

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)**

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

**WPA 6286 of 2016
Narayan Chandra Maiti
Versus
Union of India & Ors.**

Mr. Ramdulal Manna

Mr. Swapan Kumar Mallick

Mr. Sabyasachi Mondal

Mr. Sayan Mukherjee

.....For the Petitioner

Mr. Ashim Kumar Ganguly

Mr. Bellal Shaikh

.....For the State respondent

Heard on : 24.03.2022

Judgment on : 17.05.2022

Krishna Rao, J.: The petitioner has filed the instant writ petition for grant of freedom fighters pension under Swatantrata Sainik Samman Pension Scheme, 1980.

During 25th Anniversary of Independence, the Central Government to honour the Freedom Fighters who took part in the Freedom Movement of India introduced a Scheme being Freedom Fighters' Pension Scheme, 1972

for grant of pension to the living Freedom Fighters and their family members. As per the scheme, the minimum quantum of pension sanctioned to a freedom fighter be Rs. 200/- per month and in case of families it will vary from Rs.100 to Rs. 200/- in accordance with the size and number of eligible dependants in the family and the pension was admissible only to those who were in need of financial assistance on account of their meagre annual gross income upto the ceiling of Rs. 5,000/-.

Subsequently, to extend the benefit of pension to all freedom fighters as a token of Samman, the Government of India introduced a Scheme on 15.08.1981 namely Swatantrata Sainik Samman Pension Scheme, 1980 with effect from 01.08.1980 in place of Freedom Fighter's Pension Scheme, 1972.

After introduction of the scheme, the Deputy Secretary to the Government of India vide his letter dt. 12.04.1983 for the purpose of easy reference, consolidated the guidelines in the matter of grant of pension to the freedom fighters and their family members which prescribed that in the absence of official records because of their non-availability, the Personal Knowledge Certificate issued by a veteran freedom fighter who himself had been in jail in connection with the National Freedom Struggle for not less than 5 years would be acceptable to substantiate the claim of abscondence and before relying upon the same it would be necessary for the Government to satisfy itself that the applicant was a genuine freedom fighter and official records for the said period is not available. It is further clarified that the genuineness of the certificate itself has to be verified by making a reference

to the jail sufferings of five years, claimed by the certifier and that there is no complaint about indiscriminate certification against him. In case of underground sufferings which are not based on official records should invariably be placed before the State Advisory Committee and the recommendation of the State Government along with the extract of the proceedings of the State Advisory Committee should be forwarded to the Ministry of Home Affairs for further consideration.

It was brought to the notice of the Ministry of Home Affairs that in some District freedom fighters with five years jail suffering are not available and the freedom fighters of those Districts are not being able to apply for the Samman Pension under the scheme and accordingly the Deputy Secretary to the Government of India vide letter dt. 21.08.1984 relaxed the required jail sufferings of the certified from five years to two years.

In terms of the Swatantrata Sainik Samman Pension Scheme, 1980, the petitioner had applied for the freedom fighter pension along with general Non-Availability of Record Certificate (NARC) issued by the District Magistrate of Midnapore and Personal Knowledge Certificate issued by Shri Sushil Kumar Dhara, an eminent freedom fighter and eligible certifier of District - Midnapore for grant of Swatantrata Sainik Samman Pension.

On receipt of the application of the petitioner dt. 14.07.1981, the Assistant Secretary to the Government of West Bengal vide letter dt. 05/14.04.1983 sought for confirmation of the genuineness of the Personal Knowledge Certificate from the certifier Shri Sushil Kumar Dhara and

simultaneously it was informed to the petitioner that the application of the petitioner is under consideration.

The petitioner noticed that there is some bonafide mistakes in the application regarding participation in the freedom movement, the petitioner vide his application dt. 24.08.1983 prayed for necessary correction in the application for grant of Swatantrata Sainik Samman Pension dt. 14.07.1981. Shri Sushil Kumar Dhara, the Certifier of the petitioner vide his letter dt. 22.08.1983 had also confirmed about the genuineness of the Personal Knowledge Certificate issued by him in favour of the petitioner.

On receipt of the confirmation, the Assistant Secretary to the Government of West Bengal vide letter dt. 15/18.06.1984 informed the petitioner that the request of the petitioner could not be recommended to the Government of India as the certificate of abscondence submitted by the petitioner is not acceptable since Shri Sushil Kumar Dhara had suffered actual imprisonment is less than five years.

