**CWP-7901-2013(O&M)****-1-****IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH****202/2****CWP-7901-2013(O&M)
Date of decision: 09.12.2024**

Mrs. Parvati Devi

..... Petitioner

VERSUS

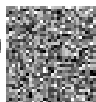
Union of India & ors.

..... Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJPresent:- Mr. Sahil Gupta, Advocate
for the petitioner(s).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)**

Challenging the order dated 15.09.2010 passed by the Government of India declining the claim of the petitioner for Swatantrata Sainik Samman Pension, the petitioner has approached this Court.

Learned counsel for the petitioner has vehemently argued that the petitioner is widow of Bhagwana Ram son of Nopa Ram and that she had applied for grant of Swatantrata Sainik Samman Pension on the ground that her husband Bhagwana Ram had been posted in the Middle East on 25.06.1942 after training and he was captured by the enemy forces. He was allegedly kept as prisoner of war in Germany and thereafter, he met Netaji Subhas Chandra Bose and he joined Indian National Army (hereinafter referred to as 'I.N.A') on 05.09.1942. He shifted to Singapore in the first

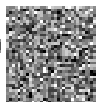
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week of October, 1943, where he was again captured by the enemy forces and was kept as prisoner of war (POW) and was released with other POWs.

Learned counsel for the petitioner has placed reliance on the certificates issued by co-prisoners namely Shri Har Nath, Shri Umrao and Shri Teku Ram. All of them had been granted Central Freedom Fighter Pension by the Ministry of Home Affairs and were deemed freedom fighters/eligible certifiers under the Swatantrata Sainik Samman Pension Scheme, 1980.

He contends that the Sub Divisional Officer (Civil) Charkhi Dadri, sent a letter vide memo No.424/MC-1, dated 18.06.2009 to Deputy Commissioner Bhiwani and submitted a report that Bhagwana Ram had died on 24.06.1989 in a road accident and the petitioner being his widow is entitled for the pension. The claim of the petitioner was allowed by the Chief Secretary, Government of Haryana vide order dated 29.07.2009 and she was held entitled to Haryana State Sainik Samman Pension. Her request was also forwarded by the Chief Secretary, Government of Haryana to grant the Central Samman Pension to the petitioner. Subsequently, a reminder was also sent on 23.07.2010. Vide letter dated 30.07.2010, respondent No.4-Senior Records Officer, informed the petitioner and Ministry of Home Affairs that the service dossier of late Bhagwana Ram was not available as the documents had been destroyed after the expiry of its retention period. Ultimately vide letter dated 15.09.2010, respondent No.3 sent a letter to the Chief Secretary, Government of Haryana and the copy of the same was also sent to the petitioner about rejecting the case of the petitioner for grant of pension under the Swatantrata Sainik Samman Pension Scheme, 1980.

Vide letter dated 20.09.2010, the Chief Secretary, Government



of Haryana sent a letter to Director, FFR Division (NZ Section), Ministry of Home Affairs and requested him to take action. Affidavits of three co-prisoners of Bhagwana Ram were also sent. Learned counsel contends that the other freedom fighters, who were part of the INA and had undergone imprisonment, gave affidavits in support of incarceration of Bhagwana Ram-husband of the petitioner. Therefore, her claim ought to be allowed.

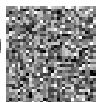
Learned counsel for respondents No.1 to 3 refers to the averments contained in the written statement and argues that the Freedom Fighter's Pension Scheme 1972 was amended in 1980 and it was renamed as Swatantrata Sainik Samman Pension Scheme, 1980. He contends that as per the conditions contained therein, the claimants, for being eligible for grant of pension, had to undergo minimum imprisonment of six months.

The conditions prescribed thereunder are as follows:-

“4.1 Imprisonment suffering: A person who had suffered minimum imprisonment of six months (3 months in case of women and SC/ST freedom fighters) on account of participation in freedom struggle subject to furnishing of the following evidences.

(a) Primary evidence: 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, facts of the case and reasons for release.

