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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 4th October, 2018
Judgment pronounced on: 7th December, 2018

+ **LPA 321/2015, CM APPL 9607/2015**

UNION OF INDIA & ANRAppellants

versus

DEV NARAYAN MISHRARespondent

+ **LPA 833/2015, CM APPLs 27412-13/2015**

UNION OF INDIA & ANRAppellants

versus

RAJENDRA THAKURRespondent

Present: Mr. Sanjeev Narula, CGSC with Mr. Abhishek Ghai and
Mr. Rajat Gava, Advocates for appellant in both the matters.
Mr. A.K. Thakur with Mr. Rishi Raj, Advocates for respondent
in LPA 321/2015.
Mr. Radhe Shyam Sharma, Advocate for respondent in LPA
833/2015.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

CM APPL 27413/2015 (Condonation of Delay in LPA 833/2015)

By way of the present application, condonation of delay of 153
days is sought in preferring the present appeal.

Heard.

For the reasons stated in the application, the delay of 153 days in filing the present appeal is hereby condoned and application stands disposed of.

LPA 321/2015 & LPA 833/2015

1. The Union of India filed the present Letters Patent Appeals under Clause X of the Letters Patent Act, against the judgments dated 29.01.2015 and 20.04.2015 (impugned judgments) whereby the learned Single Judge while allowing the writ petitions filed by the respondents, granted pension to the freedom fighters under the Swatantra Sainik Samman Pension Scheme, 1972 (hereinafter referred as the 'SSSP Scheme').
2. Brief facts of the case of *LPA 321/2015 'Union of India v. Dev Narayan Mishra'* are as under:-
 - i. The respondent herein is a 90 year old freedom fighter, who participated in the Freedom Movement and remained underground from August 1942 to 1946. The respondent made an application to the appellant on 31.03.1982 for grant of pension under the SSSP Scheme. During the period when the appellant remained underground, arrest warrants were issued against him for offences punishable under Section 224 and 225 of the Indian Penal Code, 1860, following which he was declared an absconder. In support of his application for grant of SSSP Scheme, the respondent submitted a certificate of personal knowledge (PKC), issued by one Sh. Bhagirath Jha, who was a freedom fighter and had remained under detention from 1942 to 1946. Extract

of Government Record bearing GR No. 917/1942 has also been produced by the respondent which reflects the period of his underground suffering i.e. from 1942 to 1946 and also the order dated 18.06.1968 whereby the arrest warrants issued against him were recalled.

- ii. The State Government recommended the case of the respondent by its letter dated 02.11.1998 after duly verifying the extract of GR No.917/1942 and the non-availability of the court records and also on the basis of the aforesaid personal knowledge certificate granted by Sh. Bhagirath Jha in favour of the respondent. However the claims of the respondent were dismissed by the appellant vide order dated 28.05.2010.
- iii. Against the said dismissal order, the respondent preferred a writ petition before the learned Single Judge of this Court which was allowed on 29.01.2015 observing as under:-

"9. For all these reasons, I intend to set aside the impugned order. It is ordered accordingly. The petitioner will be given pension hereafter as also arrears of pension, as applicable under the scheme, from the date of the application for the said purpose was first filed. The petitioner has also prayed for interest. Though the interest sought is at the rate of 18% per annum, according to me, since the period for which arrear obtain spans more than two decades, the interest of justice will be served, if simple interest at the rate of 9% is ordered. It is ordered accordingly. The arrears of pension will be paid to the petitioner within six weeks from today,

failing which, interest will run at the rate of 12 % per annum."

3. Brief facts of the case of *LPA 833/2015, 'Union of India vs. Rajendra Thakur'* as noticed by learned Single Judge are as under:-

- i. Briefly, the petitioner's case is that, he took part in the 1942 Movement, which was part of the freedom struggle, and on account of his participation in the Movement, he remained underground between August, 1942 till 31.05.1946, i.e., for a period of about four years. 5.1. The petitioner, avers that because of his participation in the Freedom Movement, he was included as an accused in GR 744/42.
- ii. Based on this fact, the petitioner made an application with the respondents on 06.07.1981, for being granted SSS Pension under the said scheme. The Government of Bihar, i.e., respondent no.2, placed the matter before the Advisory Committee, which, according to the petitioner, vide order dated 21/22.02.1998 recommended the case of the petitioner for release of pension w.e.f. 01.08.1980.
- iii. The petitioner further avers that since SSS Pension was not paid, several requests were made to the respondents, and having lost all hope, he approached this court by way of a writ petition under Article 226 of the Constitution, The first round, in this court, was by way of a writ petition, which was numbered as: WP(C) No. 367/2014. Directions were issued in that writ petition vide order dated 31.03.2014, for re-

issuance of a verification report by the Government of Bihar, i.e., respondent no.2. The verification report was considered by the appellant and rejected vide order dated 09/10.12.2014.

