

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

Civil Writ Petition No.310 of 2001.

Date of decision: 20.12.2006

Anant Ram

....Petitioner

Versus

Union of India and another

..Respondents

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?¹no

For the Petitioners : Mr.Vinay Kuthiala, Advocate.

**For Respondent No.1: Mr. Sandeep Sharma, Assistant
Solicitor General of India.**

**For respondent No.2: Mr. C.B. Singh, Dy. Advocate
General.**

Dev Darshan Sud, J (oral).

Petitioner is aggrieved by the order passed by respondent No.1 rejecting his claim for award of freedom fighters pension. This is the second round of litigation to which the petitioner has been subjected.

Petitioner has averred that he was a member of the Praja Mandal Movement, which was active in most of the princely States in India. According to him, all Praja Mandals were affiliated to the All India States People Conference, a Central Organization, of which late Pt. Jawahar Lal Nehru, later on the Prime Minister of India, was the Chairman. It has been submitted that the basic aim of the Praja Mandal was to secure the merger of

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?* yes

the princely States with the Union of India, for which purpose Satyagrah and agitations were regularly organized. The petitioner is resident of Bilaspur, which was a princely State and one of the last to merge with the Union of India w.e.f. 12th October, 1948. Petitioner submits that he has been active in the Praja Mandal Movement since 1946, which was banned by the erstwhile Ruler of Bilaspur, as a result of which, he was detained, beaten up by the police and later on externed from the State of Bilaspur on the verbal orders of the Ruler. According to the petitioner, he remained externed from the State from 1946 to 1948.

Respondent No.1 promulgated a Freedom Fighters Pension Scheme, 1972, which was later on amended and liberalized in the year 1980 and renamed as Swantantarta Sainani Samman Pension Scheme, 1980 (hereinafter referred to as the Scheme). According to the Scheme of 1980, the eligibility for grant of pension was:-

"The following categories will be eligible for pension:-

(A) to (E) xx xx xx xx

(F) The persons interned in their homes or externed from their districts, provided the period of internment or externment was six months or more

(G) to (I) xx xx xxx"

Petitioner submits that he was eligible both in terms of 1972 and 1980 Schemes. His application was rejected by the Union of India on the ground that it had

been received after the expiry of period fixed in the Scheme. Another application was made by the petitioner in July, 1981, under the amended Scheme supported by all the requisite certificates. According to the petitioner, this application was received by the respondents in September, 1981, which fact has been acknowledged by the respondents vide Annexure PA addressed by respondent No.1 to the petitioner.

In the year 1985, the scheme was further modified wherein it was provided that so far proof of suffering is concerned, certificates from freedom fighters, who had suffered two years imprisonment, would be admissible as proof of freedom fighter having suffered the externment and imprisonment etc. Petitioner in proof of the fact that he had been externed and imprisoned, submitted a certificate from Shri Gajan Singh, who was a freedom fighter and has been granted pension. Another certificate by Shri Sant Ram, Advocate, who was the erstwhile Home Minister in the princely State of Bilaspur, was also filed to prove the fact that the orders issued for externment by the ruler were verbal and no written orders were issued. Certificate from Shri Chet Ram, Freedom Fighter and pension holder, Shri Kishori Lal Tadu, a former Parliamentary Secretary of Himachal Pradesh and also a freedom fighter and pension holder, were also alleged to have been annexed. Petitioner has submitted that the three certificates of Shri Kishori Lal Tadu, Gurditta Ram and Nikna Ram are not available as

they were filed in original with his previous application and were available with the first respondent.

