

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 25299 of 2006

Date : 8.3.2019

Between:

DODDA KRISHNA MURTHY
S/o Appaiah R/o Wyra vilage Mandal Khammam District
Petitioner

And

The Government of India,
Rep by Deputy Secretary,
Ministry of Home Affairs freedom Fighters Division (HC)
Lok Nayak Bhavan Khan Market New Delhi & others
Respondents

The Court made the following:



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ORAL ORDER:

Heard learned counsel for petitioner Sri K.Ratangapani Reddy, Sri Namavarapu Rajeswara Rao, learned Central Government Standing Counsel for respondents 1 and 2 and learned Government Pleader for respondent no.3.

2. Petitioner claims that he participated in the freedom struggle against Nizam Regime in the year 1947-48 for the merger of erstwhile Hyderabad State into the Indian union. His request to grant pension was rejected, decision of which was communicated vide proceedings dated 28.9.2005, impugned in this writ petition.

3. According to learned counsel for petitioner, application of petitioner was processed and recommended by Hyderabad Special Screening Committee (for short HSSC) vide their Agenda No. 7491 in File No. 112/8420/97 dated 23.12.1997 (Extract of which is filed as Ex.P2). He would also submit that Kondapally Satyanarayana Reddy who participated in National Freedom Struggle and recipient of pension also certified that petitioner participated with him in the freedom struggle and petitioner remained underground for six months for the period from September, 1947 to 17.9.1948 and declared petitioner as a bonafide freedom fighter. Learned counsel would further submit that Revale Janakiramaiah, Camp Incharge of Vasthavai Camp appointed by Sharab Committee certified that petitioner was also in the Camp during the period from 1947 to 1948 (Ex.P-4). By placing reliance on the above documents he would submit that rejection was illegal.

4. Per contra, learned Assistant Solicitor General would submit that the HSSC recommendations slip duly signed by the Chairman and members is not available in the records of the petitioner. He would

submit that as there were complaints on bogus certificates by HSSC, the State Government volunteered to undertake re-verification of all claims vide their letter dated 13.4.2007 accepted by Government of India. Therefore, all claims made prior to 13.4.2007 are not accepted. After re-verification the case of petitioner was not recommended by the State Government. According to learned Assistant Solicitor General, the issue of re-verification was considered by the Hon'ble Supreme Court in several cases and upheld the decision to thoroughly verify the claims before granting pension.

5. Two things to be noted here. According to petitioner when his application was processed, the HSSC recommended petitioner name. His name is shown against Agenda No. 7491 in File No. 112/8420/97 dated 23.12.1997. Extract of agenda proceedings authenticated by Shishir Jha, Deputy Secretary, Ministry of Home Affairs, filed as Ex.p-2 is relied on. It is asserted by petitioner that second respondent mistook file number as agenda number. This assertion is not denied. The reason assigned for rejection is cases upto agenda number 8206 were only considered. If that is so, claim of petitioner ought to have been considered as his agenda number is 7491. Further, rejection was on 28.9.2005, by which date the alleged review of all claims was not undertaken but in the counter this additional plea is raised though rejection was not on that ground. The counter is silent as to whether in the revised exercise petitioner's name is included.

6. Further, in addition to HSSC recommendation petitioner also relied on certificates issued by Kondapally Setyanarayana Reddy, freedom fighter and Ravella Janakiramaiah, Camp Incharge as secondary evidence. The counter of respondents 1 and 2 is silent on this aspect also. In the absence of primary evidence these two certificates can be

considered to assess the claim to grant pension treating them as secondary evidence. Thus, impugned order is not sustainable.

7. It is apparent that claim of petitioner was processed in a mechanical manner. It is nothing but disrespecting a freedom fighter.

8. In this context it is apt to note that in **Mukund lal Bhandari Vs. Union of India**¹, Supreme Court found against such conduct. Supreme Court observed:

“7. As regards the contention that the petitioners had filed their applications after the date prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it ill behoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependants and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes. The Scheme has rightly been

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1993 Supp (3) SCC 2 at page 6

renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims, should be regarded more as a matter of administrative convenience than as a rigid time-limit.

8. Coming now to the last contention advanced on behalf of the Government, viz., that the benefit of the Scheme should be extended only from the date the claimant produces the required proof of his eligibility to the pension, we are of the view that this contention can be accepted only partially. There have been cases, as in the present case, where some of the claimants had made their applications but either without the necessary documentary proof or with insufficient proof. It is unreasonable to expect that the freedom fighters and their dependents, would be readily in possession of the required documents. In the very nature of things, such documents have to be secured either from the jail records or from persons who have been named in the Scheme to certify the eligibility. Thus the claimants have to rely upon third parties. The records are also quite old. They are bound to take their own time to be available. It is, therefore, unrealistic to expect that the claimants would be in a position to

produce documents within a fixed time-limit. What is necessary in matters of such claims is to ascertain the factum of the eligibility. The point of time when it is ascertained, is unimportant. The prescription of a rigid time-limit for the proof of the entitlement in the very nature of things is demeaning to the object of the Scheme. We are, therefore, of the view that neither the date of the application nor the date on which the required proof is furnished should make any difference to the entitlement of the benefit under the Scheme. Hence, once the application is made, even if it is unaccompanied by the requisite eligibility data, the date on which it is made should be accepted as the date of the preferment of the claim whatever the date on which the proof of eligibility is furnished.”

9. The order impugned is set aside. Matter is remitted to respondents 1 and 2 to reexamine the claim of petitioner having regard to HSSC recommendation already made and certificates issued by two freedom fighters. The respondents 1 and 2 may obtain clarification, if any, needed from State Government on recommendation by HSSC. Entire exercise shall be completed within two months from the date of receipt of this order. Accordingly, writ petition is allowed. No costs. Miscellaneous petitions, if any pending, are closed.

DATE: 08-3-2019
TVK

P NAVEEN RAO,J

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