

UNION OF INDIA & ANR.

v.

JAI KISHUN SINGH (D) THROUGH L.RS. & ORS.

(Civil Appeal No. 6651 of 2008)

SEPTEMBER 10, 2014

**[VIKRAMAJIT SEN AND ARUN MISHRA, JJ.]**

*FREEDOM FIGHTER PENSION SCHEME, 1980:*

*Determination of age - Cancellation of Freedom Fighter Pension on the ground that respondent no.1 did not participate in freedom struggle as he was child of 7-8 years in the year 1942 - Held: As per Voter List of 1975, age of claimant was 42 years - Considering said document, age in 1942 would have been above 5 years and below 10 years - At such an age, participation in the freedom fight is highly improbable, as such, in the facts and circumstances of the case, cancellation of the pension could not be said to be unwarranted at all.*

*Freedom Fighter Pension is a form of gratitude extended by an indebted nation in recognition of the sacrifice made by the freedom fighters to achieving independence - Liberal approach has to be adopted in such matters so that rightful persons are not deprived of deserving benefit for lack of evidence, after a lapse of long time - Such cases have to be decided on preponderance of probabilities and standard of proof beyond reasonable doubt is not to be applied.*

**EVIDENCE:**

*Documentary evidence - Held: Has to prevail over oral evidence.*

*Determination of age by the Medical Board - Evidentiary*

- A *value of - Held: Not reliable as it is based upon physical appearance only and not based upon any scientific medical test like ossification test and radiological examination - When it is based on such scientific tests, it is, of strong corroborative value - In the instant case, Medical Board opined on physical appearance basis age of the claimant about 73 years - As it is not based on scientific tests it cannot be accepted.*
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The original respondent no. 1 was recipient of the freedom fighter pension. The High Court directed suo motu inquiry in rampant complaints, that large number of persons in the State of Bihar were availing such benefits inspite of not having participated in freedom struggle under the Swatantrata Sainak Samman Pension Scheme, 1980. The Deputy Collector who conducted inquiry into the matter found the claim of the deceased respondent no. 1 not genuine and the competent authority ordered cancellation of the pension with effect from the date it was initially sanctioned and recovery of the amount of pension already drawn by him. The High Court quashed the said order of the authority.

E In the instant appeal, issue related to determination of the approximate age of deceased respondent no. 1 on 15th August, 1942. His claim was that his age was 13 years when he went underground for a year w.e.f. 14th August, 1942 to 15th August, 1943.

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Allowing the appeal, the Court

HELD: 1. The enquiry officer recorded oral statement indicating that his age was much less. Such statement is discarded as oral statement cannot be a safe criteria for arriving at conclusion. However, the documentary evidence of the years 1975 and 1977 in the form of Voter List and deposition-sheet clinched the issue and established that the claim was not genuine. Documentary evidence has to prevail, more so as there was no such

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dispute as to age at the relevant time. As per deposition sheet of criminal case, age was approximately 40 years in 1977. If the said date is taken as correct, the date of birth would come to the year 1937. As per Voter List of 1975, his age was 42 years. From said documents in consideration, age in 1942 would have been above 5 years and below 10 years. At such an age, participation in the incident in question is highly improbable as such cancellation of the pension in the facts and circumstances of the case, could not be said to be unwarranted at all. [Para 8] [1154-F-H; 1155-A]

2. The freedom fighter pension is a form of gratitude extended by an indebted nation in recognition of the sacrifice made by the freedom fighters to achieving independence. Liberal approach has to be adopted in such matters so that rightful persons are not deprived of deserving benefit for lack of evidence, after a lapse of long time. Such cases have to be decided on preponderance of probabilities and standard of proof beyond reasonable doubt is not to be applied. [Para 9] [1155-B, C]

*Gurdial Singh vs. Union of India* (2001) 8 SCC 8: 2001 (3) Suppl. SCR 323; *Kamlabai Sinkar vs. State of Maharashtra & Ors.* (2012) 11 SCC 754: 2012 (6) SCR 1011 - referred to.

