

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMA 332 of 2020

(Through Video Conference)

Reserved on: 18.11.2021

Pronounced on: 13.12.2021

Naru Gopal Adak & Ors.

...Appellants

-Vs-

Union of India & Ors.

...Respondents

Present:-

Mr. Ramdulal Manna,
Mr. Swapan Kr. Mallick,
Ms. Saswati Ghosh Sinha,
Mr. Sayan Mukherjee, Advocates
... for the appellants

Mr. Anuran Samanta, Advocate
... for the respondents

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. This appeal is directed against the order of the learned Single Judge dated 17.09.2019 whereby WP No. 29675 (W) of 2017 has been dismissed.

2. The original petitioner had approached the writ Court challenging the order dated 15.05.2017 rejecting the claim of the petitioner for pension under the Freedom Fighters' Pension Scheme, 1972. A further direction was sought to extend the benefit of pension. During the pendency of the writ petition the original petitioner had

died, therefore, his legal representatives were brought on record, who being aggrieved with the rejection of the writ petition, have filed this appeal.

3. The submission of the learned Counsel for the appellants is that the learned Single Judge has committed an error in rejecting the writ petition without considering the fact that the original writ petitioner was eligible under the pension scheme and the certificates of co-prisoners as required in terms of the scheme were submitted and the case of the petitioner was also forwarded by the State to the competent authority in the Central Government, hence the order of rejection ought to have been set aside.

4. Learned Counsel for the respondents opposing the prayer had submitted that the petitioner did not fulfill the eligibility conditions prescribed under the scheme and no proof was submitted by the petitioner or the appellants showing that the petitioner was a freedom fighter who had remained in jail before Independence for the prescribed period of six months. He has submitted that the Superintendent also in the report dated 14.05.2013 had conveyed to the Assistant Secretary, Home Department, Government of West Bengal that name of the petitioner did not figure in the concerned record and that the learned Single Judge committed no error in rejecting the petition

5. Having heard the learned Counsel for the parties and on the perusal of the record it is noticed that initially the provisional order for grant of pension in favour of the writ petitioner was issued but on receiving certain complaints the same was cancelled. In pursuance to the direction of this Court the order dated 09.02.2017 in

WP 14216 (W) of 2016, the case of the petitioner was examined in the light of the provisions contained in the Freedom Fighters' Pension Scheme, 1972. The competent authority has duly examined the affidavits of the co-prisoners Shri Chittaranjan Jana, Shri Amiya Ranjan Karan and also the certificates of the co-prisoner Shri Kumar Chandra Jana, ex-MLA and ex-President, Midnapur District Congress Committee and has found that these certificates do not fulfill the requisite conditions, hence the application for grant of pension has been rejected on the ground that the petitioner did not meet the eligibility criteria under the scheme.

6. The Freedom Fighters' Pension Scheme, 1972 provides the following eligibility criteria:

“ELIGIBILITY: For the purposes of this scheme, a Freedom Fighter is:

- (a) A person who has suffered a minimum imprisonment of six months in the mainland jails before Independence. However, ex-INA or ex-Military personnel will be eligible for pension if the imprisonment/detention suffered by them was outside India.

EXPLANATION: 1. Detention under the orders of the competent authority will be considered as imprisonment.

2. Period of normal remission will be treated as part of actual imprisonment.

3. In the case of a trial ending in conviction, undertrial period will be counted towards actual imprisonment suffered.

4. Broken periods of imprisonment will be totalled up and counted as one.”

7. In respect of the imprisonment/detention etc. following documents were required to be furnished:

“The applicant should furnish documents indicated below with the application:-

(a) Imprisonment/detention etc.

Certificates from the concerned jail authorities, District Magistrates or the State Governments. In case of non-availability of such certificates, co-prisoner certificate from a sitting M.P. or M.L.A. or from an ex-M.P. or an ex-M.L.A. specifying the jail period.”

8. The petitioner had submitted the certificates of co-prisoners and MLA, namely, Shri Chittaranjan Jana, Shri Amiya Ranjan Karan and Shri Kumar Chandra Jana. Their certificates have been duly examined not only by the competent authority while rejecting the claim of the petitioner but also by the learned Single Judge and it has been found that these certificates do not contain the requisite information. Learned Single Judge in this regard after examining these certificates minutely has rightly mentioned that:

“Three writings have been annexed by the petitioner claiming to be coprisoner’s certificates. First one by Kumar Chandra Jana, second by Amiya Ranjan Karan and the third by Chittaranjan Jana. Out of the three certifiers only Kumar Chandra Jana allegedly is the ex-MLA.

The application of the petitioner was rejected on the ground that it did not meet the eligibility criteria as per the 1972 Scheme.

Let me now examine whether the co-prisoner's certificate as relied upon by the petitioner was in accordance with the 1972 Scheme.