4. Being aggrieved by the order of rejection dated 09/10.12.2014, the respondent herein preferred WP(C) 2238/2015 titled as *Rajendra Thakur Vs Under Secretary, Government of India & Ors.* before the learned Single Judge which was allowed on observing as under:-

“13.1 If the test of preponderance of probability is applied, and if, what the petitioner says is right, the respondents should have, given the material set out above, accepted the claim of the petitioner. The petitioner is 93 years old. I doubt, based on the material placed before me by respondent no. 1 WP(C) 2238/2015 Page 8 of 8 and 3, that he would, at this stage in his life, make a dishonest claim. The stand of respondent no. 1 and 3, in a sense, dilutes the very purpose and object for which the SSS Pension scheme was formulated, in the first instance. For most applicants, it is more about the honour and less about money.

14. Accordingly, respondent no. 1 & 3 are directed to pay the requisite pension to the petitioner as stipulated under the SSS Pension scheme, from the date when the application in this case was made, i.e., on 06.07.1981. [See observations of the Supreme Court in Mukund Lal Bhandari & Ors. vs Union of India & Ors. 1993 Supp. (3) SCC 2 in paragraph 10 at page 8]. 14.1 Arrears will be paid, accordingly. The

arrears will be paid with interest, calculated at a simple rate of interest pegged at 12% per annum. [See judgment dated 29.01.2015, passed in WP(C) 7155/2014, titled : Dev Narayan Mishra Vs. Union of India and Anr.; and judgment dated 24.02.2015, passed in WP(C) 6950/2014, titled : Radha Krishan Vs. Union of India and Anr.]”

5. Both the appeals are set down for hearing together. Issues in both the appeals being similar, we set to place on record, the facts of *LPA 321/2015* titled as '*Union of India v. Dev Narayan Mishra*.
6. The appellants/UOI filed the present appeals challenging the impugned judgment dated 29.01.2015 passed in *WP(C) 7155/2014* titled as *Dev Narayan Mishra Vs Union of India* and judgment dated 20.04.2015 passed in *WP(C) 2238/2015* titled as *Rajendra Thakur Vs Under Secretary, Government of India & Ors.* passed by the learned Single Judge. The question that falls for determination in these appeal is whether the learned Single Judge was justified in directing payment of pension under the SSSP Scheme to the respondents.
7. The learned counsel for the appellant contended that the learned Single Judge erred in granting pension to the respondents under the SSSP Scheme as the respondents have not satisfied the pre-conditions enumerated under Clause 2.3 of the said Scheme to be eligible for grant of freedom-fighter's pension; that the learned Single Judge has erred in relying upon the personal knowledge certificates (PKC) filed by the respondents as the certifier was

himself undergoing imprisonment for the period during which the respondents were underground and also for the reason that the said certificates were not accompanied by the jail records enumerating the term of imprisonment undergone by the certifier; that merely because the same certifier has issued personal knowledge certificates (PKC) in favour of two other freedom fighters who received pension under the SSSP Scheme, the PKC so issued in favour of the respondents cannot ipso facto entitle the respondents to receive benefits under the SSSP Scheme as the same depends on the facts and circumstances of each individual case; that the PKC being a secondary evidence, cannot be accepted unless a Non-Availability of Records Certificate (NARC) issued by the State Government is duly furnished by the claimant and that since in the present case no NARC has been furnished by the respondents, the PKC could not have been considered; that the respondents are not entitled to interest on arrears of pension as the application of the respondents seeking pension, as alleged to be made on 31.03.1982, was only received in Ministry of Home Affairs/Grih Mantralaya, Freedom Fighter Division, Government of India on 18.02.2010 whereafter vide order dated 28.05.2010 this court directed the department to dispose of the application of the respondents expeditiously preferably within three months; that the extract of GR No.917/42 cannot be relied upon as it neither specifies the period during which the respondents were absconding nor does it mentions the actual offences for which the respondents were to be apprehended; that in the abovementioned circumstances the order

of the learned Single Judge be directed to be set aside; that in order to substantiate his case, the learned counsel has placed reliance on the case of *Jagdamba Devi v. Union of India* reported in *AIR 2017 SC 674*, *Union of India vs K. Indrasena Raddy & Anr* reported in *(2007) 14 SCC 305*, *Mahender Singh vs Union of India* reported in *(2011)1SCC(LS)562*, *Union of India vs Bikash R. Bhowmick & Ors* reported in *2005 (1) ALT 34*, *Government of India vs. K.V. Swaminathan* reported in *(1997) 10 SCC 190*.

