

WP(C) 1417/2007
BEFORE
THE HON'BLE MR. JUSTICE B.K. SHARMA

JUDGMENT AND ORDER (ORAL)

Heard Mr. N.M. Hazarika, learned counsel for the petitioners as well as Ms. R. Chakraborty, learned Additional Sr. Govt. Advocate, Assam appearing for the respondents.

2. In all the writ petitions, the prayer made is for a direction to the respondents to consider the applications of the petitioners for payment of Satrantra Sainik Pension as per the provisions of Assam Satrantrata Sainik Relief Rules, 1988. According to the petitioners, they were involved in the freedom movement and they were all freedom fighters. To appreciate the claim of the petitioners, the position of the petitioners as reflected in the writ petitions is indicated below:

WP(C) No. 1418/2007

In this writ petition, 17 petitioners are involved. They all claim to be freedom fighters. Their such claim has been certified by Annexure-3 certificate dated 22.12.2005 issued by Shri Nagen Chutia, who is a recognized freedom fighter. Such certificate has been issued in respect of all the petitioners. It is on that basis, the petitioners claim that they are entitled to Satrantrata Sainik Pension as per the aforesaid rules of 1988.

WP(C) No. 1416/2007

In this writ petition also the petitioner claims Satrantrata Sainik Pension. His such claim is on the basis of the report of the Enquiry Committee of freedom fighter published in 1979. Such enquiry was conducted by the Government of Assam. The enquiry report is in the form of a book namely Report of the Enquiry Committee of Freedom Fighters, Government of Assam, 1979. At page 676 of the book/report, the name of the petitioner has been included at serial No. 426 with the remark he took active part in 1942 movement

WP(C) No. 1417/2007

This writ petition has been filed by the wife of Late Ghana Hazarika. According to the petitioner, her husband was a freedom fighter. In support of such claim, the petitioner has placed reliance on the certificate of honour addressed to her husband by the Deputy Commissioner. The certificate is dated 12.8.1992 and was issued to her husband by the Deputy Commissioner, Dhemaji in his capacity as the president of Golden Jubilee Celebration Committee, Quite India Movement. In addition to the certificate, the name of her husband is also included in the aforesaid report at page 107, serial No. 701 with the remark released on bail of Rs. 100/- on 17.7.22. Ordered to execute bond of Rs. 300/- with two securities of like amount for 1 year for good behaviour.

WP(C) No. 1431/2007

The petitioner has placed reliance on the Annexure-2 document dated 9.9.1999. The document is the certificate issued by Shri Tuni Ram Hazarika, a freedom fighter certifying that the petitioner was involved in freedom of India movement. The name of Sri Tuni Ra, Hazarika appears in the enquiry report at page-113, serial

No. 760. Further, the petitioner has also placed reliance on the Annexure-4 certificate dated 2.8.1998 issued by Shri Chakrabarti Bharali, the president of Dhemaji District Mukti Jujaru Sanmilan certifying that the petitioner was involved in Quite India movement of the year 1942 and was absconding for about one year to avoid the atrocities of the Government. Shri Chakrabarti Bharali is a recipient of the aforesaid pension and his name also finds place in the report at page 55, serial No. 66.

3. The aforesaid facts, which have emerged from the writ petition will have to be tested in accordance with the provisions of Assam Swatantrata Sainik Rules, 1988. Mr. Hazarika, learned counsel for the petitioners has drawn my attention to the provisions of the rules. Rule 4 (1) lays down the eligibility criteria for receiving the pension. Relevant portion of the rules is quoted below:

4.(1) Eligibility of pension - The State Government may sanction a monthly pension to a living Swatantrata Sainik on the recommendation of the State Board who fulfills the following conditions:-

- (a) Whose minimum age was 60 years on 1st January, 1986;
- (b) Who suffered minimum period of one month imprisonment as Convict or as Under Trial Prisoner or as Security Prisoner;
- (c) Who was externed or interned or proclaimed in the Official gazette as absconder for a period of not less than 6 months and was actually working in the field.
- (d) Who lost his service or property or education or who was permanently incapacitated due to police lathi charge or bullet injury.

In case of Scheduled Caste, Scheduled Tribes and Women Swatantrata Sainiks, the above conditions may be relaxed by the State Board.

NOTE: In order to substantiate the suffering of a Swatantrata Sainik to stake his claim for a monthly pension, the following supporting documents are to be submitted for the satisfaction of the State Government.

- (i) In case of imprisonment as Under Trial Prisoner or on conviction, a certificate copy from the Jail entry and release is to be furnished.
- (ii) (a) In case of non-availability of jail records (which should be certified by the respective jail authority) a co-prisoner's certificate in prescribed form from a Swatantrata Sainik who had suffered imprisonment for not less than six months, and is a holder of Tamrapatra or Central Pensioner may be accepted. Certificate of non-availability of jail records from the jail in respect of those who suffered imprisonment or was an Under Trial Prisoner in jail, which do not fall within India after independence of the country is not compulsory.

4. As regards the plea of the petitioner in WP(C) No. 1417/2007, who is the wife of Late Ghana Hazarika stated to be a freedom fighter, Mr. Hazarika, learned counsel for the petitioner has drawn my attention to Rule 4(2) of the aforesaid Rules, makes provision for payment of monthly pension to the widow of a deceased Swatantrata Sainik.

5. It is on the basis of the aforesaid provisions of the rules, learned counsel for the petitioner submits that the petitioners having fulfilled the requirement of the eligibility conditions envisaged in rules 4 of the aforesaid rules of 1988, they are entitled to receive Swatantrata Sainik Pension.

6. He has also placed reliance on the decision of the Apex Court as reported in (2001) 8 SCC 08 (Gurdial Singh Vs. Union of India). In paragraph - 7 of the judgment, the Apex Court observed thus:

7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the Scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the Scheme. It should not be forgotten that the persons intended to be covered by the Scheme had suffered for the country about half-a-century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose of and object of the Scheme. The case of the claimants under this Scheme is required to be determined on the basis of the probabilities and not on the touchstone of the test of beyond reasonable doubt. Once on the basis of the evidence it is probabilised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence.

7. In the affidavit-in-opposition filed by the respondents, the only plea taken is that the scrutiny committee has considered about 300 applications including the applications of the petitioners and thereafter recommended 23 cases. However, no reason has been assigned as to what was the criteria adopted towards providing Swatantrata Sainik Pension only to 23 freedom fighters to the exclusion of all others including the petitioner. It is the case of the petitioners that as per the provisions of the aforesaid rules, Enquiry Report of 1979, when it is established that they are freedom fighters, there cannot be any denial of Swatantrata Sainik Pension to them. It is not discernible as to on what ground the petitioners have been excluded from the purview of the pension as envisaged in the aforesaid rules of 1988. In my considered opinion, the matter requires fresh consideration in accordance with the aforesaid rules and the Report of the Enquiry Committee of Freedom Fighters, 1979 and other materials disclosed in the writ petitions.

8. All the writ petitions are disposed of directing the respondents to reconsider the cases of the petitioners on the basis of the aforesaid rules and the documents annexed to the writ petitions. The authority may also take note of the aforesaid Report of the Enquiry Committee of Freedom Fighters published by the Government of Assam in 1979. Whatever may be the outcome of the fresh consideration of the cases of the petitioners, they may be intimated individually.

9. Entire exercise shall be carried out, as expeditiously as possible, preferably within 4 months from today.

10. Writ petitions are disposed of.