(b) Secondary evidence:- In case official records of the relevant period are not available, secondary evidence in the form of 2 co-prisoner certificates (CPC) from central freedom fighter pensions who have proven jail suffering of minimum 1 year and who were with the applicant in the same jail could be considered provided the State Government/Union Territory Administration

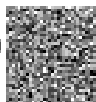


concerned, after due verification of the claim and its genuineness, certifies that documentary evidences from the official records in support of the claimed sufferings were not available. In case the co-prisoner was a sitting or Ex-MP/MLA, only one certificate in place of the two is required. In the case of persons belonging to INA category, only one CPC is required.”

Where the relevant record is not available with the concerned authority, the instructions require the State Government to issue NARC only after due verification from all the sources. The NARC is to be treated as valid only when the State Government furnishes it after consulting all the relevant authorities. For the claims of underground sufferings, documentary evidence by way of Court's/Government's order proclaiming the person as an offender, announcing an award on his head or for his arrest or ordering his detention etc. were required to be furnished. The claims of the Samman Pension can be considered by the Central Government only when the documents are duly verified and recommended by the State Government/Union Territory Administrations concerned. The said documents/reports/evidence are required to be kept by the Central Government before examining the eligibility criteria and evidentiary requirement of the Swatantrata Sainik Samman Pension Scheme, 1980. It is stated that the documents submitted by the petitioner were duly considered and it was found that she was not eligible for Swatantrata Sainik Samman Pension due to following discrepancies:-

“(a) The freedom fighter has not undergone minimum 6 months imprisonment as required under the policy.

(b) She has not produced any record based primary documentary evidence of her late husband.

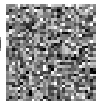


(c) *She has not produced any record acceptable secondary evidence to establish her late husband's imprisonment/detention suffering.*

(d) *Grant of State freedom fighter pension does not entitle anybody for Central Samman Pension unless he fulfils all the provisions of the same. It may be noted that State and Central Schemes of freedom fighters are completely different. Entitlement of State Pension does not automatically qualify someone for Central Pension unless he fulfils all the provisions of the scheme.*

(e) *She has not produced any other corroborative evidence e.g. repatriation certificate, movement order etc. of her late husband.”*

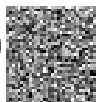
Learned counsel for respondents No.1 to 3 contends that the claim made by the petitioner is not established by any documents that have been appended. There is nothing on record that Bhagwana Ram had participated in any Freedom movement or that he had remained in custody for a period of more than six months to be eligible for the grant of pension under the said scheme. Under the given circumstances, merely on the basis of the claim made by the petitioner, the benefits cannot be given. He also refers to the reply filed by respondent No.4 and contends that the petitioner, widow of deceased Bhagwana Ram, had never claimed any such benefit even upto his death in 1989. Even in the IAFK-1172, in which the service particulars of the non-effective individuals are maintained upon destruction of service records, there is no information available with respect to Bhagwana Ram- husband of the petitioner having joined the INA. Hence, in the absence of fulfilling the eligibility conditions, the benefit in favour of the petitioner could not be released.



He further refers to the additional affidavit filed on behalf of respondents No.1 to 3 by the Under Secretary, Government of India, Ministry of Home Affairs, Freedom Fighters and Rehabilitation Division and to the consideration of Co-prisoners Certificate (CPC) submitted by the petitioner. The relevant extract of the additional affidavit is as under:-

(iii) That as per the provisions of SSS Yojana, for considering claims of Civil category of INA, a Co-prisoners Certificate (CPC) from a Central freedom fighter pensioner, who had undergone imprisonment for a minimum one year, in addition to other corroborative documents like repatriation certificate, State Pension Sanction order, certificate of INA Association are required to be submitted by the claimant, whereas in the instant claim of the Petitioner, the Co-Prisoner Certificates submitted by the claimant are not acceptable as the certifiers have not mentioned their exact duration of jail imprisonments which is mandatory in order to verify and to prove themselves as an eligible certifier.