8. Refuting the contentions advanced by the learned counsel for the appellant, Mr. A. K, Thakur learned counsel for the respondent submitted that there is no infirmity in the order passed by the learned Single Judge as the case of the respondent is covered by Clause 2.3 of the SSSP Scheme under which they were lawfully entitled for grant of pension; that sufficient evidence as mandated by the scheme has been furnished by the respondent to support his claim; that the extract of GR No. 917/1942 furnished by the respondent speaks volumes of the fact that from 1942 to 1946 the respondent had remained underground for having participated in the freedom struggle and the arrest warrants so issued against him under Section 224 and 225 of the Indian Penal Code, 1860 was recalled on 18.06.1968; that the personal knowledge certificate furnished by the respondent in support of his claim has been issued by an eligible certifier and the certificates previously issued by the same certifier in favour of two other freedom fighters has resulted in the said persons being granted pension under the same Scheme; that post the filing of application for pension, the case of the

respondent was recommended by the Government of Bihar on four different occasions being 02.11.1998, 10.05.2011, 13.06.2013 and 20.12.2013; that having satisfied the eligibility criteria as provided under the Scheme, the respondent is rightfully entitled to the grant of pension as held by the learned Single Judge: that there is no infirmity in the impugned judgment passed by the learned Single Judge and the same deserves dismissal. In order to substantiate his case, the learned counsel has placed reliance on the case of *Mukund Lal Bhandari & Ors. vs. Union of India & Ors.* reported in (1993 Suppl. (3) SCC 2) and *Sukhai Thakur v. Union of India* reported in 2013 (133) DRJ 328.

9. Mr. Radhey Shyam Sharma learned counsel for the respondent in LPA 833/2015 adopted the arguments raised by Mr. Thakur, advocate and sought dismissal of the appeals.
10. We have heard the learned counsels for the parties and perused the material available on record.
11. Before delving into the contentions raised by the counsels for the parties, it is relevant to produce and peruse the SSSP Scheme issued by the Government of India in the year 1980. The SSSP Scheme is a Central Government Scheme for the grant of pension to freedom fighters and their families from Central Revenues which was introduced by the Government of India to extend the benefit of pension to all the freedom fighters as a token of respect to them. The Scheme clearly specifies the persons who are eligible for the purpose of grant of pension under the Scheme. The Scheme lays down the eligibility of the persons who can claim pension

under the Act. Relevant paras of the Scheme is re-produced hereinbelow:-

*“2.3 **Underground** :- A person who on account of his participation in freedom struggle remained underground for more than six months provided he was ;*

A. a proclaimed offender; or

B. one on whom an award for arrest was announced; or

C. one for whose detention, order was issued but not served.

Explanation: Voluntary underground suffering or self-exile suffering for party work under command of the party leaders, are not covered as eligible sufferings for pension under the Central Scheme.

The claim of underground suffering is considered subject to furnishing of the following evidence:-

*(i) **Documentary evidence** by way of Courts /Govts orders proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention. OR*

*(ii) **Where records of the relevant period are not available**, a non-availability of records certificate (NARC) from the concerned State/Union territory Administration along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum two years and who happened to be from the same administrative unit.”*

*As per Swatantrata Sainik Samman Pension Scheme, 1980, the claim of "**Underground Suffering**" is considered subject to furnishing of the following evidence:-*

*"(i) **Primary evidence**: Documentary evidence by way of court's/Government's order proclaiming*

the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention. Absconsion on issue of warrant of arrest is not an eligible suffering for grant of SSS pension, unless the same is followed by the order of proclaimed offender/or award for arrest on head or detention order.