The petitioner annexed a piece of writing at page 36 of the writ petition allegedly issued by one Kumar Chandra Jana, ex-MLA and ex-President, Midnapur District Congress Committee dated 7th October, 1972 in support of his claim of suffering seven months rigorous imprisonment. The writing is a true copy, in the form of a declaration. It mentions the name of the applicant i.e the petitioner herein, his address, sentence awarded - seven months' RI. Thereafter the petitioner mentions that he was the co-prisoner of Sri Kumar Chandra Jana in Midnapore and Midnapore Jail. The petitioner allegedly signed the declaration. After his signature there is a writing which mentions that, 'I certify that the applicant's statement is true. He is known to me. He suffered full period of punishment in Midnapore jail with me.' In the right side bottom of the page it is typed Ex-MLA & Ex. President, Midnapore District Congress Committee, Gandhi Ashram, Basudevpur. The annexure does not contain the signature of the certifier but his name has been typed to signify that the document was signed by the said Kumar Chandra Jana.

Surprisingly, the alleged certifier neither mentions the period of his own suffering, nor the period of the suffering of the petitioner. The writing is silent about the date of imprisonment and the date of release. The writing mentions that the sentence awarded was seven months RI. Whether the petitioner actually suffered the seven months imprisonment is not clear from the said writing. The full period of punishment is not mentioned. The petitioner in his application mentions that he underwent detention in the Tamluk sub jail whereas in the writ petition the petitioner averred that he suffered imprisonment for six months in the Midnapore Central jail. The statements made by the

petitioner in his application for pension and the statements mentioned in the certificate of Kumar Chandra Jana are not in parity with each other. There are discrepancies galore in the averments made by the petitioner in his writ petition, application for pension and in the certificates relied upon by the petitioner.

The petitioner also annexed a writing allegedly written by one Amiya Ranjan Karan on 15th March, 1978 wherein it had been indicated that the petitioner was his co-worker in the August Movement of 1942 and was imprisoned for seven months for participating in the Mahisadal Thana Burning. The certifier mentions that the petitioner was with him for six months in the Central Jail of Midnapur.

The petitioner also annexed a writing allegedly written by one Chittaranjan Jana certifying that the petitioner was his co-prisoner in the Central Jail of Midnapur for six months.

None of the certificates mention the details of the imprisonment. The dates, the period, the place of imprisonment are all missing. The alleged certificates of Amiya Ranjan Karan and Chittaranjan Jana are photocopies of each other. The signatures of the certifiers remain unverified.

The Government of West Bengal vide a communication dated 15th March, 1980 recommended the case of the petitioner before the Central Government for grant of freedom fighters' pension. To verify the period of imprisonment of the petitioner the Government of West Bengal wrote to the certifier Amiya Ranjan Karan in May, 1980 to state the specific period during which the petitioner was his co-prisoner in the Midnapur Central Jail. Similar letter was written by the State Government to the other certifier Chittaranjan Jana in December, 1980. A reminder

was given to both Amiya Ranjan Karan and Chittaranjan Jana in April, 1981 and August, 1981 respectively for supplying the information.

The petitioner has annexed at page 47 of the writ petition a letter dated 8th June, 1981 allegedly written by Amiya Ranjan Karan in reply to the letter of the State Government dated 8th April, 1981 wherein Amiya Ranjan Karan mentioned that the petitioner was his co-prisoner in Midnapur Central Jail from 16th January, 1943 to 15th July, 1943. The petitioner has also annexed at page 48 of the writ petition another letter dated 8th June, 1981 allegedly written by Chittaranjan Jana to the Deputy Secretary, Finance Department, Government of West Bengal certifying that the freedom fighter was his co-prisoner in the Midnapur Central Jail from 16th January, 1943 to 15 July, 1943. None of the letters bear the signature of the certifiers. Incidentally the letters written by both the certifiers refers to the same memo that is memo no. 87 FPS(c) dated 8th April, 1981. The letters annexed at pages 47 and 48 of the writ petition appears to be photocopies bearing the same reference number. The State of West Bengal never issued any letter to Chittaranjan Jana under memo no. 87 FPS(c) dated 8th April, 1981. A bare perusal of the two letters raises doubts about its veracity.

Be that as it may, the Scheme of 1972 required a certificate from a sitting MP or MLA or from an ex-MP or ex-MLA certifying the jail period. Neither Amiya Ranjan Karan nor Chittaranjan Jana served as MP or MLA and as such no reliance can be placed on their certificates and no benefit can be granted on the basis of the said certificates.

The certificate allegedly issued by Kumar Chandra Jana is extremely cryptic and sketchy. It is devoid of the required information. The impugned order mentions that the period of jail suffering is not disclosed in the certificate. It

is an admitted fact that the period of jail suffering is not disclosed in the said certificate.”

9. The above minute examination by the learned Single Judge of the certificate relied upon by the appellants does not suffer from any error. This Court has also examined the above certificates and it is found that these certificates do not contain the requisite information showing that the petitioner had fulfilled the necessary eligibility conditions.

10. Learned Single Judge has rightly observed that since the record of the jail in Midnapur has been burnt and destroyed which is a well-known fact, therefore, the persons are coming forward to claim pension taking advantage of this fact.

11. Since the petitioner did not fulfill the eligibility conditions prescribed under the Freedom Fighters’ Pension Scheme, 1972, therefore, no error has been committed by the competent authority in rejecting the petitioner’s application and the learned Single Judge has also committed no error in dismissing the petition. Thus no case of interference in the order of the learned Single Judge is made out. The appeal is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
13.12.2021