

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

201**CWP-1554-2018****Date of Decision :04.03.2020**

Chand Kaur

... Petitioner

Versus

The Secretary, Ministry of Home Affairs and others

...Respondents

CORAM:HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. R.A.Sheoran, Advocate with
Mr. Sushil Sheoran, Advocate for the petitioners.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Shivoy Dhir, Senior Panel Counsel
for respondents No.1 and 2-UOI.**SUVIR SEHGAL, J.**

Prayer in the instant petition is for issuance of a writ in the nature of certiorari for quashing the impugned order dated 27.12.2017 Annexure P-9, passed by respondent No.3 whereby the claim of the petitioner for grant of Freedom Fighter's Pension was rejected. A further prayer has been made for issuance of a writ of mandamus directing the respondents to grant Freedom Fighter's Pension, firstly, to the husband of the petitioner and thereafter to the petitioner w.e.f. 23.11.1990 as freedom fighters' pension was granted to 63 other persons mentioned in the list of Indian National Army (INA) who served with the husband of the petitioner and a further prayer has been made for grant of arrears

w.e.f. 23.11.1990 along with interest @ 12%.

Facts in brief are that Late Gnr. Sultan Singh, husband of the petitioner was enrolled as a Gunner in Reg/corps vide No.A.A.A/5098 in the Army on 05.03.1941. While he was in service, his regiment joined INA after the fall of Singapore on 15.02.1942. They were absorbed in the INA and deployed under the orders of the then G.O.C.-in-Chief, INA at Brendon in Sumatra. They were required to man the Anti-Aircraft Guns (A.A. Guns) to defend the oil refinery at Brendon. They continued to man the A.A. Guns throughout the Second World War. On their return to India, they were discharged from the Army services depriving them from any war service benefits and they lost their job. The discharge certificate (Annexure P-1) issued to Sultan Singh, shows his date of enrollment as 05.03.1941 and date of discharge as 23.06.1946. The Central Government formulated a scheme known as "Swatantrata Sainik Samman Pension Scheme, 1980" (for short 'Scheme') which was later amended in the year 1990 (Annexure P-2). On 19.01.1988 (Annexure P-3) the Government of India constituted a committee to review the cases of INA because many persons who were members of INA were not granted pension under the said Scheme. The committee by its recommendations dated 25.04.1988 (Annexure P-4) recommended the names of 64 Anti Aircraft Artillery Gunners (A.A. Gunners) for grant of Freedom Fighters Pension. The name of the husband of the petitioner, late Gnr. Sultan Singh was at serial No.57 of the list. The Government eventually approved the list in December, 1990 (Annexure P-5) and decided to grant them Freedom Fighter's Pension. Unfortunately, before he could be granted pension under the Scheme,

Sultan Singh expired on 24.12.1990 (Annexure P-6). After his death the petitioner made numerous efforts to get pension sanctioned, however, all her efforts failed. Subsequently she came to know that some of the persons who were serving in the regiment of her husband namely, Umrao Singh, Sultan Singh and Prabhu Dyal were receiving pension under the Scheme and now their dependants are getting the same. She has appended PPO order of Umrao Singh dated 18.06.1991, Annexure P-7, which shows that he was receiving pension from 23.11.1990. The case of the petitioner for grant of pension was duly forwarded by the District Magistrate, Rewari to respondent No.3. However, no action was taken thereon forcing the petitioner to serve a justice demand notice dated 12.12.2017, Annexure P-8. After being served with the notice, respondent No.3 vide order dated 27.12.2017, Annexure P-9, rejected the case of the petitioner. The said order is being impugned herein by the petitioner.

Upon notice being issued, separate replies have been filed by the Union of India (respondents No.1 and 2) and by the State of Haryana (respondent No.3). Respondents No.1 and 2 in their counter affidavit have submitted that in order to be eligible for pension under the Scheme, an application is a must and that the application of the husband of the petitioner was not available with the Ministry and that is why, the pension was not granted to him. It was further submitted that pension had been granted to only 37 A.A. Gunners out of 64 available as per the record. It was further submitted that the requirements and eligibility criteria of the scheme is detailed in Clauses 2 and 3 of the Scheme. The claim has further been resisted by placing reliance upon Paras 1.5 and 5

of the Revised Policy Guidelines dated 06.08.2014 (Annexure R-1/1) for disbursement of Central Samman Pension .

In their reply, the Government of Haryana, respondent No.3 has submitted that the claim of the petitioner was considered and it was found that she was not eligible in view of Para 1.5 of the Guidelines. Still further, it was submitted that since the husband of the petitioner had not been granted pension under the Scheme, the petitioner was not eligible for the same.

Counsels for the parties have been heard and material placed on the record has been perused with their able assistance.