*(ii) **Secondary evidence**:- In the absence of primary record-based evidence, a Non-Availability of Records Certificate (NARC) from the concerned State Government/Union Territory Administration along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum of two years and who happened to be from the same administrative District can be submitted as supporting evidence to the claim." Where primary evidence viz. records of the relevant period are not available, 'Non-Availability of Record Certificate (NARC)' from the concerned authority, in the form of secondary evidence becomes a pre- requisite for claiming "underground suffering".*

12. The Swatantrata Sainik Samman 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. Reading of the above mentioned clause as per the SSSP Scheme shows that for a person to be eligible for pension under the Scheme, he should have remained underground for the period of more than six months during the freedom struggle for the reason of being Proclaimed Offender or one on whom an award for arrest on

his head was announced or one for whose detention, order was issued but not served. In order to prove the same, the Scheme further requires documentary evidence by way of Court's/Government's order proclaiming the applicant as an offender, announcing an award on his head or for his arrest or ordering his detention and in the absence of such primary evidence, a Non Availability of Records Certificate (NARC) is required to be produced from the concerned State Government/Union Territory Administration along with a Personal Knowledge Certificate(PKC) from a freedom fighter who has proven jail suffering for a minimum period of two years belonging to the same Administrative District. If the said conditions are not complied with, then the Central Government shall not consider a claim for such pension.

13. The respondent in support of his claim of underground suffering has produced documents i.e. extract of court record of GR No. 917/42 and the PKC of another Freedom Fighter. Perusal of the GR No. 917/42 shows that it is an extract from the order sheet dated 18.06.1968 in the case of *Emperor v. Sita Ram Manto and other accused* under Section 224 and 225 of the India Penal Code, 1860 issued by the court of *Mr. M. Usman Spl. Magistrate Madhubani in the District Darbhanga*. Further, Additional Collector of Madhubani, in the letter dated 15.10.1984 addressed to the Home Ministry, Bihar certified that the extract of GR No. 917/1942 was issued on the basis of original record with the Government. In the letter dated 02.11.1998 issued by Director

cum Joint Secretary of Government of Bihar, it has been stated that the evidence(s) produced by the respondent in support of his plea has been verified and further proves the fact that the Respondent remained underground between 14.08.1942 and 21.05.1946.

14. On the basis of the GR No. 917/1942 as well as various other letters issued by the Government of Bihar in this regard, it is evident that the respondent was absconding for the period between 14.08.1942 and 21.05.1946 and also the warrant of arrest was issued against him which was recalled and they were also identified as absconders and the criteria for claiming pension under SSSP Scheme stands satisfied.
15. As per the Scheme, it is clear that once the primary evidence is supported by a valid documentary evidence and underground suffering of more than six months has been duly proved, then the condition precedent for the grant of pension under SSSP Scheme stands fulfilled. In its case in hand, even if we assume that the primary evidence does not entirely support the case of the respondent and in the absence of primary record-based evidence, a Non-Availability of Records Certificate (NARC) from the concerned State Government/Union Territory Administration along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of a minimum of two years and who happened to be from the same administrative District can be submitted as supporting Secondary evidence to the claim.

16. In the present case, the contention of the appellant is that the respondent has not furnished a valid NARC and in absence of valid NARC, PKC cannot be considered and is not acceptable. In this context, we find from the record that Government of Bihar repeatedly on four occasions made recommendations for grant of pension to the respondent and also the respondent has placed on record PKC of one Bhagirath Jha in support of his plea as the Secondary evidence. The certificate issued by Bhagirath Jha belonging to District Madhubani stated that he participated in freedom struggle movement and remained imprisoned for more than five years and remained in jail between 03.10.1942 to 17.04.1946 in District Darbhanga Madhubani. Relevant para of the PKC is reproduced below:-

“ I hereby declare that Sh. Dev Narayan Mishra S/o Late Mahesh Mishra, R/o village Amada, PO Raghuni Dehat, PS Raj Nagar, District Raghubani is a freedom fighter who during the freedom fight of 1942 remained underground from (a) August 1942 to 1942 for more than 6 months because he is one:-

- (1) Declared offender*
- (2) Illegible*
- (3) Whose arrest order were issued but was escaped from arrest.*

*(c)..... To
..... for more than six months remained out from his district and the order of detention at home was passed.*

As per my full knowledge and believe due to written or non written application for exemption, the punishment of death was no adjourned and he

was also not get underground voluntarily or due to love for country or due to fear of arrest.”