The petitioner vide his letter dt. 10.12.1984 informed the Assistant Secretary to the Government of West Bengal for consideration of his application taking the specific note to that effect that vide Notification dt. 21.08.1984, the period of certifier's jail suffering has been reduced to two years from five years. The petitioner vide letter dt. 05.09.1986 requested the Under Secretary to the Government of India for consideration of the application of the petitioner for grant of pension in accordance with the scheme.

The Deputy Secretary to the Government of West Bengal vide letter dt. 08.05.2015 directed the Deputy Secretary to the Government of West Bengal to furnish report as to the jail sufferings of the petitioner and co-prisoners certificate etc. In compliance of the letter dt. 08.05.2015, the Additional Secretary to the Government of West Bengal had directed the District Magistrate, Purba Medinipur to enquire into the matter and to furnish report in respect of the petitioner's jail sufferings, if any and the co-prisoners certificates etc.

The Superintendent, Tamluk, Subsidiary Correctional Home had informed the Additional District Magistrate, Purba Medinipur that no exact date or year of detention of the petitioner is available. The Officer In-Charge, D.I.B., Purba Medinipur had informed the Superintendent of Police that he had made a local enquiry and came to learn that the petitioner is a bonafide freedom fighter but he was never confined in the jail. He further stated that he went in underground and absconded from August, 1942 to September, 1944 to evade arrest and for continuing his patriotic service to the country under the guidance of the party leader Shri Sushil Kumar Dhara, Shri Satish Chandra Samanta and Shri Rabindra Nath Giri.

On 23.11.2015, the petitioner had again made a representation to the Deputy Secretary to the Government of India, Ministry of Home Affairs requesting for disposal of the application filed by the petitioner taking into note of the report as submitted by the Government agencies. The representation of the petitioner is not considered and is still pending before the authorities.

Ld. Counsel for the petitioner relied upon the judgment passed by the Coordinate Bench of this Court reported in CAL LT 1999 (1) HC 241 (Gokul Chandra Panja –versus- Union of India & Ors.) and submitted that if no records are available to show the name of the petitioner with regard to issuance of warrant of arrest, his suffering in jail or his underground, the Certificate of Personal Knowledge granted by Shri Sushil Kumar Dhara ought to have been taken as proof of the claim of the petitioner in terms of the Scheme.

Ld. Counsel for the petitioners further relied upon the judgments reported in 2010 (4) CHN (CAL) 4 (Gajendranath Manna –versus- State of West Bengal & Ors.) and 2017 (5) CHN (CAL) 464 (Lichu Bala Ghara –versus- Union of India & Ors.) and submitted that in both the cases, the Hon’ble Court accepted the certificate issued by Rabindra Nath Giri and Sushil Kumar Dhara as secondary evidence and directed the Ministry to release pension in favour of the petitioner.

Ld. Counsel for the respondent relied upon the Clause (4) of the Eligibility Conditions and Evidentiary Requirements for Swatantrata Sainik Samman Pension Scheme, 1980, which reads as follows :-

“4. Acceptability of Secondary Evidence

Secondary evidences can be considered only if supported by a valid Non-Availability of Records Certificate (NARC), which should be in the following format:

“All concerned authorities of the State Government who could have relevant records in respect of the claim of the applicant, have been consulted and it is confirmed that the official records of the relevant time are not available.”

The contention raised by the Counsel for the respondents that the secondary evidences can be considered only if supported by valid Non-Availability of Records Certificate (NARC) which should be in the format as mentioned in Clause 4 of the Scheme of 1980. The contention raised by the respondents has already decided by the Hon'ble Division Bench of this Court in the case of Lichu Bala Ghara vs. Union of India & Ors. reported in 2017 (5) CHN (CAL) 464 (supra) wherein the Hon'ble Court has held that it will be quite impossible for the petitioner or anybody to produce official records pertaining to freedom fighters who were the residence of village Polanda for the relevant period. If that be so, only the other option would be to act on the basis of Personal Knowledge Certificate issued by the eligible certifiers.

In the instant case, admittedly there is no official record available with the petitioner to prove that the petitioner is a freedom fighter of village Chakdurgadaspur but Shri Sushil Kumar Dhara had provided Personal Knowledge Certificate to the petitioner certifying that the petitioner is a bonafide freedom fighter who remain underground for the period from August, 1942 to September, 1944 as he was one for whose detention order were issued but he evaded arrest. Shir Sushil Kumar Dhara was also a freedom fighter and had suffered actual imprisonment for more than 5 years during the freedom struggle and the period of imprisonment was also mentioned in the said certificate which clearly reveals that he was suffered total imprisonment of 5 years 7 months.

