereby the respondent directed the petitioner to furnish the following information/documents.

- (i)details of the petitioner husband suffering in the cause of India's Independence
- (ii)Documentary proof, if any.

32.Only pursuant to the said directive issued by the respondent, apart from the information furnished in the proforma, the petitioner given the documents referred to above.

33.That apart, the Tamil Nadu INA Forum, which is a welfare organisation for INA personnel, had issued a certificate called "History Sheet of INA Personnel", where some crucial informations about the petitioner's husband has been given. The column, mentioned in the said certificate, at Serial No.7, speaks about the status prior to joining of INA, it has been mentioned that the petitioner's husband was working as a Water Boy at a Singapore Hotel with a monthly salary of Rs.120/- from the year 1936 to December 1941. In Serial Nos.4 to 6, the following informations were given.

"4.Where and when joined the

I.N.A.: My husband joined I.N.A in
Singapore—Recruited to
I.I.L.,in in (sic) Oct.1943
—Training at
Selattar Camp at Singapore.
Sepoy.REF.No.8./2/3039/Emo.
Dated 28.10.68.



5. Rank in I.N.A. : Reft.No.56472-Rank: Sepoy--
Unit 7th Guerilla Regt.

6. History of participation : After training he was attached to in the Freedom Movement 7th Gorilla Regt. And sent for in Malaysia and Burma, advance to Chitra Camp. kept with evidence ready for despatch to front lines, but arrested by British force in August 1945-kept in Chitra detention camp at Kedah State, made to work hard labour and released in February 1946 after visit of Indian commission"

The so many particulars given by the petitioner had been verified by All India INA Committee at No.82, Daryaganj, New Delhi and certified the same.

34. With the strength of these documents, as well as particulars pertaining to the involvement of the freedom struggle by the petitioner's husband and consequently his imprisonment in the Chitra Camp Jail, Malaysia, for six months period, the Scheme introduced by the central Government i.e., "Swatantrata Sainik Samman Pension Scheme, 1980" cannot be made against the petitioner making the petitioner ineligible to get the Central Government Freedom Fighters Family Pension.

35. In this context, it is to be noted that, the petitioner made application after the death of her husband, on 25.09.1973. The said application had been kept pending by the respondent for long time, therefore, at various point of time, communications had been made only by the petitioner and in the year 1977, co-prisoner certificate had been produced. That apart, the death certificate of her husband and the legal heirship certificate of the petitioner had been produced. After all these documents having been produced, the respondent had not come forward to consider the claim of the petitioner. Therefore, from the year 1998 onwards, representations had been given. Last such representation was given on 05.01.2002 which was received by the respondent through the then Hon'ble Minister for Home Affairs, New Delhi and the Minister of State (Finance) and that was triggering the respondent to act upon and to pass the impugned order.

36. In so far as the reasons stated by the respondent in the impugned rejection order is concerned, since, the petitioner's husband had been imprisoned between August 1945 and February 1946 for six months, at Chitra Camp



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Jail, Malaysia, no documents as has been mentioned under Clause 2.2 of the Scheme, as submitted by the learned Standing Counsel appearing for the respondent, can be obtained. The reason being that, the imprisonment or detention certificate from the concerned jail authority, District Magistrate or the State Government mentioning the period of sentences awarded, cannot be obtained from these authorities, as the jail wherein the petitioner's husband was placed was a Camp Jail at Malaysia during the relevant point of time. Therefore, no documents as required under Clause 2.2 of the Scheme can be expected on the case of the petitioner's husband.

37. However, the petitioner was able to produce the co-prisoners certificate, atleast obtained from two prisoners, who had been in the very same camp jail at that time along with the petitioner's husband, and this fact had been accepted by the respondent/Central Government and that is the reason why pension has been sanctioned by the respondent/Central Government for those co-prisoners who gave certificate to the petitioner's husband.

38. The further reasoning stated by the respondent that, there had been two set of people in INA at that time, one is from British Indian Army and another one is recruited locally called civilians and only those who are from British army alone had been jailed after the camps were captured by the Allied Forces and the remaining people were not jailed is concerned, the said reason is absolutely ridiculous as it no way connected with the sanctioning of Freedom Fighters Pension/Freedom Fighters Family Pension.

39. In this context, this Court wants to make it clear that, the Freedom Fighters Pension Schemes announced by both the Central Government and the State Government are only to recognise the immense service selflessly made by thousands of lakhs of persons for the freedom struggle. In order to recognise and appreciate such prodigious selfless service of those persons, these Schemes were announced by the Central and State Governments and therefore, it cannot be treated as a gift or bounty by the Governments.

40. Moreover, in the case in hand, the State Government after having considered the claim of the petitioner has sanctioned Freedom Fighters Family Pension to the petitioner as early as in the year 1970 by order dated 28.03.1970. Assuming for the sake of argument that, unless the State Government made recommendation for sanctioning of the Freedom Fighters Family Pension to the petitioner, the respondent/Central Government cannot act upon, atleast the respondent could have verified whether the State Government has sanctioned Freedom Fighters



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Family Pension to the petitioner if so on what basis. Moreover, since the State Government sanction order dated 28.03.1970 had also been forwarded by the petitioner to the respondent at the first instance itself, the respondent could have very well confirmed the stand of the State Government by verifying the fact.

