

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

201

**CWP-15066-2013 (O&M)
Date of decision: 11.10.2023**

GURCHARAN SINGH

.....Petitioner

VERSUS

UNION OF INDIA AND OTHERS

.....Respondents

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

Present: - Mr. Armindra Pratap Singh, Advocate
for the petitioner.

Mr. Abhinav Gupta, Advocate
for respondent No.1. -Union of India.

Ms. Niharika Sharma, AAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the order dated 06.03.2013, 05.04.2013 and 02.12.2004 (Annexure P-5 to P-7) respectively.

2. Petitioner contends that the Government of India had introduced a Freedom Fighter Pension Scheme, 1972 for grant of pension to the Freedom Fighters who participated in the freedom struggle of India. The said Scheme was modified and renamed as 'Swatantrata Sainik Samman Pension Scheme, 1980 (herein referred to as pension scheme) to honour the contributions of the freedom fighters. The same was made applicable w.e.f. 01.08.1980. The petitioner claims that he suffered imprisonment for more than 08 months in the main land jails before

independence on account of having participated in the Quit India Movement during the freedom struggle of the country and he remain imprisoned in Central Jail Lahore. His co-prisoners Bahal Singh resident of village Suhron and one Inder Singh resident of village Suhron were also lodged in the same jail during the said period. Both the said co-prisoners had been granted freedom fighter pension by the State Government as well as the Government of India and they have received the said pension till their death where after their dependents are also receiving the benefits admissible to them.

3. The petitioner submitted an application for the grant of freedom fighter pension, in the prescribed performa, on 30.05.1988 alongwith all requisite documents/affidavits including the co-prisoners certificates of Bahal Singh and Inder Singh. The above said case was forwarded to the Deputy Commissioner, Patiala for verification of the documents submitted and for recommendation for grant of pension on the basis of the statement of co-prisoners and the documents submitted alongwith the same. The then Deputy Commissioner, Patiala, summoned the petitioner as well as the co-prisoners and verified the said fact. On being satisfied that the petitioner was a genuine freedom fighter, his case was recommended by him and sent to the Chief Secretary to Government of Punjab. The State Government thereafter granted the freedom fighter pension to the petitioner w.e.f. 30.05.1988 on the recommendations of the Deputy Commissioner, Patiala and PPO No. 8273/SS/Punjab was allotted. He continued to receive the freedom fighter pension as announced by the State of Punjab alongwith the medical allowance. Further, the Government of Punjab was required to recommend the case of the petitioner to the

Government of India for grant of freedom fighter pension under the Pension Scheme of 1980, however, the same had not been recommended. As no decision on the said recommendation was taken by the Government of India, the petitioner approached this Court by way of CWP-1850-2011 for seeking directions to the respondent authorities to consider the case of the petitioner for grant of pension under the Pension Scheme of 1980. The said writ petition was disposed of by this Court vide order dated 24.05.2012 and the respondent-authorities were directed to pass a speaking order on the representation of the petitioner within a period of two months from receipt of copy of the said order.

4. That instead of deciding the case of the petitioner on the basis of the documents submitted by him to the Government of Punjab, the Government of India directed the Punjab Government to hold a fresh enquiry as to whether the petitioner is bona fide freedom fighter or not. The Sub Divisional Magistrate, Rajpura alongwith subordinate staff approached the petitioner, who was confined to bed, and submitted a report wherein it has been averred that the requisite information could not be furnished by the petitioner. The Sub Divisional Magistrate, Rajpura did not recommend the case of the petitioner as per his letter dated 10.12.2012 for the following reasons :-

“(1). The Petitioner (Prisoner) does not know in which movement he had taken part;

(2). He does not remember the dates of which he was sent to Jail and was released from the Jail;

(3). The Petitioner doesn't produced required Co-Prisoner certificate and stated that he can't produce the said certificate.

(4). Many columns of prescribed Performa are left

blank, the Petitioner stated that he had no reply regarding the columns of this Performa;

(5), No record/file is available in this office regarding to the petitioner pension case of Punjab Government;

Due to above reasons, the case cannot be recommended in any way.”

5. That on the basis of the aforesaid recommendation, the Government of India, Ministry of Home Affairs rejected the case of the petitioner for grant of freedom fighter pension. The above order of the Government of India is subject matter of challenge in the present writ petition.

