

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

252

CWP-305-2022

Date of Decision: 13.09.2023

SURESH AND ANR.

... Petitioners

VERSUS

UNION OF INDIA AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Sushil Sheoran, Advocate
for the petitioners.

Mr. Shivoy Dhir, Sr. Panel Counsel
for respondent No.1- Union of India.

Mr. Pankaj Mulwani, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

The instant petition raises challenge to the impugned orders dated 17.08.2020, 26.02.2021 and 13.08.2021 (Annexures P-8, P-9 and P-11 respectively) passed by respondent No.1 – Union of India, allegedly in violation of the Swatantrata Sainik Samman Pension Scheme 1980 as well as in disregard of the judgment dated 04.03.2020 (Annexure P-6) passed in CWP-4420 of 2018 and upheld by the Division Bench in LPA No.56 of 2021 vide judgment dated 01.03.2021. A further prayer has been made for issuance of directions to the respondent No.1 to declare Harphul Singh, late father of the petitioners as a freedom fighter and to hold that his widow Kamla Devi was entitled for dependent Swatantrata Sainik Samman Pension (hereinafter to be referred to as 'SSS Pension') and that the arrears that enured in their favour be released alongwith interest.

Briefly summarized, the facts of the case are that the petitioners, who are successors of late Harphul Singh, and Smt. Kamla Devi have preferred the present petition averring that Harphul Singh had joined as a Sepoy bearing No.8676 in First Bahawalpur Infantry and served in the erstwhile Punjab Regiment. He was enrolled on 09th May, 1930 and was discharged on 18.02.1946. As per the Discharge Certificate issued by the respondents, the reason for discharge was as under:

“Discharge from the service being a member of INA vide discharge certificate “Grey” as per Arm HQ List Sr. No.16.”

Late Harphul Singh had served in Bahawalpur Infantry under the Punjab Regiment for a period of 15 years before being discharged on the ground of being member of INA, hence, no pension was granted to him. Harphul Singh passed away on 28.08.1992 leaving behind his widow Kamla Devi, who had applied for service particulars of her husband, when she became aware of the fact that the reason behind discharge of her husband from service was his association with the INA. The said aspect finds mention also in the certificate issued by the respondents-Authorities showing particulars of the deceased soldier.

After obtaining the requisite documents, Smt. Kamla Devi applied for SSS Pension through the Government of Haryana. The documents submitted by late mother of the petitioners herein were verified from the Punjab Regiment and no discrepancy was noticed therein. However, the case of the petitioner was not sent by the respondents-State of Haryana to the Union of India. Information under the Right to Information Act, 2005 was thereafter sought for, wherein it was informed vide letter dated 27.08.2015 that the above issue is pending consideration with the

Protocol Branch since 22.10.2010 and that the proceedings were initiated 12 times. It was further responded by the respondents in reply to question No.5 that on verification of the record submitted by late Kamla Devi, from the Punjab Regiment, PIN908761 C/o 56 APO, it was found that deceased Harphul Singh was a Sepoy of the INA. It was also apprised that in so far as the pensionary benefits under the HSSS Pension is concerned, the same was pending for want of constitution of the Haryana Swatantrata Sainik Samman Samiti and that the final decision shall be taken upon constitution of the said Samiti.

Having waited for sufficient time to enable the respondent-Authorities to take a decision, Smt. Kamla Devi approached this Court by filing CWP No.4420 of 2018 claiming release of the said benefits under the SSS pension scheme. Various objections were raised by the Union of India including reliance on the revised guidelines dated 06.08.2014 which were supported also by the State of Haryana. Other similar petitions had also been preferred by similarly placed person before this Court. The said cases were decided by a common order/judgment dated 04.03.2020 passed in CWP-1554 of 2018 titled as 'Smt. Chand Kaur Vs. Secretary, Ministry of Home Affairs and others'. As the case of one Chand Kaur had earlier been declined by the respondents vide order dated 23.12.2017, this Court in its judgment dated 04.03.2020 set aside the impugned order therein and directed the respondent No.3 therein to forward the application of Chand Kaur, with its report for grant of pension as a dependent of the deceased freedom fighter, under the scheme to respondent-Union of India within a period of four weeks. The respondent-Union of India was further directed to consider and

decide the application received from the State of Haryana within a further period of four weeks and to thereafter grant pension, if the petitioner (therein) (Chand Kaur) was found eligible and entitled alongwith all arrears with interest @ 9% per annum. The operative part of the said judgment in CWP-1554 of 2018 reads thus:

“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, respondent No.1 and 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.”

