

CWP No.14190 of 2016 (O&M)

[1]

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

**CWP No.14190 of 2016 (O&M)
Date of decision:17.04.2018**

Amrit Rani

...Petitioner

Versus

Union of India and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Raman Chawla, Advocate,
for the petitioner.

Mr. Udit Garg, Advocate,
for respondents no.1 and 2.

Mr. Saurabh Mohunta, DAG, Haryana.

Rakesh Kumar Jain, J.

The petitioner is the widow of late Shri Sham Lal Sardana, a freedom fighter who had been drawing Swantantra Sainik Samman Pension vide PPO No.7197/FF (No.Pen.4/Revision of Pension/FF/85-86/5818-34 dated 6/7-11-85) from the Central Government. She has prayed for a direction to the respondents to transfer the dependent family pension in her name being the legally wedded wife of the aforesaid freedom fighter.

Counsel for the Government of India has submitted that the family pension has been sanctioned to the petitioner on 07.10.2016 w.e.f. 06.06.2016, allegedly from the date when the petitioner had applied for the same, whereas the grievance of the petitioner is that her husband Sham Lal Sardana had expired on 27.10.2013 and she had applied for the family pension on 21.03.2014, therefore, the family pension should have been sanctioned in

her favour with effect from the said date.

Counsel for the respondents has submitted that the transfer of pension to spouse/daughter of a freedom fighter is governed by Para 5.2 of the Swantantra Sainik Samman Pension Scheme (hereinafter referred to as the “Pension Scheme”), which reads as under:-

“5.2 Transfer of pension to Spouse/Daughters :-

After the death of the pensioner (Whether freedom fighter himself or his spouse) the transfer of pension to the spouse/daughter will only be considered if she applies for transfer of pension within 6 months of the death. Application received after 6 months shall not be considered by the Bank but referred to the Ministry. The Ministry shall then take a view whether to allow dependent pension or not or whether any arrears are to be paid.

5.2.1 The procedure for submitting application shall be as under :-

5.2.1.1 If the name of the spouse/daughter is already mentioned in the original sanction letter of the Ministry, then application may be made on a plain paper (along with Documents as per Annexure -IV) within 6 months of the death of pensioner to the Bank.

5.2.1.2 If the name of the spouse/daughter is not mentioned in the original sanction letter of the Ministry, then application may be made on a plain paper (along with Documents as per Annexure -V) within 6 months of the death

of the pensioner, to the District Magistrate, who shall recommend the application to the Bank after due scrutiny.

5.2.2 The dependent pension shall be paid from the date of application by the spouse/daughter and not from the date of death of the pensioner.”

Counsel for the respondents has further submitted that in order to avail the transfer of pension by the spouse of the deceased freedom fighter, the application has to be filed within a period of six months and as per Para 5.2.2 of the Pension Scheme, the dependent pension shall have to be paid from the date of application filed by the spouse/daughter and not from the date of death of the pensioner.

The only issue that arises for adjudication in this case is as to whether there is evidence on record to show that the petitioner had applied for the pension on 21.03.2014 or the respondents are justified in sanctioning the pension w.e.f. 06.06.2016, that is the date when the petitioner had allegedly applied?

Counsel for the petitioner has placed on record an affidavit of the petitioner which was attested on 21.03.2014 in which she had specifically mentioned that her husband was a freedom fighter and had been receiving freedom fighter pension vide PPO No.7197/FF which was being credited to his bank account. She has also mentioned that her husband had expired on 27.10.2013 and attached the death certificate with the said affidavit.

The only dispute raised by the respondents is that they had not received the said affidavit but the positive case of the petitioner is that the said affidavit was sent to the respondents after it was attested on 21.03.2014 and,

therefore, she is entitled to the dependent pension from the date of application, i.e. 21.03.2014, and not from the date when the pension has been sanctioned by the respondents, i.e. 06.06.2016.

It is needless to mention that the Freedom Fighter Pension Scheme was later on given the nomenclature of Samman Pension Scheme which was a token of honour by a grateful nation to the honourable freedom fighters and their dependents.

In such circumstances, the Court would lean in favour of the petitioner being the old aged widow of the freedom fighter while accepting the affidavit dated 21.03.2014, having been filed by her, instead of accepting the contention of the respondents that no such affidavit was received by them.

Consequently, the present petition is hereby allowed and a direction is issued to the respondents to consider the case of the petitioner for the purpose of grant of pension w.e.f. 21.03.2014 instead of 06.06.2016 and disburse the amount of arrears of pension to her or deposit the same in her bank account as soon as possible, preferably within a period of two months, from the date of receipt of certified copy of this order. Since this order is being passed in view of the peculiar facts and circumstances of this case, therefore, it may not be treated as a precedent.

April 17, 2018
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(Rakesh Kumar Jain)
Judge

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