

CWP-6327-2013(O&M)

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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

202

CWP-6327-2013(O&M)

Date of Decision: 09.12.2024

Mrs. Lachhma Devi

.. Petitioner

Versus

Union of India and others

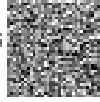
... Respondents

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

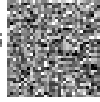
Present: Mr. R.A. Sheoran, Advocate
for the petitioner.Mr. Gaurav Pathak, Sr. Panel Counsel
for respondents No.1 to 3.Mr. Rohit Verma, Advocate
for respondent No.4.VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 27.03.2009 (Annexure P-10) passed by respondent No.3-Under Secretary, Government of India, Ministry of Home Affairs, whereby the claim of the petitioner for Swatantrata Sainik Samman Pension was declined. A further prayer has been made that the benefits ought to be released in favour of the petitioner.

Learned counsel for the petitioner has argued that the petitioner (since deceased) was the widow of late Gnr. No.6472 Lal Chand, who was enrolled in Hong-Kong Singapore Royal Artillery, joined Indian National Army (hereinafter referred to as 'I.N.A. ') and he was killed in action on 15.02.1942 due to heavy artillery gun fire. He places reliance on the service particulars of late Lal Chand. He submits that on 08.05.1997, the petitioner

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had applied for grant of State Samman Pension, which is granted by the Government of Haryana and application was also submitted for grant of INA pension to respondent No.4 i.e. Senior Records Officer, Topkhana Abhilekh, Artillery Records, but the petitioner was directed to approach the State Government. Accordingly, an application dated 18.09.2003 was submitted for grant of Freedom Fighter Pension along with affidavits of other persons, who had also served in the same unit. Reliance is placed on photocopies of the affidavits of Mr. Nanta son of Sh. Teko and Mr. Duli Chand son of Mr. Sheo Lal, who were Freedom Fighters and were getting INA Freedom Fighters Pension from Union of India. He contends that the Government of Haryana, however, considered the matter with regard to the grant of "State Pension to the Freedom Fighters" and it was held that the State Samman Pension be granted to the petitioner w.e.f. 08.05.1997 i.e. from the date of her application. Still further the office of Chief Secretary, Haryana, also granted a Freedom Fighter Certificate to the husband of the petitioner on 20.12.2006. Despite various representations made by the petitioner requesting for grant of Swatantrata Sainik Samman Pension, the same was not released. Communication dated 09.01.2008 was sent to the Ministry of Home Affairs reiterating that Lal Chand-husband of the petitioner was enrolled in Hong-Kong Singapore Royal Artillery on 12.02.1940 and was killed in action on 15.02.1942. It was conveyed that the information regarding his I.N.A. service, the operation for which he was killed, has not been found recorded in the IAFK-1172. The claim of the petitioner was rejected by the respondents for grant of Swatantrata Sainik Samman Pension on 27.03.2009 by recording the following reasons:-



“Subject: Grant of Swatantrata Sainik Sammann pension-claim of Smt. Lachhma Devi wd/o late Lal Chand of District Bhivani (Haryana).

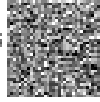
Sir,

I am directed to refer to your letter no. 49/87/2003-2 P.P. dated 7-6-2007 on the subject mentioned above and to state that the claim of Smt. Lachhma Devi for Swatantarata Sainik Samman (dependent family) pension has been examined keeping in view the documents submitted by her in support of the claimed suffering of her husband late Lal Chand for participation in INA movement.

2. Under the provisions of the Swatantrata Sainik Samman Pension Scheme, 1980, a widow of a martyr is also eligible for Samman Pension. For the purpose of grant of pension a martyr is a person who was killed or died in action or in detention or was awarded capital punishment while participating in a National movement for emancipation of India. It includes an ex-INA or ex-military person who died fighting the British. The claim is however, required to be established by documentary evidence.

As per the policy being followed in respect of INA cases of military category the eligibility for pension is decided on the basis of discharge book/certificate issued by the concerned Army authorities. In case of any doubt/dispute, reports/particulars of the claimant are obtained from the concerned Army Record Officer to decide the case.

3. It is also clarified that the freedom fighters' pension schemes operated by the State Government and the Central Government are separate and distinct schemes. Grant of pension by the State Government does not ipso facto entitle a person to Central Samman pension under the S.S.S. Pension Scheme, 1980 (unless and until, he also meet the eligibility criteria and evidentiary requirements of the Central Scheme, too).