The Government of India introduced Freedom Fighters' Pension Scheme, 1972, which came into force with effect from 15.08.1972 providing for grant of pension to freedom fighters and to their families, if the freedom fighter is no more. The minimum pension sanctioned to a freedom fighter was Rs.200/- per month and between Rs.100/- to Rs.200/- per month to their families. It was admissible to only these freedom fighters whose annual gross income was less than Rs.5000/-.

From 01.08.1980, a modified Scheme was introduced as 'Swatantrata Sainik Samman Pension Scheme, 1980', which was extended to all freedom fighters as a token of Samman to them. It was a beneficial scheme. Pension payable under the Scheme was meant not only for the freedom fighters, but also for their eligible dependants, who have been defined in Clause 2 as under:-

“2. Who are eligible dependents:

For the purpose of grant of Samman pension, family includes (if the freedom fighter is

not alive) mother, father, widower/widow if he/she has not since remarried, unmarried daughters.

Not more than one eligible dependent can be granted pension and in the event of availability of more than one dependent the sequence of eligibility will be widow/widower, unmarried daughters, mother and father.”

A perusal of Clause 2 of the Scheme shows that where the freedom fighter is no longer alive, one eligible dependant, out of widow/widower (if he/she has not since re-married), unmarried daughters, mother or father, in that order, will be entitled for the grant of pension under the Scheme. In the present case, the wife, being the widow had submitted an application after the death of her husband. To non-suit her simply on the basis that the husband has not been granted pension and therefore, she is not eligible for the same, does not meet the objects for which the Scheme has been framed.

The reason for this is not far to see. The Scheme was formulated in 1972 and the modified Scheme came into force in the year 1980. When the Scheme was introduced in 1972, twenty five years had lapsed since the country had attained independence. Cognizance can be taken of the fact that a number of freedom fighters might have expired during this period. Keeping this in view, to oust such freedom fighters and their families from the benefit of the Scheme would result in defeating the very aim for which the Scheme was framed.

Still further, it may be noticed that Paras 1.5 and 5 of the Guidelines came up for interpretation before the High Court of Kerala in R.P. No.128 of 2016 in WP(C) No.3814 of 2009 titled as ***Union of India vs. State of Kerala and others***, wherein it was held as under:-

“9. A reading of Annexure-A1 guidelines would show that it is a revised policy guidelines to be followed by authorised Public Sector Banks for disbursing the Sainik Samman Pension. The said guidelines were issued when it came to the notice of the Ministry of Home Affairs that certain discrepancies have crept in the disbursement of monetary benefits under the scheme by the Public Sector Banks.

10. The learned Central Government Counsel mainly rely on Para 1.5 of Annexure-A1 guidelines in order to contend that after the death of the freedom fighter sanctioning of dependent pension on his legal heirs is impermissible. Para 1.5 of Annexure-A1 reads thus:

1.5 Sanction of pension after the death of Freedom Fighter - No pension shall be sanctioned in the name of the freedom fighter after his/her death even if his/her matter was under examination. This also entails that no life time arrears or dependent pension shall be sanctioned to his/her spouse/daughter after the death of the freedom fighter.

11. Reading of Para 1.5 would show that the said provision mainly concern with sanctioning of pension in the name of a freedom fighter after his or her death, even in a case in which the matter is under examination. The said provision will not in any manner disentitle the dependent of a freedom fighter in making an appropriate application claiming dependent

pension, which is evident from the provisions under Para 5 of Annexure-A1 which reads thus:

- 5. Sanctioning the dependent pension to spouse or daughters of Freedom Fighter:- Dependent pension shall be sanctioned to the spouse or unmarried daughters only if their names were appearing in the original application form submitted by the freedom fighter or the sanction letter issued by the Ministry. If the freedom fighter marries or has a daughter, either own or adopted, after the sanction of the pension, then family pension to such spouses or daughter shall not be admissible.*
- 12. Going by Para 5 of Annexure-A1 sanctioning of dependent pension to the spouse or daughters of the freedom fighter is permissible, if their names were appearing in the original application form submitted by the freedom fighter or sanction letter issued by the Ministry. Further Para 5.2.2 of Annexure-A1 provides that the dependent pension shall be paid from the date of application by the spouse/daughters and not from the date of death of the pensioner, which would also make it explicitly clear that, even after the death of the freedom fighter his wife/daughters are entitled for dependent pension under the SSS pension scheme.”*

As such, it is clear that even in case of the deceased freedom fighter, his/her eligible dependant is entitled to dependant pension and

the application for grant of pension is to be considered from the date the application was moved and claim was raised. The reasoning given by the State Government while rejecting the application of the petitioner, therefore, cannot be sustained and deserves to be set aside.

Still further, it may be mentioned that the State Government had no authority to reject the application under the Scheme. The limited role which had been given to the State Government under the Scheme is clear from Clauses 5 and 8 of the Scheme, which is as under:-

“5. How to apply?