6. Reply by way of counter affidavit of Secretary to the Government of Punjab, Department of General Administration had been filed wherein it has been averred that the petitioner has been receiving the Punjab State Freedom Fighter Pension vide PPO No. 8273/SS/Punjab w.e.f. 30.05.1988 and that no details of the record of the petitioner are available with the said respondent being an old record. They, however, submitted that the respondent-Government of India has rejected the case of the petitioner on the ground that he could not meet the eligibility criteria and did not satisfy the requirements as laid down in the ‘Swatantrata Sainik Samman Pension Scheme, 1980. Further, as per the policy of the State Government dated 02.12.2004 (Annexure P-7), where a case of an applicant for grant of the pension is rejected by the Government of India, the Government of Punjab would also discontinue the same.

7. In view of the above said policy decision of the Government of Punjab dated 02.12.2004, a show cause notice was issued to the petitioner vide the State Government letter No. 13-10/2011-1FF/376 dated 05.04.2013 as to why the pension of the petitioner be not stopped. As an

interim stay was granted to the petitioner in the present writ petition, the pension continues to be disbursed to him.

8. A separate reply by way of short affidavit had been filed on behalf of Accountant General (Pension)-respondent No.4 wherein they have contended that they have no concern with the issue involved and the pension orders are to be issued by the respective State Government who have framed the said schemes.

9. A counter affidavit had also been filed on behalf of respondents No.1 and 2 i.e. Union of India, through Under Secretary in the Ministry of Home Affairs, Freedom Fighters and Rehabilitation Division. The respondents referred to the clauses of the pension scheme under which a person is entitled to claim pension. An applicant is required to furnish a certificate from the concerned jail authorities indicating the period of sentence awarded and the custody undergone. However, where the record of relevant period is not available, a non-availability of record certificate (NARC) from the concerned State Government alongwith two co-prisoner certificate from freedom fighters who had a proven jail sufferings of minimum one year and who were with the applicant in the main land jail for a minimum period of 06 months is required to be appended alongwith the application. The details as regards the procedure to be followed for approving the pension under the above said scheme has also been mentioned. It is averred that the case of the petitioner had been examined in light of the above said scheme and the order had been passed rejecting the claim of the petitioner. They further submitted that the Punjab Committee had considered the case of the petitioner and vide its meeting held on 22.01.1991 rejected the case of the petitioner since he failed to

satisfy the minimum suffering. Since case of the petitioner was rejected by the Punjab Committee, hence, the respondent-Union of India also declined the case of the petitioner herein vide order dated 18.02.1991 and his name was indicated at Serial No. 36398 of the computerized list of the rejected cases.

10. It is contended that the State Government furnished incomplete application of the petitioner, without the supporting documents, as a result whereof, a report was sought from the State. The report submitted by the Sub Divisional Magistrate, Rajpura was lacking in details and said deficiencies have been noticed in the impugned order. In the absence of the above said details, the case of the petitioner could not be considered for grant of pension as the requisite eligibility conditions are not satisfied.

11. No replication to the same had been filed.

12. Counsel for the petitioner has vehemently argued that the respondents have failed to take into consideration the specific pleaded case of the petitioner. It had been averred in para No.5 of the writ petition that when the petitioner submitted his application to grant of pension on 30.05.1988, all the requisite documents were submitted alongwith the same alongwith certificate issued by the co-prisoners. The said co-prisoners were summoned by the Deputy Commissioner, Patiala for verification of the facts and on being satisfied that the case of the petitioner was that of a genuine freedom fighter, a recommendation was made. The said recommendation was accepted and the pension was also released in favour of the petitioner. The petitioner did not possess copies of the said co-prisoners certificate with him and they were always in possession of the respondent-State Government. The conditions for grant of pension as notified by the State of

