

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

LPA-56-2021(O&M)

Date of Decision: 01.03.2021

Union of India

--Appellant

Versus

Smt. Kamla Devi & another

--Respondents

**CORAM:- HON'BLE MR.JUSTICE AJAY TEWARI.
HON'BLE MR. JUSTICE RAJESH BHARDWAJ.**

Present:- Mr. Satyapal Jain, Addl. Solicitor General of India with
Mr. Shivoy Dhir, Senior Panel Counsel for the appellants.

Mr. R.A. Sheoran, Advocate for respondent no.1.

Mr. Vivek Saini, Addl. A.G., Haryana for respondent no.2.

RAJESH BHARDWAJ.J

The present appeal has been preferred against the order of learned Single Judge dated 4.3.2020 passed in CWP-4420-2018, wherein respondents have been directed to consider and decide the application of petitioner Smt. Kamla Devi for the grant of Freedom Fighters Pension.

Respondent no.1 herein filed CWP-4420-2018 praying for the issuance of a Writ of Mandamus directing the respondents to grant her the Freedom Fighters Pension.

As per the brief factual matrix, husband of respondent no.1 namely Late Sep. Harphul Singh joined the 1st Bahwalpur Infantry and served in the Punjab Regiment. He was enrolled on 09.05.1930 and was discharged on 18.02.1946. The reason for discharge was that he was a member of the Indian National Army (INA). A copy of the Sheet Roll for combatants dated 14.09.1968 was appended as Annexure P-1 along with the writ petition. Service particulars of late Sh. Harphul Singh had also been

annexed as Annexure P-2 along with the petition. Unfortunately husband of respondent no.1 herein Harphul Singh expired on 28.8.1992. Thereafter, she made strenuous efforts for grant of pension under “Swatantrata Sainik Samman Pension Scheme, 1980” (herein after to be referred to as the Scheme). Despite her best efforts neither her case was sent to Union of India nor it was processed by the Govt. of Haryana. Having no other option she applied under the Right to Information Act, 2005 and vide memo dated 27.08.2015 which was annexed as Annexure P-5 along with the petition, it was informed that the case had been taken up as many as 12 times by the Committee but the same has not been finalized. The Union of India contested this claim in the writ petition on the parameters of the provisions of paras 1.5 and 5 of the Revised Guidelines dated 6.8.2014, wherein it had been asserted that the respondent no.1/petitioner does not fulfill the eligibility criteria as per the Scheme and there is a delay of about 25 years after the death of her husband. Thus, on the flimsy grounds the respondents were dragging their feet in deciding the claim of respondent no.1/petitioner.

We have heard learned counsel for the parties at length and appreciated the records made available.

It is apparent from the Sheet Roll for combatants dated 14.09.1968 annexed as Annexure P-1 along with the petition that the late husband of respondent no.1/petitioner was enrolled in the Army on 09.05.1930 and was discharged on 18.02.1946. The reason for discharge has been mentioned as he was a member of the INA. It is also worth mentioning the contents of the counter affidavit filed by Sh. Tilak Raj, Under Secretary to the Govt. of India dated 21.6.2018 on behalf of Union of

India, which are as under:-

(iv) That as per the scheme the INA comprised of (1) personnel who joined INA from the then British Indian Army called Military Category and (ii) those who were recruited in the INA Locally called civilian category. After the defeat of Japan the allied British Forces took over the camps where INA personnel were stationed in the camps segregation took place. Those who had joined INA from British Indian Army were taken prisoners as they had acted against their oath of allegiance to the British Crown. But the civilian category of InA had not taken such an oath of allegiance to the British. They were not formally tried by any court in General.

(v) That the case of military cases are decided normally on the basis of documentary evidence from official records available with/issued by the concerned British Indian Army/Indian Army authority. Cases of civilian category of ex-INA are decided inter alia taking into consideration secondary evidence i.e. co-prisoner certificates (CPC) from renowned freedom fighters who themselves (i) has undergone imprisonment for not less than one year in connection with the freedom struggle and remained in jail with the claimant and (ii) are recipients of pension from the Central Revenue. In addition they may submit other corroborative documents like movement order/certificate issued by INA inquiry and relief committee, Repatriation Certificate etc.

A perusal of the aforementioned provisions categorically reveals that the husband of the petitioner was in Military for about 15 years and thus his case was to be decided on the basis of documentary evidence from the official record available and hence the same could not be mixed up with the civilian category of ex-INA which are decided inter alia taking into consideration the secondary evidence. Despite this the case of the petitioner has not been decided for the reasons best known to the

appellant/respondents.

In the totality of the facts and circumstances of the case, we find ourselves totally in agreement with the findings of the learned Single Judge and hence uphold the same. The appeal being devoid of any merit is hereby dismissed.

Appeal dismissed.

(AJAY TEWARI)
JUDGE

(RAJESH BHARDWAJ)
JUDGE

01.03.2021

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