17. A conjoint reading of the PKC issued by Bhagirath Jha alongwith GR No. 917/1942 as well as various other letters issued by the Government of Bihar, it is evident that the respondent participated in the freedom struggle and was absconding for the period between 14.08.1942 and 21.05.1946. It is further proved that warrant of arrest has been issued against the Respondent and the respondent has suffered underground suffering for more than six months.
18. The contention of the learned counsel for the appellant that the learned Single Judge has wrongly relied upon the personal knowledge certificate (PKC) filed by the respondent as the certifier/ Sh. Bhagirath Jha was himself undergoing imprisonment for the period during which the respondent was underground and also for the reason that the said certificate was not accompanied by the jail records enumerating the term of imprisonment undergone by the certifier is without any force. It is important to glance at the letter dated 02.08.2013 issued by Additional Secretary of Government of Bihar in favour of Freedom Fighter Department, Government of India with regard to demand of report in connection of jail period of Sh. Bhagirath Jha as mentioned in PKC. In the aforesaid communication it was clarified by the Jail Superintendant, Darbhanga and Madhubani that as per Certificate No. 2260 dated 28.11.87, Sh. Bhagirath Jha entered the jail after getting transferred from Darbhanga Jail on 23.06.1944 and was acquitted on 17.04.1946. The Jail Superintendent also mentioned in

the aforementioned letter that the entry register for the period between 03.10.1942 to 20.04.1946 was not available. The appellant failed to raise any objections or dispute that on the basis PKC issued by Bhagirath Jha, this court vide order dated 13.03.2013 granted pension under SSSP Scheme to Shri Rajdhar Jha and Shri Badhyanath Mehto.

19. From the Jail Certificate No. 2260 dated 28.11.87, it can be inferred that Sh. Bhagirath Jha underwent imprisonment for a period of not less than two years and belonged to the same administrative unit.
20. The argument on behalf of the appellant that Sh. Bhagirath Jha could not have issued a valid certificate in favour of the appellant as he himself was undergoing imprisonment from 1942 to 1946 and cannot be the sole ground rejecting the claim of the respondent for grant of freedom fighters pension as there is no reason to doubt the certificate produced on record on behalf of Sh. Bhagirath Jha.
21. In the present case, the respondent fulfills the conditions as stated in the SSSP Scheme for the grant of pension and it is also a settled proposition of law that the court shall not adopt a hyper-technical approach while dealing with the case of freedom fighter and that the basic objective of the scheme is to honour and benefit the kith and kin of the freedom fighters. In the case of ***Gurdial Singh vs Union Of India & Ors*** reported in (2001) 8 SCC 8, the court has placed reliance in the case of ***Mukund Lal Bhandari & Ors. vs. Union of India & Ors. [1993 Suppl. (3) SCC 2]*** and held that:-

The scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from the foreign country is very cumbersome and expensive. Keeping in mind the object of the scheme, the concerned authorities are required that in appreciating the scheme for the benefit of freedom fighters a rationale and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the scheme are supposed to be such persons who had given the best part of their life for the country. This Court in Mukand Lal Bhandari's case(supra) observed:

The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet

that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependents. The preference in employment, allotment of accommodation and in admission to schools and colleges of their kith and kin etc., are also the other benefits which have been made available to them for quite sometime now."

The court categorically mentioned that the pension under the scheme should be made payable from the date on which the application is made whether it is accompanied by necessary proof of eligibility or not."

22. Having regard to the aforesaid law and the facts and circumstances of the present case, it is observed by this court that the necessary condition required to grant pension under the SSSP Scheme stands fulfilled and the discrepancies as adhered by the appellant cannot be held to be material which could be made a premise for depriving the respondent of his right to get pension. The standard of proof required in such cases is not as required in criminal cases and once on the basis of evidence it is probable that the respondent had suffered imprisonment during freedom struggle, a presumption is required to be drawn in his favour.

23. Accordingly, this court finds no infirmity in the judgment dated 29.01.2015 passed in *WP(C) 7155/2014* titled as *Dev Narayan Mishra Vs Union of India* and judgment dated 20.04.2015 passed in *WP(C) 2238/2015* titled as *Rajendra Thakur Vs Under Secretary, Government of India & Ors.* passed by the learned Single Judge. The appeals, therefore, stands dismissed along with the pending applications.

SANGITA DHINGRA SEHGAL, J.

G.S.SISTANI, J.

DECEMBER 07, 2018 /gr