Punjab are same as have been prescribed by the Government of India in the pension scheme of 1980 and as such, the said eligibility requirements prescribed by the Government of India had been verified by the respondent-State of Punjab before sanctioning pension in favour of the petitioner vide PPO No. 8273/SS/Punjab w.e.f 30.05.1988. The petitioner was nearly 90 years of age when verification in 2012 was conducted and a mere discrepancy in submitting a response to the queries posed by the Sub Divisional Magistrate cannot be construed that there was no material available. It is further necessary to be kept in mind that the co-prisoners who had given their certificates and their statements were recorded by the Deputy Commissioner, had in the meanwhile passed away. It was thus not possible for the petitioner to secure a fresh co-prisoner certificate to substantiate his claim. Taking advantage of the failing health of the petitioner and his inability to remember on account of old age, the respondents completely ignored their earlier verification done by an officer in the rank of the Deputy Commissioner, Patiala himself and recommended the case against the petitioner. The Sub Division Magistrate is an authority lower in the hierarchy and rank to the Deputy Commissioner. He, for reasons unknown, chose not to even advert to the earlier verification done by the Deputy Commissioner, Patiala or verify the said record from the archives/record of the Collectorate, Patiala. In the event of the documents having been misplaced by the respondents, after the same had been handed over to and had been verified, which such verification stands crystallized and validated by the sanction of the pension by the respondent themselves, the petitioner cannot be held accountable or liable. The obligation in that eventuality has to be discharged by them and the same cannot be construed to the prejudice of

the petitioner in the peculiar circumstances of this case. He further contends that insofar as reliance on the proceedings of the Punjab Committee in not recommending the case of the petitioner, is concerned, a perusal of the said proceedings appended as Annexure R-1 alongwith the reply by the respondent shows that the claim of the petitioner was dealt with at Sr. No. 34 by the Punjab Committee. Claim of one Nishan Singh son of Ishar Singh bearing File No. 127/P/3652/89 was also not recommended by the Punjab Committee. The said Nishan Singh approached this Court by mean of **CWP-26329-2013** titled as **“Nishan Singh (deceased) through his LRs versus Union of India”**. The stand adopted by the respondents i.e. the Union of India as well as the State of Punjab in the case was that the claim of the petitioner had not been recommended by the Punjab Committee. The said issue was considered by this Court and it was held that the process for proving the eligibility in terms of the scheme document was on strength of documents referred thereto and the scheme did not contemplate any Committee to determine any claim. It is contended the Punjab Committee was required to ascertain the evidence/claims of the claimants who pleaded underground suffering, internment or externment and not in relation to the cases of persons who had to suffer imprisonment in main land jails. The relevant extract of the said judgment reads thus:

“In the case of imprisonment for more than six months in the mainland jail, the alleged freedom fighter has to prove his case either by way of primary evidence or if it is not available then by secondary evidence, which I have already mentioned in the earlier part of this order and in case of underground suffering, internment or externment, separate set of evidence is required to be tendered and by virtue of the Circular No.08/12/81-FF(P) dated 13.04.1982, relied upon by

the Government of India and from the aforesaid facts and circumstances, it is very much clear that the Committee has only to look into the evidence tendered to examine the case of underground/internment or externment to declare a person claiming himself to be a freedom fighter and in a case in which the certificate has been given by the co-prisoners of the political suffering of a person, who had been with them in the mainland jail on account of their participation in the freedom struggle for a period more than six months and such co-prisoners have already adjudged as freedom fighters holding Tamra Patra and are being paid freedom fighter pension both by the Government of India and Government of Punjab. In the case of 'underground suffering' if the alleged freedom fighter have documentary evidence by way of the Court's/Government's order, proclaiming himself as an absconder, having an award on his head or for his arrest or ordering his detention where the record of relevant period are not available, then it has to be proved by the prominent freedom fighter who had proven jail suffering of minimum two years and who happened to be from the same administrative unit. In the case of 'internment or externment', if the alleged freedom fighter has no order issued by the competent authority then again a certificate from a prominent freedom fighters, who had themselves undergone suffering of imprisonment for two years or more, is required to be proved. Thus, in view of this background, a Circular No.08-12/81- FF(P) dated 13.4.1982 was issued as per which a committee is ordered to be constituted of prominent freedom fighters, which is not a requirement in the case where a freedom fighter has claimed pension on the basis of his sentence for more than six months in the mainland jail, who had only to prove the said fact by way of certificate of two co-prisoners, who had proven jail suffering for minimum one year and were with the said applicant in the jail for a minimum period of six months and in case the said certificate is of M.P. or MLA or Ex M.P. M.L.A, then his own affidavit/certificate is sufficient

instead of certificate by two co-prisoners. Thus, in view of the aforesaid facts and circumstances, this Court is of the considered opinion that the impugned orders are patently illegal and are thus quashed. Respondent No.1 is directed to pay freedom fighter pension to the present petitioners, who are the legal heirs of Nishan Singh (deceased), from the date of the application along with arrears and respondent No.2, who has been influenced by the order of rejection passed by respondent No.1, is further directed to continue to pay its freedom fighter pension to the legal heirs of Nishan Singh (deceased), who have been impleaded as a party in this case, along with arrears, if any.”

