

S. No. 15

Regular matter

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP No. 1227/2016

Noor Ahmad Shah

.....Petitioner(s)

Through: Mr. I Sofi, Adv.

V/s

Union of India and Ors.

..... Respondent(s)

Through: Mr. T. M. Shamshi, DSGI.

CORAM:

Hon'ble Mr. Justice Sanjay Dhar, Judge.

ORDER

04.08.2023

01. Through the medium of the instant petition, the petitioner has sought a direction upon the respondents to include him in the category of freedom fighters in the Swatantrata Sainik Samman Pension Scheme of the Government of India. Further direction has been sought by the petitioner upon the respondents to consider him as a freedom fighter in terms of the aforesaid Scheme

02. It is case of the petitioner that he has rendered exemplary services for the State while fighting against various militants in his individual capacity and in this regard, he has been conferred appreciation certificate by the Indian Army operating in District Kupwara. On this ground, it is urged that the petitioner is eligible for the grant of pension under the aforesaid Scheme. It has been submitted that the petitioner has made a number of representations to the respondents but without any success

03. The respondent Union of India has filed reply to the writ petition.

It has been submitted in the reply that only those persons who have participated in the freedom movement and fulfilled eligibility criteria/condition laid down in Swatantrata Sainik Samman Yojana are eligible for grant of benefit under the said Yojana. It has been submitted that the petitioner does not qualify to be freedom fighter within the meaning of Swatantrata Sainik Samman Yojana as such he is not entitled to the relief prayed for.

04. Heard and considered.

05. As per the SSA Pension 1980, a copy whereof has been placed on record by respondent No. 1 along with its reply, the following persons are eligible for grant of SSA Pension:

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.

A MARTYR is a person who died or who was killed in action: or in detention or was awarded capital punishment while participation in a National Movement for emancipation of India. It will include an ex-INA or ex-Military person who died fighting the British.

06. From a perusal of the aforesaid clause, it is clear that a person who has fought against the militancy is not eligible under the said Scheme. It is only those persons who have participated in the National Freedom Struggle, who are eligible for benefits under the Scheme. The petitioner it seems is not eligible for the benefits under the SSA Yojana.

07. In view of the above, the claim of the petitioner lacks merit and as such the writ petition is dismissed.

(Sanjay Dhar)
Judge

SRINAGAR

04.08.2023

"Aasif"