Persons who consider themselves eligible for Samman Pension under the Scheme should apply in duplicate on the prescribed application form. One form duly filled and supported by required documents as proof of claim of suffering should be sent to the Chief Secretary to the State Government/Union Territory Administration concerned. The second copy should be sent to the Deputy Secretary to the Government of India, Freedom Fighters Division, Ministry of Home affairs, Govt. of India, NDCC-II Building, Jai Singh Road, New Delhi-110001 as an advance copy.”

6. xxx xxx xxx

7. xxx xxx xxx

“8. Issue of sanction order

The receipt of advance copy of application form is acknowledged. The claim of the applicant will be scrutinized in the State Government/Union Territory administration in consultation with State Advisory Committee on the basis of copy of application submitted to them. After receipt

of State verification and entitlement to pension report, the claim of the applicant is scrutinized and if found eligible Pension is granted. Sanctions are issued as applications are scrutinized and conveyed to the Accountant General of the areas with copies to the Chief Secretary of the State Government/UT Administration and the Collector/DC of the District concerned. Simultaneously, a communication conveying sanction of pension as also the amount of pension is issued to each grantee. Applicants whose applications are not approved are duly informed.”

This clause has to be read with Para 1.1 of the Guidelines-Annexure R1/1, wherein it is mentioned that:

“1.1 The applicant must submit the Application form to the concerned State Government complete in all respect. The application shall be duly forwarded by the State Government and must include the requisite documents failing which it shall be deemed to be rejected. No cognizance of incomplete application forms or those sent directly to the Central Government shall be taken.”

From the above, it is apparent that application, in duplicate, has to be submitted to the State Government in the prescribed form with all supporting documents. Second copy is to be sent to the Government of India. State Government is to scrutinize the application in consultation with the State Advisory Committee, verify it and report regarding the entitlement of the applicant to pension and send it to the Central Government. On the basis of the report, the Government of India will

examine the same and sanction the pension. It is clear that the State Government is not authorized to take any decision on the application. On this ground alone the rejection order dated 27.12.2019 (Annexure P-9) by the State Government deserves to be quashed.

It deserves to be noticed that in the reply by respondents No.1 and 2, they have submitted that the cases of A.A. Gunners were initiated in 1972 but the same could not be decided because these personnel did not fulfill the criteria to be eligible for the grant of Freedom Fighter's Pension as they had been released from Army service subsequent on reduction of forces. A.A. Gunners were also paid balance of their pay and allowance, at the time of release. It was only when the Government sanctioned pension to the INA personnel, the A.A. Gunners raised their claims for pension. Thereupon, the Government of India constituted a Review Committee to decide the cases of INA pensions in the year 1988. The committee recommended the grant of Freedom Fighter's Pension to the A.A. Gunners on the basis of loss of military job and submitted a list of 64 A.A. Gunners for the grant of the pension out of the total 80 A.A. Gunners who were deployed at Brendon in Sumatra Island for the protection of the oil refinery during the second world war. The name of the husband of the petitioner was also in the list. Accordingly, on the basis of the recommendation made, the case was taken up for administrative approval of pension in favour of the named 64 A.A. Gunners and the same came to be approved by the competent authority on 23.12.2019. Thereafter, the cases were individually examined on the basis of the documents submitted by applicants as per the instructions of the Scheme and Freedom Fighter's Pension was

granted to only 37 out of 64 A.A. Gunners. The facts of the present case when examined in the background of the submissions made by respondents No.1 and 2 show that the husband of the petitioner, Sultan Singh, unfortunately expired on 24.12.1990 i.e. just one day after the approval of the names of 64 A.A. Gunners was given by the competent authority. Therefore, it can safely be presumed that when the husband of the petitioner expired, he was not aware that the list of A.A. Gunners had been approved and the Government had decided to grant pension to the eligible applicants under the Scheme. In such a situation, it was naturally not possible for the husband of the petitioner to have applied for pension under the Scheme. Consequently, the rejection of the petitioner's application on the ground that her husband had not applied for pension under the Scheme defies logic.

The admitted position is that the name of Sultan Singh, deceased husband of the petitioner, was at serial No.57 on the list submitted by the Review Committee. This list was approved by the Government of India. Therefore, there can be no doubt about the eligibility of the husband of the petitioner and consequently of the petitioner in so far as her entitlement for claim of pension under the Scheme is concerned.

As a result, impugned order dated 23.12.2017 (Annexure P-9) passed by respondent No.3 is set aside. A direction is issued to respondent No.3 to forward the application of the petitioner with its report for grant of pension as a dependent of the deceased freedom fighter under the Scheme to respondents No.1 and 2 within a period of four weeks from the date of receipt of certified copy of this

order. Considering the fact that the petitioner is already more than 80 years of age, respondents No.1 to 2 are directed to consider and decide the application so received from respondent No.3 within a period of four weeks thereafter and grant the pension, if the petitioner is found eligible and entitled thereto, from the date of submission of the application with arrears along with interest @ 9% per annum.

With these directions, the writ petition stands disposed of.

04.03.2020
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether speaking/reasoned? *Yes*

Whether reportable? *Yes*