13. The above said judgment was challenged by the respondents by means of **LPA 1239-2017** titled **“Union of India and another versus Nishan Singh deceased and others”**. The Division Bench dismissed the above said LPA vide order dated 31.10.2017, primarily on account of delay. The SLP No. 14273 of 2018 was thereafter preferred by the Union of India before the Hon’ble Supreme Court. The said SLP was also dismissed with a cost of Rs. 50,000/-. It is further submitted that the policy of 2004 of the Government of Punjab, on the basis whereof, they could have discontinued the pension of persons whose claim was rejected by the Government of India has already been quashed.

14. A further reference is made by him to the judgment of the Hon’ble Supreme Court in the matter of **“Gurdial Singh versus Union of India”** reported as **AIR 2001 Supreme Court 3883** to contend that standard of proof in such pension schemes is not to be equated as in criminal cases but in furtherance of the object of the said scheme. Once the underlying object is to honour the freedom fighters for their contribution, the bureaucratic mind set cannot be allowed to examine the claims within object

of defeating the intent behind the scheme. Para 7 of the above said judgment reads thus:

7. *The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. It should not be forgotten that the persons intended to be covered by scheme have suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of the claimants under this scheme is required to be determined on the basis of the probabilities and not on the touch-stone of the test of 'beyond reasonable doubt'. Once on the basis of the evidence it is probalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.*

15. It is further argued by the counsel for the petitioner that the respondents have chosen not to advert to the earlier investigation/verification conducted by the Deputy Commissioner, Patiala and have chosen to completely forego the conclusions and the recommendations made by the Government of Punjab. It is contended that it is not a case of a fresh application having been submitted by the petitioner, rather, the entitlement

of the petitioner was to be adjudged on the basis of the application submitted by him on 30.05.1988. There is nothing produced by the respondents before this Court on the basis whereof it may be held that requisite documents had not been furnished by the petitioner alongwith his application originally filed on 30.05.1988. The obligation of the petitioner could have been cast only in case the deficiencies communicated by the Sub Divisional Magistrate, Rajpura in the year 2012 were borne out from consideration of the erstwhile application and not on account of any interregnum lapses committed by the respondent-State itself in not processing/protecting the documents already filed with them and were in their possession.

16. Counsel for the respondent-State on the other hand argued that for consideration of the claim in terms of the applicable policy, an applicant is required to fulfil the eligibility conditions stipulated thereunder. Since the requisite document in support of the claim of the petitioner for having undergone imprisonment for a period of more than 06 months as a part of the freedom movement, is not established in view of the report submitted by the Sub Divisional Magistrate, there was hence, no error in the order passed by the respondents.

17. While responding to the recommendations made by the Punjab Committee about the entitlement of the petitioner and the judgment passed in the matter of Nishan Singh (supra), counsel for the respondent contends that the same is a matter of record and he would not be in a position to dispute the applicability of the same setting aside of the Punjab Committees' scope in relation to consideration of the cases of the freedom fighters who were lodged in main land jails. Further, he does not dispute the fact that the amended policy of the State of Punjab notified in the year

2004 has been quashed by the High Court.