By a communication dated 21.7.1986, Annexure PE to the writ petition, the application of the petitioner for grant of pension was rejected on the ground that the necessary certificates in support of the claim for the pension were not available. The petitioner approached this Court by way of CWP No.576 of 1992, which was later on withdrawn as according to the petitioner, a new Committee had been constituted by the State of Himachal Pradesh for considering the cases of freedom fighters. It was the contention of the petitioner therein that he wanted to place his case before this Committee for consideration. Later on, the case of the petitioner was considered by this Committee and he was granted pension under the Himachal Pradesh Freedom Fighters Pension Scheme, 1985, w.e.f. 24.12.1996. This fact was brought to the notice of respondent No.1, however, his application was still rejected by respondent No.1 by communication dated 20.3.1998 on the ground that the application was considered but could not be accepted as it was not accompanied by documentary evidence from official records in support of claimed sufferings for a minimum period of six months. In para 3 of this communication it has been stated that, "the fact that the State Government has granted you pension does not ipsofacto, make you entitled to SSS Pension from Central Government." According to the petitioner, his case has

not been considered in its true perspective and the rejection is arbitrary.

Respondents in their counter affidavit denied the claim of the petitioner. On merits, it is alleged that the petitioner had withdrawn the earlier writ petition because he wanted to place his case before a new Committee constituted by the State of Himachal Pradesh for considering the cases of the freedom fighters. The respondents allege that the petitioner was got verified through proper channel but was placed before Swatantrata Sainik Kalyan Board Samiti in its 40th meeting and after consideration, the Government of Himachal Pradesh sanctioned the State pension in favour of the petitioner. The affidavit further states that the schemes for Central Pension and State Pension are different and the grant of State pension in favour of the petitioner has nothing to do with the Central Scheme. Respondent No.1 on proper consideration of the case of the petitioner had rejected the case of the petitioner. Respondent No.2 has admitted the averments made by the petitioner.

I have heard the learned counsel for the parties. Learned counsel for the petitioner submits that the application for pension was filed alongwith ample proof of the sufferings by the petitioner during the freedom struggle. In support, my attention has been drawn to Annexure PB, a certificate issued by Shri Gajjan Singh, who is a freedom fighter and pension holder. He has certified that the petitioner remained exterred from 1946 to 1948 from the erstwhile princely State of

Bilaspur and whenever he tried to enter the State, he was arrested and beaten up by the police, kept in detention and again externed. The certificate further states that because of participation of the petitioner in the freedom movement, he had to undergo a lot of physical and financial hardship. Similarly, another certificate, Annexure PC, has been issued by Shri Sant Ram, who is a retired Senior Sub Judge and Ex-Home Minister of the erstwhile princely State of Bilaspur. He also certifies that the petitioner was actively participating in the freedom struggle between 1946 and 1948. In September, 1946, he was beaten up and externed from the State of Bilaspur and could only return in October, 1948, after the State was merged with the Union of India.

Shri Chet Ram, who is another freedom fighter, has certified that the petitioner had participated in the Praja Mandal which was banned in the year 1946 and he was externed from Bilaspur town in September, 1946. His certificate, Annexure PD, shows that necessary documents had been annexed. Annexure PE, is rejection of the application which has been made by the petitioner for grant of freedom fighters pension.

On consideration of the material on record, I find that the order refusing pension to the petitioner, Annexure P-I, cannot be sustained, as respondent No.1 has acted in a hyper technical manner in rejecting the case of the petitioner. This practice has been deprecated by the Hon'ble Supreme Court in a number of cases as also by this Court.

Learned counsel for the petitioner has placed reliance on CWP No.64 of 2000, Smt. Kaushalya Kanga Vs. Union of India and another, decided on 27.10.2004, wherein this Court had considered the certificates issued by Shri Sant Ram, the erstwhile Home Minister of the State of Bilaspur and Shri Sita Ram, another freedom fighter and pension holder, testifying the sufferings of the freedom fighters in that petition. It has been held that this constituted sufficient proof to establish a claim for freedom fighters pension. The objections of the respondents based on the judgments passed by the Supreme Court in State of Maharashtra and others Vs. Raghunath Gajanan Waingankar, (2004) 6 SCC 584 and Mukand Lal Bhandari and others Vs. Union of India and others, 1993 Supp. (3) SCC 2, were considered and it was held that the ratio of these two judgments did not apply to the facts where sufferings of freedom fighters had been certified in accordance with the scheme.