The petition bearing No.4420 of 2018 filed by Kamla Devi – (mother of the petitioners herein) was also disposed of in terms of the aforesaid judgment, vide order dated 04.03.2020.

Notwithstanding the said judgment, the respondents failed to comply with the same whereupon Smt. Kamla Devi- mother of the petitioners herein preferred COCP-1399 of 2020 on 21.07.2020.

Reply by way of an affidavit was filed by the Chief Secretary, Government of Haryana, wherein it was admitted that Harphul Singh was discharged from service due to being member of the INA and that his widow Smt. Kamla Devi (since deceased) was eligible for dependent freedom

fighter pension and that the Government of Haryana had sent all the verified documents alongwith the report to the Government of India for its decision. Reference was again made to the Discharge Certificate of Harphul Singh.

The respondent-Union of India, however, rejected the claim for grant of dependent freedom fighter pension to Smt. Kamla Devi on 17.08.2020 on the ground that in the Discharge Certificate of Harphul Singh, there is no reference of any jail suffering. The relevant extract of the said order passed by the respondent UOI is as under:

“6. After going through the records of the case, it is apparent that the instant claim for grant of SSS pension has been preferred on the basis of claimed participation in the INA, however, the documents related to jail imprisonment of your husband have not been submitted as required under the provisions of SSS Yojana. Therefore, you are not eligible for the benefit of SSS Yojana. As regard the Service certificate is concerned, the said certificate does not establish the jail sufferings of your husband, if any.

7. In view of above mentioned facts and circumstances of the case, provisions of SSS Yojana and available documents on record, your claim does not meet the eligibility criteria and evidentiary requirements of the Swatantrata Sainik Samman Yojana and you have not been found eligible for the grant of freedom fighter pension in name of your husband under SSS Yojana. Therefore, your claim for grant of freedom fighter pension under the provisions of SSS Yojana is hereby rejected.”

The aforesaid order was brought to the notice of Contempt Bench, where COCP-1399 of 2020 was pending. However, the Contempt Bench did not *prima facie* feel satisfied with the order passed by the respondent-Union of India, whereupon Union of India filed LPA No.56 of

2021 on 10.02.2021 challenging the judgment dated 04.03.2020 passed by the Single Bench in the case of Kamla Devi-mother of the petitioners herein.

It is averred that even the Hon'ble Division Bench, seized of the LPA, did not *ex facie* agree to the abovesaid order passed by the respondents and orally informed the respondent-Union of India to pass a fresh order in accordance with the scheme documents. The aforesaid observation of the Hon'ble Division Bench was conveyed by the counsel representing Union of India to the Department.

In furtherance to the aforesaid communication and while referring to the communication received from the counsel representing the Union of India, the respondents passed a fresh order dated 26.02.2021 rejecting the claim once again and for the same reason. The extract of the said order dated 26.02.2021 is reproduced hereinafter below:

“8. After taking into consideration of entire records once again, it is evident that the instant claim for grant of SSS pension has been preferred on the basis of claimed participation in the INA but neither any document regarding jail suffering has been produced nor any other evidentiary document as required to consider a claim under SSS Yojana have been submitted as mentioned hereinabove. Therefore, the claim does not found admissible/satisfying the laid down criteria of SSS Yojana.

9. In view of above foregoing facts, provisions of SSS Yojana and documents available on record, your claim is not found to be meeting the eligibility criteria and evidentiary requirements of the Swatantrata Sainik Samman Yojana and thus you have not been found eligible for the grant of freedom fighter dependent pension in name of your husband under SSS Yojana. Therefore, your claim for grant of freedom fighter

dependent pension cannot be acceded to under SSS Yojana being devoid of merits.”

The LPA No. 56/2021 preferred by respondent-Union of India in the case of Kamla Devi supra was dismissed by the Division Bench vide its order dated 01.03.2021 by specifically referring as under:

“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 (2) 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.”

The LPAs against the other matters arising from the judgment in Chand Kaur's case supra were also dismissed by the Division Bench, however, reference of the said fresh speaking order dated 26.02.2021 does not find mention in the LPA preferred by respondent-Union of India in the case of Kamla Devi, whereas such reference is duly mentioned in the LPA No.60 of 2021 arising out the writ petition preferred by Chand Kaur. As subsequent order passed by respondents was mentioned in LPA No. 60 of 2021 while dismissing the LPA, the respondents implemented the order.