18. Counsel appearing on behalf of the respondent-State of Punjab does not dispute the averments raised in Para No. 5 of the writ petition. The response submitted by the respondent-State of Punjab in their reply is that “Contents of the para are matter of record”. The specific contention raised by the petitioner that the affidavits of the co-prisoners namely Inder Singh and Bahal Singh had been furnished and verified has thus remained uncontroverted. A specific reference is also made that after verification by the Deputy Commissioner, Patiala, a recommendation was made and which such recommendation was accepted by the respondents. The have also failed to rebut the submission that conditions prescribed by the Government of Punjab for release of the pension to the freedom fighters is para materia to the eligibility conditions prescribed by the Government of India in its scheme of 1980. It is, however, contended that the claim of the petitioner was re-verified pursuant to the objections/communication received from the Government of India and the Sub Divisional Magistrate had been deputed to verify the contents. The petitioner himself does not dispute the fact that the Sub Divisional Magistrate had visited the petitioner and the answers were recorded. She contends that she is not in a position to comment on the availability of the record pertaining to the earlier verification done by the respondents, however, the factum of the petitioner being granted pension continuously since 30.05.1988 is not denied.

19. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents available on record.

20. The essential conditions of the eligibility as prescribed in the

scheme document read thus:-

3. 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.”

Xxxx xxxx xxxxx xxxxx xxxxx xxxx

7. HOW TO PROVE THE CLAIMS (EVIDENCE REQUIRED)

The applicant should furnish the documents indicated below whichever is applicable:-

(a) IMPRISONMENT/DETENTION ETC.

Certificate from the concerned jail authorities, District Magistrates or the State Government in case of non-availability of such certificates co-prisoner certificates from a sitting MP or MLA or Ex-MP or ex-MLA specifying the jail period (Annexure-I in the application form.)

(Emphasis Supplied)

21. The above requirement is further established from the response filed by the Union of India in Para No.3, which reads thus:

3. The applicant should furnish the documents indicated below. whichever is applicable, in order to prove his claimed sufferings for grant of pension under the Scheme:-

(a) In case of imprisonment a certificate from the concerned jail authority District Magistrate or the State Government indicating the period of sentence awarded, date of admission, date of release, facts of the case and reasons for release. In case records of the relevant period are not available a Non-Availability of Records Certificate (NARC) from the concerned State

Government along with two Co-Prisoner Certificates (CPC) from freedom fighters who had a proven jail sufferings of minimum 1 year and who were with the applicant in the jail for a minimum period of six months. In case the certifier happens to be a sitting M.P. or MLA or Ex. M.P./M.L.A, only one Co-Prisoners' Certificate in Place of two is required."

(Emphasis Supplied)

22. It is evident from a perusal of the above that a person who has suffered imprisonment for a period of more than 06 months in main land jails before independence and in relation to the freedom struggle would be entitled to the Samman pension in the event of his furnishing evidence in the form of certificate from the concerned jail authority, District Magistrate of the State Government indicating the period of sentence awarded. However, in the cases where the record of relevant period are not available, certificate from two co-prisoner's was required to be furnished. The said co-prisoners should have proven jail suffering of minimum one year and should have been in custody alongwith the applicant in the same jail for a minimum period of 06 months.

23. It has also remained undisputed before this Court that an application for grant of pension under the Samman Pension Scheme was submitted for the first time by the petitioner herein on 30.05.1988 alongwith complete particulars and also the certificates issued by the two co-prisoners who had undergone a jail suffering of more than one year. The aforesaid certificates were duly verified by the District Magistrate-cum-Deputy Commissioner, Patiala and their statements were recorded then before the Deputy Commissioner who, after being satisfied, forwarded the case of the petitioner for grant of pension to the State Government. The

sanction was subsequently also granted by the State Government and pension benefits were released in favour of the petitioner. It is further remained uncontroverted that the aforesaid two co-prisoners namely Bahal Singh and Inder Singh had been availing the freedom fighter pension not only from the State of Punjab but also from the Government of India. Hence, their status as freedom fighter has remained uncontroverted. The respondent-State, while responding to the specific plea raised by the petitioner in Para No.5 of the writ petition about the process completed by the respondents' before sanction of the pension in favour of the petitioner has remained undisputed. Rather, the respondent-State of Punjab has specifically admitted the same to be matter of record.