41. However, the respondent in the impugned order has given one more reason that, merely because the State Government sanctioned Freedom Fighters Family Pension to the petitioner, the respondent/Central Government need not follow it. This Court is of the view that, the said stand taken by the respondent/Central Government is absolutely unjustifiable because, a Freedom Fighter who fought for the freedom of this great country, shall be the freedom fighter for every one whether it is a state or central Government. A service rendered by the Freedom Fighter needs recognition by both State Government and the Central Government. Hence, it shall not take a stand that merely because the State Government recognised the service rendered by the Freedom Fighter viz., the husband of the petitioner, the respondent /Central Government need not follow it. This kind of stand taken by the respondent/ Central Government, in the opinion of this Court, is absolutely unjust and it cannot be approved.

42. Further, no doubt, there had been a Scheme in the year 1980 and under the Scheme, certain procedures have been contemplated as to how the applications filed by the freedom fighters have to be processed and sanctioned.

43. The Scheme came into effect only from 01.08.1980 whereas, the application of the petitioner was filed on 25.09.1973. Therefore, the import of the said Scheme, shall not be put against the petitioner on technical reasons for considering her application, which was filed and pending already from the year 1973. Assuming that the import of the 1980 Scheme also would apply to the case of the petitioner, during the pendency of the application filed by the petitioner, it has not suggested anything to reject the claim of the petitioner for the reasons stated in the impugned order.

44. The petitioner cannot get a co-prisoners certificate easily without the persons who have given co-prisoners certificate have recognised the imprisonment undergone by the petitioner's husband along with them. This has been clearly mentioned in the co-prisoner certificates and without considering the same, the impugned order has been passed by the respondent as there is no reasoning given with regard to the validity and veracity of the co-prisoner certificates.



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45. In respect of the judgment cited by the learned Standing Counsel appearing for the respondent, in Jagadambal case (cited supra), this Court respectfully state that, the facts of the said case is entirely different to the facts of the present case as the petitioner's husband had been in jail in Chitra Camp Jail, Malaysia. For the said purpose, no certificate or document can be expected from any authority. Therefore, the only source to recognise the said claim of imprisonment of the petitioner's husband at Chitra Camp Jail, Malaysia is to verify the co-prisoners certificate.

46. Here in the case in hand, the Freedom Fighters Family Pension granted by the state Government to the petitioner can be looked into by the Central Government and the same shall be properly appreciated by the respondent. Unfortunately, the same has not been appreciated by them. Apart from the co-prisoners certificate, other documents had been produced by the petitioner, out of which one was issued by the All India Congress Committee headed by the then President of All India Congress and the another one is the history sheet of INA personnel issued by the Tamil Nadu INA Forum. Beside these certificates, the State Government has also sanctioned pension to the petitioner on 28.03.1970. Without appreciating any of these evidences submitted by the petitioner, by not properly considering the same, the respondent has rejected the claim of the petitioner.

47. It is further to be noted herein that, the application of the petitioner was filed on 25.09.1973, constantly the petitioner had been in communication with the respondent ofcourse those communications are one sided, as the respondent never considered or responded to those communications of the petitioner and ultimately, the application had been rejected by the impugned order dated 14.01.2003 ofcourse pursuant to the latest representation given by the petitioner dated 05.01.2002 which was admittedly received by the Central Government through the then Hon'ble Minister for Home Affairs, New Delhi. Till such time, the application of the petitioner was pending for 30 years and the delay for considering the application of the petitioner for such a long period was not at all explained by the respondent. This attitude on the part of the officials who were responsible for keeping the application of the petitioner for more than three decades is to be deprecated. Had the application of the petitioner decided in the year 1973 and disposed of either way, the petitioner would have been in a position either to get the fruits of the Freedom Fighter Family Pension or would have agitated the issue, in the manner known to law. For all these years, without any plausible reason, since, the application of the petitioner had been kept pending and disposed of the same after 30 years,



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that too by giving flimsy or unacceptable reasons, this Court feels that the very purpose of framing the Scheme by the Central Government for appreciating the priceless service rendered by the Freedom Fighters, by way of giving pension to them and their family members, is getting defeated.

48. In any democratic set up, the Rulers who are in the governance will make policy decisions for the welfare of the people. But the policy makers always depend the administrative machinery who have to implement such policies. While implementing the policies of the Government, those who are in the helm of affairs in administrative hierarchy should go, in unison with the policy makers, then only every policy decision of the Government will reach the people for their betterment.

49. Here, in the case in hand, for 30 long years, the application of a poor widow of a Freedom Fighter has been kept pending by the respondent/Central Government, for which, this Court wants to register its displeasure against all those responsible.

50. This writ petition was filed in the year 2003. However, we are not able to dispose of this case immediately and for this delay caused in disposal of this writ petition, this Court express its regret.

51. Since the petitioner, for all these reasons and discussions made above, is entitled to get Central Government Freedom Fighters Family Pension, the writ petition is ordered in the following terms:-

"(i) the impugned order is quashed

(ii) the respondent is directed to sanction Central Government Freedom Fighters Family Pension to the petitioner from the date of her application i.e., 25.09.1973 and the arrears of such payment shall be calculated and be paid to the petitioner with 6% interest per annum from the date of due till the date of payment and shall continue to pay the freedom fighter family pension to the petitioner till her lifetime.

52. With these directions, the writ petition is allowed with the cost of Rs.10,000/- which shall also be paid by the respondent along with the arrears of the pension to the petitioner, within a period of two months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

Jbm



To

The Secretary,
The Union of India,
Ministry of Home Affairs,
Freedom Fighters Pension Division,
Lok Nayak Bhavan,
New Delhi.

+1cc to Mr. A.Kumaraguru, Advocate SR.No. 77204

+1cc to Mr.R.N.Kothandaraman , Advocate SR.No. 77463

W.P.No.20495 of 2003

ASK(15/11/2018)