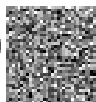
(iv) That mere being all CPC certifiers are SSS pension holders could not signify them as an eligible for issuing CPCs too. The certifiers in their CPC have endorsed that they were captured by enemies and thereafter joined INA in July 1942 and the husband of the Petitioner was with them as co-prisoner in the same jail from May 1945 to till the release of POWS. In the light of this inconclusive information, it was very difficult to find out as to how long the certifier was in the jail. It may be less than one year, may be one year or may be more than one year. In absence of such vital information, it cannot be concluded whether these certifiers are eligible for issuing CPCs or not.



(v) *That as claimed by the CPC certifiers they were captured by enemies and thereafter joined INA in July 1942 and they were in jail from May 1945. The period mentioned by them has not corroborated with the period of existence of INA. In this regard, National Archives of India vide their letter dated 11.10.2019 has sent the relevant extracts regarding formulation, training and disband of INA in Singapore as per which the INA was officially functional w.e.f 01.09.1942 to 28.12.1942 whereas as per the CPC submitted by the Petitioner, her husband had joined INA in July 1942 i.e much before formulation of INA. Hence, the said CPC also not corroborates the time of actual formation of INA as such same cannot be relied upon. Copy of National Archives of India letter dated 11.10.2019 is annexed herewith and marked as Annexure-R-2.*

(vi) *That as per the provisions of SSS Yojana, the claims of Samman Pension can be only be considered by the Central Government when these are recommended by the State Government in accordance with the provisions of SSS Yojana whereas, in the instant claim of the Petitioner, the State Government has endorsed their recommendation taking into the consideration of affidavit of other three freedom fighters which is not acceptable.”*

He contends that it is, thus, evident from perusal of the additional affidavit that although the Co-prisoners Certificate substantiates that Bhagwana Ram joined INA in July 1942, however, as per the official record INA was not functional till 01.09.1942. Hence, there was no occasion for Bhagwana Ram to join INA in July 1942. Accordingly, the Co-prisoner Certificate was ruled devoid of any merits. He further submits that there is no detailed description given as to when the prisoners were

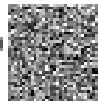
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released from the alleged custody and as such the minimum period of undergone custody has not been substantiated. Reliance was also placed upon the judgments of the Hon'ble Supreme Court as well as different High Courts according to which the Government of India is at liberty to examine the eligibility conditions under its Welfare Schemes and that the documents must satisfy the criteria so prescribed by the Government of India.

No replication or rejoinder has been filed to the arguments raised by the respondents.

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

The primary consideration for grant of benefit under the Swatantrata Sainik Samman Pension Scheme, 1980, is that the person who is seeking grant of pension under the said scheme, is required to establish that he participated in the freedom struggle and had been imprisoned for the minimum prescribed period to be eligible for grant of such pension. A Co-prisoner Certificate is admissible as secondary evidence in the absence of any primary evidence. The petitioner, in the Co-prisoner Certificate, appended along with present petition, claims her husband to have joined INA in July 1942. The respondents specifically considered the affidavits of the Co-prisoners and disbelieved the averments contained therein by referring to the constitution of INA on 01.09.1942. It was, thus, held that since INA had not been officially functional before September 1942, hence, there was no occasion for Bhagwana Ram to join INA in July 1942. It is further evident that even the Co-prisoners Certificate does not specify the actual duration of the custody undergone. It was for the said reasons that the eligibility conditions were noted to have not been fulfilled by the

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petitioner for establishing the claim for grant of family pension. The failure of the petitioner to lead any evidence to refute the objection pointed out by the respondents, thus, does not leave much scope for consideration of her case.

In view of the case set up by the respondents that essential conditions prescribed in the Swatantrata Sainik Samman Pension Scheme, 1980 have not been fulfilled, which is also *prima facie* established from its response, this Court cannot supplant factual evidence to supersede the specific objections that are borne out from consideration of the entire record.

Under the given circumstances, I do not find any sufficient grounds on the basis whereof the decision taken by respondent-authority can be said to be illegal, perverse or suffering from non-appreciation of material evidence on record. The petitioner thus has not been able to establish her entitlement to the pension or that the decision of respondents is bad.

The writ petition is accordingly dismissed.

09.12.2024*monika***(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No