24. At the same time, it is reflected from the reply of the respondent No.1-Union of India that when the matter of the petitioner was put up before the Union of India for grant of pension at an earlier occasion, the same was declined vide order dated 18.02.1991 only on the strength of the recommendation not having been made by the Punjab Committee. The said Committee report had been attached as Annexure R-2 with the present reply. Notwithstanding that the said recommendations are non-speaking and do not refer to any details as to why the Committee did not find it feasible to recommend the case of the petitioner. The authority of the Committee to examine such claim has itself been set aside by the High Court. Hence, there was no power or authority with the Committee to make such recommendation. It is incomprehensible as to what was the basis/material available before the Punjab Committee, while considering the claims submitted by the various persons, & why the same was rejected. Further, even though the proceedings had been held in the month of

January, 1991, however, the document appended as Annexure R-1 and R-2 by the respondents fail to disclose the material that was placed before the authorities and on the basis whereof the Committee recommended a rejection of the claim made by the claimants therein. No such material, as was placed before the Committee, has been mentioned either in the written statement or has been produced before this Court during the course of arguments. The order thus is non-speaking and cannot be considered as a valid order at all. Be that as it may, there is no necessity of going into the aforesaid issue any further since this Court, in the judgment of Nishan Singh (supra) has already held that the Punjab Committee was not competent to examine the cases of the prisoners who were imprisoned in main land jails and that in the absence of the record, the co-prisoners certificate who had undergone more than one year of sentence would be sufficient.

25. Significantly, the co-prisoners' who had issued the certificate in favour of the petitioner having remained in custody for more than 06 months in relation to the Quit India Movement, are undisputedly freedom fighters and the respondent-State as well as the Government of India had released pensionary benefits in favour of the co-prisoners. Hence, the status of the co-prisoners and their entitlement to issue the certificate in terms of the policy framed by the Government of India remains established.

26. It is also noticed that the earlier order passed by the respondent-Union of India in 18.02.1991 is based solely on the absence of recommendation made by the Punjab Committee and is not on account of failure on the part of the petitioner to append the documents in relation to his imprisonment. The deficiencies as have been noticed now by the Sub

Divisional Magistrate, Rajpura and relied upon by the respondent-Union of India do not find mention in the earlier order of rejection. Accordingly, this Court has to necessarily draw an inference that all the other necessary documents i.e. the certificates by the co-prisoners had been sent/forwarded by the State Government to the Government of India for consideration of the claim. Had there been any such deficiencies, there was no occasion for not mentioning about the such defects while rejecting the claim of the petitioner then vide order dated 18.02.1991. When the only basis for rejection of claim earlier was non recommendation by the Punjab Committee, for considering the entitlement of the petitioner for grant of freedom fighters pension, the respondents cannot, thereafter make improvement upon their own order and substitute the reasons available with them for any subsequent development & to call upon the petitioner to tender the evidence afresh.

27. Further, the case also needs to be considered in light of the objective as culled out by the Hon'ble Supreme Court in the matter of ***“Gurdial Singh versus Union of India”*** (supra) wherein, while dealing with the issues of imposing the burden on a claimant, the Hon'ble Supreme Court specifically held in Para 7 of the said judgment that the object of the Swatantra Sainik Samman Pension Scheme was to facilitate and honour the sacrifices made by the freedom fighters. The act of bestowing however on a person cannot be defeated by imposing an obligation to prove the eligibility beyond reasonable doubt. Once sufficient material and contemporaneous evidence has been brought forth, a claimant ought not to be exposed to greater harassment. The process of conferring honour should not be made as a process of incarceration of a claimant. Considering that

the petitioner was lodged in the jails at Lahore, as it was then, hence, it cannot be perceived that he would be in possession of the record from Lahore Jail or be in a position to procure the same. The ground realities ought not to be completely overlooked by the respondents-authorities while considering the claims of the freedom fighters. The petitioner is stated to be now 99 years of age approximate and as such, he was nearly 89 years of age in the year 2012 when the Sub Divisional Magistrate, Rajpura purportedly contacted the petitioner to make enquiries in relation to claim made by him. The specific case of the petitioner was that on account of old age, he was of hard of hearing and suffered from nearly 93% deafness and hence was not in a position to answer all the questions. The respondent-authorities were thus required to keep the aforesaid issue in their mind while posing the queries. The petitioner was left handicapped as a result the delay occasioned by the respondent themselves in processing the rightful claim of the petitioner and not forwarding the same as per the procedure prescribed in the scheme document and introducing a mechanism which is not provided in the scheme. Claims were being declined for no reasons. Instead of taking responsibility of having misplaced the documents, the authorities opted to add to the struggle of the freedom fighter. Having caused the delay, the respondents cannot thereafter pass on the burden to the petitioner to re-establish his claim especially when the co-prisoners have pass away in the meanwhile. It was necessary for the Sub Divisional Magistrate to have verified from the records of the office of the Deputy Commissioner, Patiala and also available alongwith the sanction order No. 8273 whereby the pension had been sanctioned in favour of the petitioner as to whether the proper documentation had been submitted by the

petitioner and as to whether the due reports after verification of the documents had been furnished by the District Collector or not.

