



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 02nd November, 2023

IN THE MATTER OF:

+ **W.P.(C) 7327/2022**

UTTAM LAL SINGH

..... Petitioner

Through: Mr. I. C. Mishra with Mr. Anwar Ali Khan, Advs.

versus

UOI AND OTHERS

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC for R-1 to 3/UoI. Mr. Rohan Gupta, GP Mr. Azmat H. Amanullah and Mr. Nitya Sharma, Adv for R-4/State of Bihar.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner, who is 96 years old freedom fighter, has approached this Court for grant of '*Swatantrata Sainik Samman Pension*' from the date of application, i.e. 29.03.1982, along with interest @ 18% per annum.
2. The facts, in brief, leading to the present Writ Petition, are as under:
 - a. It is stated that the Petitioner herein was born on 01.01.1927. He participated in the Quit India Movement and other Movements associated with the Freedom struggle. It is stated that the Petitioner was named as an accused in G.R. Case No.707/1942 and since the Petitioner was absconding he was declared as Proclaimed Offender on 23.09.1943 and his name



has appeared in the Proclaimed Offender's list at S. No.25. It is further stated that since the Petitioner was declared as a Proclaimed Offender, Non Bailable Warrants were issued against him and proceedings under Section 82 of the Cr.P.C were initiated.

- b. It is stated that on 29.03.1982 the Petitioner herein applied for '*Swatantrata Sainik Samman Pension*' Scheme which was announced by the Government of India. It is stated that the Petitioner herein applied for the said Pension Scheme by submitting an application in the prescribed format along with a copy of G.R. No.707/1942 and other relevant documents by which the Petitioner was declared as absconder/proclaimed offender. It is stated that the Petitioner's case was placed before the State Advisory Committee, Bihar for consideration and the Advisory Committee *vide* letter dated 07.02.1983 recommended the name of the Petitioner for grant of the '*Swatantrata Sainik Samman Pension*'. It is stated that the Home (Special) Department, Govt. of Bihar *vide* letter No. 875 dated 14.03.1985, recommended the case of the Petitioner to the Central Government enclosing various supporting documents, in original, including one set of the Petitioner's application as well as the available court record. It is stated that the said recommendation was reiterated by the State of Bihar *vide* another letter to the Central Government *vide* letter dated 07.09.2005.



- c. It is stated that since no response was forthcoming from the Central Government, the Petitioner herein made a representation to the Bihar Government *vide* letter dated 02.12.2013 requesting it to send a reminder to the Ministry of Home Affairs, Government of India. It is stated that acceding to the request of the Petitioner, a reminder was sent by the Bihar Government to the Central Government enclosing the copy of the letter dated 14.03.1985 by which the Government of Bihar had recommended the case of the Petitioner for grant of Pension. It is stated that when no response came from the Government of India, another representation dated 15.04.2015 was submitted by the Petitioner to the Government of Bihar requesting to send another reminder to the Government of India. It is stated that *vide* letter dated 22.04.2014 another reminder was sent to the Government of India by the Bihar Government. It is stated that since no decision was taken by the Government of India a fourth reminder dated 08.06.2017 was sent to the Government of India.
- d. It is stated that on 28.11.2017 a letter was sent by the Government of India to the Government of Bihar stating that the record of the Petitioner was not available with the Ministry of Home Affairs. In the said letter, the Government of India requested the Government of Bihar to share the verified copies of the relevant documents pertaining to the Petitioner herein including the application of the Petitioner along with the attested Court records etc. It is stated that *vide* letter dated



21.12.2017, the Government of Bihar once again shared copies of all the relevant documents with the Ministry. It is stated that *vide* letter dated 18.01.2018, the Government of India asked for the originals of the Court record, the Petitioner's application form and a fresh recommendation and verification report of the State Government. It is stated that in compliance of the said letter, the State Government *vide* letter dated 06.02.2018 stated that all the original documents had already been sent to the Ministry *vide* letter dated 14.03.1985 and only photocopies of the requisite documents are now available with the State Government and the same were also shared with the Ministry. It was further stated in the said letter that since only photocopies of the original documents were available with the State Government, it is not possible to re-verify and make a fresh recommendation *qua* the Petitioner.