Learned counsel for the petitioner also placed reliance on the decisions of this Court in CWP No.756 of 1995, Jeet Ram Vs. Union of India and another, CWP No.1036 of 1995, Kirpa Ram Vs. Union of India and another, CWP No.1979 of 1995, Daya Ram through (LR) Smt. Kala Devi Vs. Union of India and another, CWP No.540 of 1990, Lekh Ram Bhardwaj Vs. Union of India and another, CWP No.539 of 1990, Prabhu Ram Vs. Union of India and another, CWP No.745 of 1995, Narain Dass Vs. Union of India and another, Sh. Kanhaiya Lal alias Ghurka Ram Vs. Union of India and another, 1994(1) Sim. L.C. 357, Balak

Ram Mahajan now deceased through his L.Rs Virender Kumar

Gupta and others Vs. Union of India and another, 1994(1)

Sim. L.C. 36 and Shri Nanku Vs. Union of India and

another, 1994(1) Sim. L.C. 346. Learned counsel for the

petitioner submits that the case law on which reliance has been placed by him, lays down that a hyper technical view should not be taken while dealing with the applications for grant of freedom fighters pension and every effort and attempt should be made to uphold the claim of a freedom fighter. He further submits that when the externment, imprisonment and sufferings of a freedom fighter have been certified by the other freedom fighters, who have been granted pension under the Scheme, there is no reason as to why the claim of a freedom fighter should be rejected. I have gone through the case law and I find that the submissions made by the learned counsel for the petitioner are well founded. Learned counsel also cited other precedents, but I do not think that it is necessary to multiply the same.

On consideration of the entire material on record, I find that the stand adopted by respondent No.1 is not tenable. Apart from the fact that the order does not disclose any application of mind, it is against the very provisions of the scheme. Respondent No.1 has not cared to consider the certificate issued by Shri Sant Ram, the erstwhile Home Minister of the princely State of Bilaspur, Annexure PC and two other certificates Annexures PB and PD, of freedom fighters and pension holders, namely S/Shri Gajjan Singh and Sita Ram.

Material placed on record by the petitioner was sufficient to have substantiated his claim, but a hyper technical view has been taken and the application of the petitioner rejected in a mechanical manner. The reply does not seriously oppose the averments on facts which have been made by the petitioner. The denials are evasive and not precise. The fact that the case of the petitioner was considered by the State and he was held eligible to receive pension from the State Government, has been brushed aside with the mere observation that the two schemes are different and the case of the petitioner is not properly verified by the State Government. Petitioner is a freedom fighter in so far as the State of Himachal Pradesh is concerned, but not for the Union of India. Why and how this criteria has been introduced, is not explained. The Hon'ble Supreme Court has, on more than one occasion, observed that the Scheme was introduced with the object of honouring and providing pension to living freedom fighters and their families and to the families of martyrs, who had laid down their lives in the freedom struggle. It has been further observed that it was not expected that the records of sufferings, imprisonment and externment etc. should be maintained meticulously by the freedom fighters. The standard of proof, which was required, was not that as if a trial in a criminal case was being conducted. A hyper technical view which has been taken by the Union of India, has been deprecated by the Hon'ble Supreme Court in a number of cases, which have been followed by this Court in the

judgments, cited by the learned counsel for the petitioner. The objections which have been taken by respondent No.1 in preliminary submissions, have been considered and rejected in Smt. Kaushalya Kanga's case (supra) and I see no reason to differ with that reasoning. Moreover, as noticed by me, on merits there hardly seems to be any precise denial to the averments which have been made by the petitioner. On going through the material placed on record, I am satisfied that a case for grant of pension has been made out by the petitioner, who has been able to establish that he is entitled to pension under the Swatantarta Sainani Pension Scheme.

In result, the writ petition is accepted. The orders Annexures PE and PI passed by respondent No.1 rejecting the claim of the petitioner, are quashed and set aside and it is directed that the petitioner will be granted Swatantarta Sainani Samman Pension from the date on which he had filed his application. The entire exercise shall be completed by 30th September, 2007. There shall be no order as to costs.

December 20, 2006
(ss)

(Dev Darshan Sud)
Judge.