Although the Personal Knowledge Certificate may be secondary evidence in the absence of primary evidence, the same has to be accepted in

terms of the scheme wherein it is categorically mentioned that certificate from veteran freedom fighters who had themselves undergone imprisonment for 5 years or more if official records are not forthcoming due to their non-availability.

The Division Benches of this Hon'ble Court have also held that if the secondary evidence i.e. Personal Knowledge Certificate is provided there is no necessity for production of documentary evidence of non-availability of records during the said period.

In the instant case, Shri Sushil Kumar Dhara had provided his Personal Knowledge Certificate and on the basis of the said Personal Knowledge Certificate, the petitioner had applied for grant of pension under the scheme but the Government of India, Ministry of Home Affairs have not considered the application filed by the petitioner and the same is still pending before the authorities for consideration.

The judgment relied by the petitioner reported in CAL LT 1999 (1) HC 241 (Gokul Chandra Panja -Vs- Union of India & Ors.), the Hon'ble Court held that:

“40. To sum up : There are no records which would be material to the question of the petitioner's political suffering. In such circumstances, it is the personal knowledge certificate alone which had to be accepted and the recommendation made by the State Government and which has otherwise not been challenged by the Central Government in terms of the Scheme. I therefore set aside the impugned orders and direct the appropriate authority of the Central Government to pass an order with regard to the petitioner's pension in the light of present judgment within a period of two weeks from the date of service of a copy of this order on it and to communicate the same to the petitioner within a week from the taking thereof.”

The above referred judgment was carried in appeal in FMA No. 251 of 2014 and the Hon'ble Division Bench has upheld the judgment and directed the respondent authorities to release the admissible arrears due without any further delay within three weeks from the date of communication of the order.

The Union of India had preferred Special Leave Pension but the same was also dismissed.

In the case reported in 2010 (4) CHN (Cal) 4 (Gajendranath Manna – vs- State of West Bengal), the Hon'ble Division Bench held that:

“7. At the last hearing, we had called upon the learned Government Pleader to produce the Village Crime Note Book with regard to the cases at Tamluk Police Station in respect of Village Polanda where the appellant was residing at the relevant time. Time learned Counsel has placed before us the Village Crime Note Book Part-I relating to Village Polanda. The learned State Counsel is not in a position to place before us Part-II of the Village Crime Note Book of Village Polanda or any other part. A perusal of the said Village Crime Note Book Part-I indicates that it merely records the routine petty offences like house breaking and theft but there is no recording of any political offence. We are, therefore, reason to believe that the Part-II of the Village Crime Note Book relating to Village Polanda is not available and, therefore, the guideline No. 2 as contained in the Government of India Circular dated 12th April, 1982 would apply. As per the said guideline in the absence of official records because of their non-availability, a certificate from, a prominent freedom fighter who himself had been in jail in connection with the National Freedom Struggle for not less than five years would be acceptable to substantiate the claim of abscondence, internment or externment. The petitioner's case therefore squarely falls within the said guideline. Sri Rabindra Nath Giri, who had given the certificate dated 6th August, 1981 had himself undergone absconding/imprisonment for five years, two months and twenty-six days. Neither the State Government nor the Central Government has raised any objection about the eligibility of said Sri Rabindra Nath Giri to give the certificate as referred in the Circular dated 12th April, 1983. We are, therefore, no manner of doubt that the appellant fulfils the eligibility criteria for being granted pension under the Liberalized Freedom Fighters Pension Scheme.

8. We, therefore, direct that the respondents shall give the appellant Freedom Fighters Pension under the Liberalized Swatantra Sainik Samman Pension Scheme with effect from the date of his application. The arrears from the date of application till 31st May, 2010 shall be given by 30th June, 2010 and the pension for the period from June, 2010 onwards shall be regularly paid in the next month.”

This Court is satisfied that the certificate issued by Shri Sushil Kumar Dhara would make the petitioner eligible for being granted pension under the said scheme. None has disputed the authenticity of the certificate issued by Shri Sushil Kumar Dhara in favour of the petitioner. This is one of the modes of approving the claim of being a freedom fighter envisaged by the said scheme.

Accordingly, the respondent authorities i.e. the Union Government is directed to pay the petitioners, Freedom Fighter’s Pension under the liberalized “Swatantrata Sainik Samman Pension Scheme” with effect from the date when the petitioner made an application for grant of pension within 3 (three) months from the date of communication of the copy of this order.

WPA No. 6286 of 2016 is thus **allowed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)