- e. Material on record discloses that *vide* letter dated 23.03.2018, the Government of Bihar requested the District Magistrate, Madhubani, to send a report to it as to whether the record of GR No.707/1942 is available and also to send a report verifying the facts contained therein. It is stated that in the meantime, the Government of India requested the Government of Bihar to verify as to whether the Petitioner was alive or not. It is stated that in compliance of the said letter, the State Government sent a letter dated 01.10.2018 to the District Magistrate, Madhubani, seeking the requisite verification and in response to the said letter, the District Magistrate, Madhubani sent a report



confirming that the Petitioner was alive. It is stated that the said confirmation was intimated to the Government of India by the Government of Bihar *vide* letter dated 24.04.2019.

- f. It is stated that the District Magistrate, Madhubani, *vide* letter dated 22.06.2022 sent a verification report by the Incharge Dy. Collector confirming that the Petitioner's name is mentioned at S. No.24 in the list of accused persons in G.R. No.707/1942. It is also mentioned in the said report that since the Petitioner had been made an accused along with various other persons/freedom fighters, it was not possible to segregate his record from the record of other accused persons. It is stated that the report of the District Magistrate, Madhubani along with a certified copy of GR No.707/1942 was forwarded to the Government of India *vide* letter dated 14.07.2022.
- g. Aggrieved by the inaction of Respondents No.1, 2 & 3, the Petitioner has approached this Court by filing the present Writ Petition with the following prayers:

"It is, therefore, most respectfully prayed that this Hon'ble Court may kindly please to issue a writ in nature of prohibition, certiorari & mandamus or as may be appropriate with directing the respondents to grant 'Swatantrata Sainik Samman Pension' to petitioner & pension from the date of application i.e. recommendation 29.03.1982 or as by respondent No.4 per w.e.f 01.08.1980 along with 18% interest and cost and it is also further prayed that the letter dated 29.09.2020 and 01.02.2021 from respondent No.3 be quashed and heavy cost & fine be imposed upon



respondent No.3 namely Sumitra Rani and on other respondents. "

3. The Writ Petition came up for hearing on 11.05.2022. Counter affidavits have been filed by the Respondents.

4. Union of India has taken a stand that grant of pension under the '*Swatantrata Sainik Samman Pension*' Scheme can be considered by the Central Government only when the following documents are furnished by the applicant:

(a) Primary certificate evidence: from the Imprisonment a 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.

(b) Secondary evidence: In case the records of the relevant period are not available with the State Government, a Non-Availability of 'Records Certificate (NARC) in prescribed format from the concerned State Government is required along with two Co-Prisoner Certificates (CPC) from freedom fighters who had 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. In the case of persons belonging to INA Category, only one CPC is required.



(c) For claims of underground suffering, documentary evidence by way of Court's/Government's order proclaiming the applicant as an absconder, announcing an award on his head or for his arrest or ordering his detention. Where records of the relevant period are not available, a Non-Availability of Records Certificate (NARC) from the concerned State Government along with a Personal Knowledge Certificate (PKC) from a prominent freedom fighter who has proven jail suffering of minimum two years and who happened to be from the same administrative unit, is required.

(d) For claims of internment or externment, orders issued by the competent authority from the official records. In the absence of official records, a Non-Availability of Records Certificate (NARC) from the concerned State Government along with a certificate from prominent freedom fighters who had themselves undergone suffering of imprisonment for two years or more.

(e) In case of confiscation and sale of property, orders of dismissal or removal from service for taking part in the National Freedom Struggle, orders of the competent authority is required.



(f) For claims of permanent incapacitations:

(i) A Certificate from the District Magistrate stating that Permanent incapacitation was done by bullet injury/lathi charge sustained during participation in the National Freedom Struggle.

(ii) Medical certificate from the Civil Surgeon in support of the handicap.

(g) For claims of punishment of 10 strokes of caning/flogging/whipping, copies of orders passed by the competent authority from the official records.

(h) For claims of martyrdom, evidence from official records or newspapers of the relevant time in support or killed in action or in detention etc.

5. It is the stand of the Union of India that unless these documents are received, the claim of the Petitioner cannot be verified.

6. Heard the Counsels for the parties and perused the material on record.

7. The instant Writ Petition reflects the complete sad state of affairs. A 96 years old Freedom Fighter has been made to wait for over 40 years for his pension. The '*Swatantrata Sainik Samman Pension*' Scheme was announced by the Government of India to honour the freedom fighters who gave their seat and blood to secure the freedom of the country. A 96 years old freedom fighter has been made to run from pillar to post to get his rightful pension. The Government of Bihar has recommended the case of the Petitioner and



has send the original documents to the Central Government and the same have been lost by the Central Government. The inaction of the Central Government is actually an insult to the freedom fighter who was declared as a proclaimed offender and probably his entire land would have been attached in the proceedings initiated by the British Government. The very spirit of the Pension Scheme is being defeated by the stonewall approach of the Government of India which cannot be appreciated by this Court.