Smt. Kamla Devi passed away on 02.06.2021 i.e. during the pendency of the COCP No.1399 of 2020. The contempt petition No.1399 of 2020 was finally disposed of by this Court vide order dated 06.12.2021 granting an opportunity to the heirs of Smt. Kamla Devi to assail the impugned order dated 13.08.2021 (Annexure P-11). It was further averred claim was rejected wrongly and notwithstanding that the eligibility criteria was fully met with by the mother of the petitioners and that her case was at par with that of Smt. Chand Kaur, to whom the benefit of SSS Pension had been restored. The relevant extract of the order dated 13.08.2021 (Annexure P-11) whereby the claim of the mother of the petitioners was rejected once again is reproduced as under:

“XXXXXX XXXXXX XXXXXX

- c) Further, upon examination of the record in the light of Annexure P-2 of the Swatantrata Sainik Samman Pension Scheme, 1980, which provides the eligibility conditions and evidentiary requirements for being eligible for pension, it has been concluded that the said letter dated 28.10.2014 is not a Discharge Certificate of the your husband but apparently is issued by the Army Records office of Punjab Regiment for some other purpose/Army Service benefits In that letter also, word ‘discharge’ is used without qualifying the reasons for such discharge
- d) The opening line SSS Scheme 1980, clearly clarifies that all the persons who participated in the freedom movement in some way or the other are not eligible for Samman Pension. It has been noted from the documents furnished including the documents that mention his military service in the Punjab regiment as a member of

INA and being discharged do not point to any of the suffering such as imprisonment or underground suffering interment/ externment, loss incapacitation, dismissal/removal etc.

- e) It is therefore, reiterated that mere participation in INA or being a member of INA is not a criteria for grant of SSS pension by Central Government

2. In view of the above mentioned facts and circumstances of the case and provisions of SSS Yojana as described in the aforesaid paragraphs, and in compliance of order of the single bench passed in CWP 4420/2018 dated 04.03.2020 this Ministry considers that your case is not found to be meeting the eligibility criteria and evidentiary requirements of the Swatantrata Sainik Samman Yojana and you have not been found eligible for the grant of freedom fighter dependent pension in name of your husband under SSS Yojana Therefore, your claim for grant of freedom fighter dependent pension cannot be acceded to under SSS Yojana, being devoid of merit.”

Aggrieved thereof the present petition has been preferred by the petitioners assailing all the three orders passed by the respondent-Union of India.

A written statement on behalf of respondent No.2 had been filed by the Principal Secretary to the Government of Haryana, General Administration Department reiterating Clause 1.5 of the revised Policy/Guidelines of the SSS Pension Scheme of the Central Government in the Home Ministry, circulated on 06.08.2014, to contend that Smt. Kamla Devi was not eligible for the pension in terms thereof. It was further averred that late Harphul Singh had not applied for pension during his life time and

even uptill his date of death on 28.08.1992. The application was submitted in 2013 after a gap of nearly 21 years from the date of death of her husband. No explanation has been given for such inordinate delay in filing the application/representation claiming the benefit. The pension scheme having been introduced as a welfare measure and to recognize the valuable sacrifices made by the freedom fighters, it does not confer any right on the claimant and that the terms and conditions as incorporated in the pension scheme including the prescribed time schedule for submission of application/representation is sacrosanct. Any application not received in the prescribed format and/or within the cut off time prescribed therein is liable to be rejected on the said score alone.

A counter affidavit by Under Secretary, Government of India had also been filed on behalf of respondent No.1. The respondents do not dispute the facts noticed above as well as the judgments passed by this Court in the writ petition; LPA as well as in the contempt petition. It is, however, contended that the case of Kamla Devi and thereafter by the petitioners had been considered by the respondents on multiple occasions and that the following deficiencies/shortcomings were observed:

“(i) Any claim of SSS pension has to be fulfilled the governing criteria of SSS Yojana as framed by the Central Government to regulate the Scheme. As per para 2.1 (a) of of SSS Pension Scheme, imprisonment/detention certificate from the concerned jail authority, District Magistrate or State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release should be furnished. Whereas in the certificate of service as produced by the Petitioner, there is also no evidence

of jail sufferings is mentioned and mere participation in INA is not a criteria for grant of Swatantrata Sainik Samman Pension.