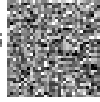


4. *As per the report of the concerned Army Record Office, late Lal Chand was enrolled in the Army (HKSRA) on 12-2-1940 and killed in action on 15-2-1942. He was given medals/decorations and war medal. Death Gratuity etc. were also paid to his family. The information regarding his INA service and cause of death i.e. operations for which he was killed in action has not been found recorded in the service particulars of non-effective individuals.*

5. *In view of the above her late husband's claimed participation in INA movement is not proved. He can therefore not be treated as freedom fighter under the Swatantrata Sainik Pension Samman Scheme. Consequently Smt. Lachhma Devi is not entitled for dependent family pension under the Swatantrata Sainik Samman Pension Scheme.*

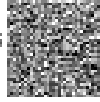
6. *It is, therefore, regretted that it is not possible to accept her claim for the grant of dependent family pension under the S.S.S.Pension Scheme, 1980.*

He contends that the reply to the aforesaid was sent by the petitioner on 22.01.2011 including a certificate of War widow issued to the petitioner and that numerous requests had been made thereafter, but all in vain. Hence, the present writ petition has been filed by placing reliance on the affidavits issued by two other persons, namely Mr. Nanta and Duli Chand, about the petitioner having participated with them as a part of INA and about his having been killed in action on 15.02.1942. He corroborates the death of Lal Chand being in action from the service particulars issued by the Record Officer for Commanding Officer on 18.10.1984. He further submits that even though he served from February 1940 to February 1942, he was awarded with 1939-45 Star, Defence Medal, War Medal and Pacific Campaign 1942, which shows his exemplary bravery. The Swatantrata Sainik Samman Pension, thus, ought to be granted to the petitioner.

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A joint affidavit was filed on behalf of respondent No.4 raising objection to the petition being allowed. Apart from raising an objection of delay and laches, it is contended that the IAFK-1172, which maintains the service particulars of non-effective individuals, do not reflect the name of Lal Chand about his having joined INA. Hence, it cannot be ascertained as to whether he had died in action while participating in the freedom movement of the country.

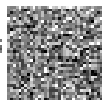
A separate counter affidavit on behalf of respondents No.1 to 3 has been filed through Deputy Secretary, Ministry of Home Affairs, Freedom Fighter's Division. Learned counsel for the respondents refers to the preliminary submissions/objections therein and has argued that Freedom Fighters Pension Scheme, 1972 was initiated w.e.f. 15.08.1972 to grant pension to living freedom fighters, their families (if the freedom fighter is no more) and their widows. For being eligible for grant of pension, a freedom fighter was required to undergo at least one of the sufferings prescribed in the said scheme. Participation in the INA and in the Indian Independence League was also treated as participation in the National Liberation Movement. Since the petitioner was not claiming grant of benefit under provision 2.2 of the said Scheme, which deals with imprisonment, hence the same is not applicable. The claim of the petitioner was for grant of pension under the category of 'Martyr'. It is averred that INA comprised of Personnel from the then British Indian Army i.e. the Military Category and those who were recruited in INA locally i.e. the 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



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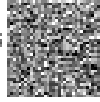
place. Those who had joined INA from British Indian Army (i.e. Military Category Personnel of INA) were taken prisoners as they had acted against their oath of allegiance to the British Crown. But the Civilian Category of INA had not taken any such oath of allegiance to the British. They were not tried/imprisoned by the Allied/British Forces in general. Civilian members of INA being detained/imprisoned for six months or more could be done in exceptional cases. He contends that a large number of ineligible/bogus or forged claims have been made for seeking pension under the Swatantrata Sainik Samman Pension Scheme, 1980 and the respondent-Union of India is required to carry out a due diligence and ascertainment of facts before any such pension is to be awarded. Such right of the Government has already been upheld by the Hon'ble Supreme Court of India in **Civil Appeal No.7336/2002 titled 'UOI Vs. M.S. Mohammad Rawther', reported as AIR 2007 SC 3014.** Reference was also made to various other judgments upholding the right of Government of India to carry out such diligence. On merits, it was argued that the petitioner had produced photocopies of the affidavits of Mr. Duli Chand son of Mr. Sheo Lal, a letter dated 04.04.1997 of Topkhana Abhilekh (Artillery Records), Nasik Road Camp, in respect of late GNR No.6472 Lal Chand son of Ketha Ram. For being eligible for Martyr Pension in the above-said scheme, the person ought to have given a supreme sacrifice while participating in action for the freedom struggle of the country. The concerned Record Office i.e. Artillery Records, Nasik Road Camp, were sought for to report/confirm whether Lal Chand had ever joined INA and had suffered thereof. There is, however, no indication or evidence on the basis whereof it could be ascertained that Lal Chand had in