28. The factum of grant of sanction and release of pension by the respondent leads to only one lawful inference i.e. that all requisite formalities and eligibility conditions had been duly fulfilled by the petitioner herein. The above said aspect finds further support from the subsequent decision of the Government of India dated 18.02.1991 wherein no such deficiency or defect in the application submitted by the petitioner has been pointed out and the only reason for rejection of the claim sighted is the non-recommendation by the Punjab Committee. As held by this Court in a judgment that has already attained finality, that the Punjab Committee was not competent to examine the cases of the claimants/freedom fighters who has suffered main land imprisonment for a period of more than 06 months, I fail to understand how the aforesaid reason could have sustained any further. It was then incumbent upon the respondent-State to have forwarded the claim of the petitioner for grant of pension after tracing their own record. Further, in the event of any such documents going amiss from the record of the respondent-State, the liability thereof cannot be imposed or transferred to the petitioner. The respondent-State, having failed to retain its papers and having not been able to controvert the claim made in the petition cannot rely on its own lapses to deny what has rightfully accrued in favour of the petitioner.

29. In view of the aforesaid factual circumstances and the contemporaneous documents/evidence available on record, I am of the view that the petitioner had duly submitted the requisite documents alongwith his application dated 30.05.1988 to the State Government and

the same was duly verified. He cannot be called upon to refurnish those documents more so when the persons who issued the certificates have passed away during the interregnum. Once the receipt of the said documents and pleadings in this regard are not disputed or denied by the respondents, they cannot be permitted at this stage to reopen the aspects that are already closed.

30. The respondent-State of Punjab is accordingly directed to trace its record pertaining to the application dated 30.05.1988 submitted by the petitioner alongwith the verification conducted by the Deputy Commissioner, Patiala. The above said exercise be conducted by the respondent-State of Punjab within a period of 06 weeks of a receipt of certified copy of this order.

31. In the event such documents/record is traced, the same shall be forwarded, complete in all particulars to the Government of India for necessary processing and/sanction in terms of the applicable scheme documents. However, where the record establishes that all such documents were forwarded to the Government of India, the requisite proof shall be conveyed to the Government of India.

32. That the respondent-Union of India shall thereafter take a considerate decision on the strength of the documents and the conditions eligibility as prescribed in the scheme document. If there is no defect/deficiency noticed in the said documents furnished on 30.05.1988, the requisite pensionary benefits shall be released in favour of the petitioner w.e.f. the date of the application/framing of the scheme within a period of 08 weeks thereafter. It is further made clear that in case the said decision is not taken and/or the benefits admissible to the petitioner is not

released in the above said period of 08 weeks, the petitioner shall be entitled to interest @ 6 % per annum from the date of filing of the present petition till disbursement of the dues.

33. The respondent-State of Punjab may, if so advised, forward all such supporting documents/evidence as are in its possession and as may establish the claim of the petitioner to be admissible in terms of the Swatantra Sainik Samman Pension Scheme, 1990, as amended. Needless to mention that a reasoned and a speaking order shall be passed by the respective authorities with keeping in mind the object of the scheme rather than taking a ministerial view in the matter and subjecting an applicant/beneficiary to uncalled for hardship.

34. Further in the event the respondent-State of Punjab is not in a position to trace the said file and/or the documents then appended, the respondent-State of Punjab shall then have to pay the pensionary benefits as prescribed under the scheme of the Government of India to the petitioner herein on the terms mentioned above, if the Government of India declines to make the payment for want of documents.

35. The petition is accordingly allowed in terms as aforesaid.

36. All the pending miscellaneous application(s), if any, are also disposed of.

(VINOD S. BHARDWAJ)

JUDGE

OCTOBER 11, 2023

Vishal Sharma

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