(ii) As per provisions of SSS Yojana, certificate from All India INA Committee is must. But in the documents submitted in support of Petitioner's claim, the jail suffering of her husband is not mentioned in the Certificate furnished by the All India I.N.A. Committee.

(iii) As per para 2.1(b) of SSS Pension scheme, 1980, the Co-prisoner's Certificate ought to have issued by an eligible certifier ie Central freedom fighter pensioner who had undergone imprisonment for a minimum one year and who were with the applicant in the jail could be considered provided the State Government/Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in the support of the claimed sufferings were not available. Whereas, the Co-prisoner's Certificate have not been submitted by the Petitioner.

(iv) Para/Clause 2.2 of SSS Pension Scheme provided about the method and manner of Personal knowledge certificate for consideration of a claim. As per the laid down provision, in case of underground sufferings, a PKC from a prominent freedom fighter who has proven jail sufferings of a minimum of two years and who happened to be from the same administrative unit could be considered provided the State Government/Union Territory Administration concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available. Whereas, the Petitioner had not submitted PKC.

(v) As per the clause/para 2.1(a) of laid down guidelines of SSS Pension Scheme (now called as SSS Yojana). imprisonment/detention certificate from the concerned jail authority, District Magistrate or the State Government

indicating the period of sentence awarded, date of admission, date of release are required to be submitted whereas, the Petitioner had not submitted any no document in support of the claimed jail imprisonment suffered by her husband which could establish his jail sufferings.

(vi) As per para V (1) of policy/letter no. 45/03/2014-FF(P) of SSS Yojana, Central Government can consider the claims of Central Samman Pension only when the same are received from the State Government/Union Territory duly verified and recommended. The verification and recommendation report is mandatory because the relevant documents and other evidence are in the possession of concerned State Government/Union Territory Administrations concerned and not of the Central Government. In the instant case, the State Government has not recommended the case for grant of Central Samman Pension. Hence, in absence of the recommendations of the State Government, claim of the Petitioner is not considerable.

(vii) The para 4 of SSS Pension Scheme (now called as SSS Yojana) makes the provision that where record is not available with the State Government, the concerned State Government should furnish non-availability of record certificate in the prescribed format, whereas the same has also not been provided.”

Relying on the same, it was averred that the petitioners' case was not found meeting the eligibility criteria and the evidentiary requirements under the SSS Yojana and was thus rightly rejected through a detailed, well reasoned and a speaking order.

Controverting the same, counsel for the petitioners has argued that the Pension Scheme dated 15.08.1981 as framed by the respondents provided the details as to who are eligible dependents and also the people

who are eligible for the Samman Pension. The relevant clauses of the said scheme are as under:-

“3. 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

4. WHO IS ELIGIBLE?

For the purpose of grant of Samman pension under the scheme, a freedom fighter is-

- (a) *A person who had suffered a minimum imprisonment of six months in the mainland jails before Independence. However, ex-INA personnel will be eligible for pension if the imprisonment/detention suffered by them was outside India. The minimum period of actual imprisonment for eligibility of pension has been reduced to three months, in case of women and SC/ST freedom fighters from 01.08.1980.*

EXPLANATION

- 1. Detention under the orders of the competent authority will be considered as imprisonment.*
- 2. Period of normal remission upto one month will be treated as part of actual imprisonment*
- 3. In the case of a trial ending in conviction, under trial period will be counted towards actual imprisonment suffered.*
- 4. Broken period of imprisonment will be totalled up for computing the qualifying period.*

- (b) *A person who remained underground for more than six months provided he was*
1. *a proclaimed offender, or*
 2. *one on whom an award for arrest/head was announced; or*
 3. *one for whose detention order was issued but not served.*
- (c) *A person interned in his home or externed from his district provided the period of internment/externment was six months or more.*
- (d) *A person whose property was confiscated or attached and sold due to participation in the freedom struggle.*
- (e) *A person who became permanently incapacitated during firing or lathi charge.*
- (f) **A person who lost his job (Central or State Government) and thus means of livelihood for participation in national movement.**

A MARTYR is a person who died or who was killed in action or in detention or was awarded capital punishment while participation in a National Movement for emancipation of India. It will include an ex-INA or ex-Military person who died fighting the British.”