8. Material on record and the counter affidavit filed by the State of Bihar reflects that the State of Bihar has recommended the name of the Petitioner herein for grant of Freedom Fighter Pension to the Petitioner. The Government of Bihar had sent the original documents pertaining to GR No.707/1942 to the Central Government *vide* its letter dated 14.03.1985 but the Central Government lost them. The Government of Bihar, in its recent letter dated 14.07.2022, has once again verified that the Petitioner's name figures at S.No.24 in G.R. No.707/1942. It is painful to see the way in which the Freedom Fighters are being treated and the insensitivity shown by the Union of India towards Freedom Fighter who has fought for the independence of the country.

9. The Apex Court in Mukund Lal Bhandari v. Union of India, **1993 Supp (3) SCC 2**, has observed as under:

"5. Coming now to the present petition, the petitioners/the late freedom fighters are persons who had participated in the Arya Samaj Movement in the late 1930s in the erstwhile Nizam State of Hyderabad. In view of the amendment made to the Scheme by the Government circular/letter dated September 30, 1985, the petitioners would undisputedly be entitled to the



benefit of the Scheme provided, of course, they produced the relevant material in support of their claim. This is not disputed on behalf of the Union of India. However, three contentions have been raised. Firstly, the petitioners have not produced the required proof in support of their claim that they had in fact participated in the movement and were sentenced to imprisonment for six months or more. Secondly, they had filed their applications before the Government after the date prescribed for filing the application. And thirdly, in any case, if it is held that they satisfied the qualifying conditions under the Scheme, they would be entitled to the pension only from the date they produced the required documentary proof in support of their claim and not from any earlier date.

6. As regards the sufficiency of the proof, the Scheme itself mentions the documents which are required to be produced before the Government. It is not possible for this Court to scrutinize the documents which according to the petitioners, they had produced in support of their claim and pronounce upon their genuineness. It is the function of the Government to do so. We would, therefore, direct accordingly.

*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 behoves 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 dependants 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."

(emphasis supplied)

10. A perusal of the above judgment shows that the Apex Court was of the opinion that pedantic approach should not be expected from the Union of India and when the facts have been accepted by the State Government and there is nothing on record to create any doubt regarding the genuineness of the claim of the Petitioner then it is the duty of the Union of India to honour the freedom fighter.

11. The State of Bihar in its affidavit has stated the number of reminders sent by it to the Government of India and also the fact that it acknowledged that the Petitioner's name finds mention at S. No.24 in G.R.707/1942.

12. It is not in dispute that the Petitioner is alive. It is also not in dispute that the State of Bihar has sent the original documents pertaining to G.R.



No.707/1942 along with the Application Form of the Petitioner herein to the Central Government *vide* its letter dated 14.03.1985. When the State of Bihar has already recommended the name of the Petitioner for grant of *Swatantra Sainik Samman Pension* to the Petitioner herein and in light of the fact that the District Magistrate in its report dated 22.06.2022 has verified that the name of the Petitioner herein reflects at S.No.24 in G.R. No.707/1942, this Court is unable to fathom as to why the Petitioner is not being given the benefit of the Pension Scheme.

13. In Gurdial Singh v. Union of India, (2001) 8 SCC 8, the Apex Court has observed as under:

"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 the Scheme had 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 touchstone 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."
(emphasis supplied)

14. A perusal of the facts of the case and the affidavit filed by the State of Bihar reflects that all the documents relating to the Petitioner have been verified and the insistence of the Union of India to re-verify the documents again and again cannot be accepted.

15. Accordingly, the Writ Petition is allowed. The Respondents No.1, 2 & 3 are directed to release the pension of the Petitioner within 12 weeks from today along with the interest @ 6% per annum from 01.08.1980 till the date of payment of the pension amount.

16. For the lackadaisical approach of the Union of India, this Court deems it fit to impose costs of Rs.20,000/- on the Union of India. Let the Costs be paid to the Petitioner within 6 weeks from today.

17. With these directions, the Writ Petition is disposed of. Pending applications, if any, also stands is disposed of.

SUBRAMONIUM PRASAD, J

NOVEMBER 02, 2023

Rahul