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fact died in action for the cause of freedom of the country. A further objection has been taken that historically, there was no offensive/defensive mobilization of INA against the British in February, 1942 and that the INA came into existence officially on 01.09.1942. Late Lal Chand- husband of the petitioner, however, died on 15.02.1942 i.e. even before the INA came into existence officially. Thus, he was not killed in action in any movement for the freedom of the country and may have died during the Japanese invasion/action against the Allies/British in South East Asia, which was not a part of the Indian Freedom movement. He submits that since there was no such documentary evidence available with the respondents and considering that the INA came into existence nearly 7 months after demise of Lal Chand, the claim was rightly rejected by the respondents. Certificates in question, thus, could not be taken into consideration.

During the course of hearing, learned counsel for the respondents contends that as per the database of the Hong-Kong and Singapore Royal Artillery available on their web- site, Lal Chand (husband of the petitioner) was killed in action in Malaya-Singapore War on 15.02.1942. Photocopy of such certificate is taken on record as 'Annexure R-1'. Referring to the same, he argues that as Lal Chand was killed in Malaya-Singapore War, hence it was not that his sacrifice was in any way linked to the Indian freedom movement. Under the said circumstances, the benefit under the Swatantrata Sainik Samman Pension Scheme, 1980, cannot be extended to the petitioner and the same has been rightly declined.

I have heard learned counsel for the parties and have gone through the documents appended along with the present petition.



While much emphasis has been laid by the counsel for the petitioner on the factum that Lal Chand- husband of the petitioner had died in action on 15.02.1942 and as such, the petitioner ought to be granted pension by drawing support from the photocopies of the affidavits issued by Mr. Nanta son of Sh. Teko and Mr. Duli Chand son of Mr. Sheo Lal, I am afraid that the contentions of the learned counsel for the petitioner and his reliance on the photocopies of the affidavits issued by certain persons, who claimed themselves to be volunteers and having joined INA, were taken into consideration at this stage in the light of the secondary evidence, which has been rebutted by the respondent-State itself. This Court cannot ignore the fact that Union of India has recognized coming into existence of the INA on 01.09.1942 and undisputedly Lal Chand died on 15.02.1942 even before coming into existence of the INA. Further, the documents Annexure R-1, which has been taken on record today, is an extract from the website of Hong-Kong and Singapore Royal Artillery, which shows that death of Lal Chand took place in action during Malaya-Singapore War. The same was, thus, not a part of the Indian freedom movement. Accordingly, for being eligible for grant of pension, the claimant ought to have been a freedom fighter and must have participated in the freedom movement of the country. A mere death in any other action would not entitle the petitioner to claim compensation under the Swatantrata Sainik Samman Pension Scheme, 1980 although he/she may be eligible for grant of pension under any other scheme which so covers their entitlement. The essential eligibility conditions under the Swatantrata Sainik Samman Pension Scheme, 1980 are thus not fulfilled. The affidavits of Nanta son of Sh. Teko and Duli

Chand son of Mr. Sheo Lal, thus, cannot be taken as gospel truth about participation of deceased husband of the petitioner in the INA or in the movement for the freedom of India. The basis of the respondent-Union of India declining the claim of the petitioner cannot be said to be bereft of any merit. The petitioner never led any evidence which could dispel the reasons given by the respondents and even during the course of arguments, counsel for the petitioner was not able to establish that Indian National Army had officially come into existence prior to September 1942.

Under the given circumstances, a mere submission of the petitioner that the death in question took place as a member of INA and during the freedom movement of our country cannot be accepted. I find that the order passed by the respondent-Union of India is based on an assessment of examination of the evidence on record. Conjectural hypothesis advanced by the petitioner to substantiate her claim cannot substitute itself for the need of satisfying the eligibility conditions so prescribed under the said scheme.

For the aforesaid reasons, the present petition is dismissed.

09.12.2024.	(VINOD S. BHARDWAJ)
monika	JUDGE
<i>Whether speaking/reasoned</i>	<i>: Yes/No</i>
<i>Whether reportable</i>	<i>: Yes/No</i>