It is argued by the counsel for the petitioner that the widow of deceased freedom fighter is eligible for the Pension Scheme and that for being eligible, the claim of Kamla Devi was to be considered under Clause 4(f) as a person who has lost his job (Central or State) and thus means of livelihood for participation in National Movement. He further makes a reference to the list of movements/mutinies that have recognized as National Movements under the SSS Pension Scheme 1980 wherein INA movement has been mentioned at No.18 in Annexure -1 thereof. He submits that eligibility conditions mentioned in Clause 4 of the aforesaid scheme are

independent categories and do not require all to be satisfied together by each and every claimant before his/her claim is considered for the grant of pension under the said scheme. He contends that Harphul Singh had lost his job with Central Government, in the Ministry of Defence while serving in First Bahawalpur Unit of Punjab Regiment, and thus lost his means of livelihood for participation in National Movement. The Discharge Certificate undisputedly makes a reference to the reason for discharge from service being his participation/association with the INA movement. It is contended that the reason assigned by the respondents for rejection of the claim is that requisite documents to substantiate that deceased Harphul Singh had undergone an imprisonment had not been furnished, whereas such requirement was not prescribed in the scheme document for persons who lost their jobs. The necessity for providing the contemporary evidentiary documents in form of imprisonment for release of pension was in relation to the claimants who had suffered imprisonment under Clause 4(a) of the abovesaid scheme and that the petitioners' mother having not applied under the said Clause, her claim for release of pensionary benefits under Clause 4(f) cannot be tested on the documents prescribed for determining the validity of pension under clause 4(a). It was further argued that the objections of the respondents with respect to the revised guidelines under Clause 1.5 and Clause 5 as per the addendum dated 06.08.2014 has already been considered by a Single Bench of this Court and the said objections were noticed and rejected as not laying down a valid foundation for rejection of the claim of petitioners' mother. He further contends that it has gone uncontroverted that the similar benefit has already been extended to

Smt. Chand Kaur, who was similarly placed but the order has not been implemented with respect to the petitioners' mother even though the case of Smt. Kamla and Smt. Chand Kaur was identical and the case of Chand Kaur was rejected by Division Bench, while dealing with LPA No.60 of 2021 arising out of the Writ petition of Smt. Chand Kaur, for same reasons. Even though reference to the second order passed by respondents may not have been made by the Division Bench order passed in LPA No.56 of 2021, however, the Division Bench has specifically noticed the same in LPA No. 60/2021 and hold that the reasons relied upon by the respondents are untenable. Consequently, reiteration of the same reasons even in the third order of rejection dated 13.08.2021 was an attempt to overreach the judgment of the Division Bench of this Court.

While adverting to the objections raised by the respondent-State of Haryana regarding necessity of submission of the claim within the time limits prescribed as per the scheme document, reference has been made to the Single Bench Judgment in the writ petition filed by the petitioners' mother as affirmed in the LPA whereby the said objections were found to be untenable. He further refers to the judgment of Hon'ble Supreme Court in the matter of '**Mukund Lal Bhandari and others Vs. Union of India and others**' reported as **AIR 1993 SC 2127**. The relevant extract thereof reads as under:

“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-behaves 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 dependents 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 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. ”

Referring to the same, it is contended that the object of the pension scheme was to honour the sacrifices made by the freedom fighters, who participated in the freedom struggle of this country. The said scheme was a benevolent scheme meant to acknowledge exemplary courage shown by the participants of the freedom movement at the cost of their inconvenience. There is no rationale as to why cut off date would be sacrosanct. The scheme being a social welfare scheme, any such cut off date has to be read only as directory and should not be construed as defeating the rights of an applicant merely on account of delay.

Controverting the above arguments, counsel for respondent - Union of India has reiterated the stand already noticed above and has argued that the petitioners have not fulfilled the eligibility requirements referred to above and that the application in question had not been forwarded alongwith complete documents duly verified from the concerned Authorities i.e. State of Haryana.

The above said stand of the respondent-Union of India is however contradicted and belied by the stand of the respondent-State of Haryana, which had specifically responded to the information sought by late Smt. Kamla Devi, wherein it was averred that application had been submitted by Smt. Kamla Devi on 22.10.2010 for release of the pension and further from the affidavit filed by Chief Secretary in the pending contempt petition, wherein it was specifically averred that the case of the petitioners was forwarded to the Union of India for consideration and release of pensionary benefits. It was also averred that necessary verification of the documents appended alongwith the application had also been done and the same had been found in order.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The uncontroverted factual matrix which emerges from the perusal of the documents as well as from the pleadings available on the file are as under:

- (i) Deceased Harphul Singh was working with the central government in the Punjab Regiment and that he was discharged

from service in 1946 on account of his association/participation in the INA movement.

- (ii) INA has been declared to be part and parcel of a National Movement as per Swatantrata Sainik Samman Pension Scheme, 1980 duly notified by Union of India at Sr. 18 of Annexure I.
- (iii) That the SSS Pension Scheme held the widow/unmarried children of a freedoms fighter to be eligible for the pension/the dependent pension.
- (iv) That as per the eligibility conditions prescribed in Clause 4 of the Scheme Document, the beneficiaries could fall under different categories. The persons eligible were not required to fulfill all the concerned requirements and were required to satisfy the conditions that are sufficient to establish the claim for release of pension under the category in which such a claim has been lodged or is to be considered.
- (v) That the claim preferred by the petitioners for grant of Samman Pension was to be considered under Clause 4(f) wherein a person who has lost his job for being associated with the National Movement was entitled to the Samman Pension.
- (vi) That the Discharge Summary as well as the Certificate issued by the respondent-Authorities reflecting that late Harphul Singh was discharged from the Army on account of participation in the National Movement has remained uncontroverted and undisputed.

- (vii) That the reasons given by the respondent-Union of India for declining the claim of the petitioners are apparently in reference to Clause 4(a) where a person is required to suffer minimum imprisonment. The documents cited by the respondents as necessary for verification of the claim being the certificates from the co-prisoners as also the custody duration etc. are prescribed as a part of the requirement under Clause 4(a) and no such requirement has been prescribed while dealing with the issues pertaining to Clause 4(f).

The eligibility and the evidentiary requirement mentioned in Annexure-II appended to the Scheme had to be examined in terms of Clause 2.6 or the said Annexures which would rather apply for Clause 4(F) and the same reads thus:

“2.6 Loss of Government Job: *A person who lost his Govt. job for participation in freedom struggle is eligible subject to furnishing of orders of dismissal or removal from service. However, persons who were reinstated in service before expiry of two years from their dismissal or removal from service and were in receipt of benefits or pay and allowance are not eligible for pension.”*

The only requirement prescribed for a pensioner seeking Samman Pension on account of loss of Government Job is ‘furnishing of orders of dismissal or removal from service’. The only disqualification for pension under the said clause is ‘in case the employee had been reinstated after dismissal within a period of less than two years from such removal’. It is not the case of the respondents that late Harphul Singh was reinstated within a period of less than two years from the date of his removal from

service, which would be an ineligibility/disqualification under Clause 2.6 of the Annexure –II prescribing eligibility conditions and evidentiary requirements for consideration of Swatantrata Saini Samman Pension Scheme 1980.

It is further evident from perusal of the order passed by the learned Single Judge as well as by the Hon'ble Division Bench not only in the matter of Kamla Devi but also in the matter of Chand Kaur that the objections with respect to the revised guidelines dated 06.08.2014 had been noticed and rejected by a Single Bench as well as a Division Bench of this Court. Notwithstanding the rejection of the said claim, the respondents have shown the audacity to place reliance on the same objections which have been tested and have been rejected by this Court. The above conduct of the respondents deserves deprecation.

The object of the scheme that was intended to confer benefit and to honour the sacrifices made by the freedom fighters has been completely belittled by the conduct of the officials who had been dealing with the entire issues with insensitivity and repetitive ministerial mindset. There has been no application of mind. So much so, the respondents have chosen not to even refer to their own policy document and to test the application on the basis of eligibility conditions prescribed therein. Even though the respondents had availed as many as three opportunities to re-examine the claim and case of the petitioners for release of the pension, however, on each occasion, it was just a repetition of the reasons given earlier. This left the petitioners to pursue their remedies repeatedly before different Forums and to suffer the agony of humiliation caused by the

respondent-Union of India. The said conduct of the respondent-Union of India, which shows complete lack of empathy, sensitivity, objectivity and fairness, renders it liable to pay a costs of Rs.1,00,000/- (Rupees One Lac only) to the petitioners herein.

The present petition is accordingly allowed, in view of the facts noticed above and the position of law extracted above.

The petitioners would be entitled to the dependent pension in terms of the aforesaid Scheme of 1980 w.e.f. 22.10.2010 when the application was submitted by Smt. Kamla Devi till 02.06.2021 when she passed away, alongwith interest @ 6% per annum. In the event the aforesaid pension alongwith all arrears is not disbursed within a period of three months of the receipt of certified copy of this order, the arrears shall carry interest @ 9% per annum.

Petition stands allowed accordingly.

13.09.2023.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No