3. The determination of age by the Medical Board is not reliable as it is based upon physical appearance only and not based upon any scientific medical test like ossification test and radiological examination. When it is based on such scientific tests, It is, of strong corroborative value. The Medical Board held on 11.4.2002 has opined on physical appearance basis age about 73 years. It is not based on scientific tests hence it cannot be accepted, more so in view of other documentary

A evidence on record. In the facts and circumstances of this case, the judgment and order of the High Court is set aside. As the respondent has been wrongly allowed pension after rejecting claim at the first instance by the appellant, the High Court has directed suo motu inquiry and on this basis pension had been withdrawn, and also considering the fact that the recipient of pension respondent No.1 has died, the amount paid to him shall not be recovered from his legal representatives. [Paras 11, 13] [1156-E-F; 1158-B-C]

C *Om Prakash vs. State of Rajasthan & Anr. (2012) 5 SCC 201: 2012 (5) SCR 237; State of Orissa vs. Choudhury Nayak (D) through L.Rs. & Ors. (2010) 8 SCC 796: 2010 (10) SCR 615 - relied on.*

D Case Law Reference :

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|---|-------------------------|-------------|---------|
|   | 2001 (3) Suppl. SCR 323 | Referred to | Para 10 |
|   | 2012 (6) SCR 1011       | Referred to | Para 10 |
| E | 2012 (5) SCR 237        | Relied on   | Para 11 |
|   | 2010 (10) SCR 615       | Relied on   | Para 12 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6651 of 2008

F From the Judgment and Order dated 21.02.2007 of the High Court of Patna in LPA No. 82/2006.

S. Wasim A Qadri, Rekha Pandey (for Sushma Suri) for the Appellants.

G Manu Shanker Mishra, Nishant Kumar, Manish Kumar (For Gopal Singh), Mridul Ray Bharadwaj for the Respondents.

The Judgment of the Court was delivered by

H ARUN MISHRA, J. 1. In the case in hand, the Court is

required to adjudicate upon the issue whether Freedom Fighter pension had been undeservingly extended to respondent No.1 inspite of the fact that he did not participate in freedom struggle as he was a child of 7 to 8 years in the year 1942.

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2. Initially, original respondent No.1's case for granting suchpension was declined by the appellant vide letter dated19.06.1995. However, original respondent No.1 was successfulin getting released pension on second attempt and it was ordered to be released on 26.12.1997 with retrospective effect from 28.07.1981.

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3. The matter did not set at rest at that. The High Court at Patnadirected suo motu inquiry in the rampant complaints that largepersons in the State of Bihar were availing such benefits inspiteof not having participated in freedom struggle as contemplatedunder the Swatantrata Sainik Samman Pension Scheme, 1980(for short "the Scheme"). The Deputy Collector conductedinquiry into the matter and recorded evidence. He found that claim of the deceased respondent No.1 was not genuine. On that basis, the Union of India issued show-cause notice and thereafter took decision on 19.05.2004 to cancel pension witheffect from the date it was initially sanctioned, i.e. 28.07.1981 and the amount of pension already drawn by him be recovered.

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4. The deceased respondent No.1 unsuccessfully impugned the aforesaid order in writ petition filed before the Single Bench. However, the Division Bench of the High Court in the appeal has quashed the order. Hence, the Union of India has come up in appeal before us. The operation of order passed by the Division Bench of the High Court was stayed by this Court on 10.11.2008.

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5. The learned counsel for the appellants submitted that pension was rightly withdrawn. The age of the deceased respondent No.1 was 7 to 8 years in 1942. Thus, his participation in the incident of August 1942 was rightly

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- A disbelieved. He was unable even to give details of the incident in the course of inquiry. The reliance placed by the Division Bench on the determination of age by the Medical Board at 73 years in 2001 was uncalled for as the Medical Board has not conducted scientific tests and has opined on the basis of
- B physical appearance of the original respondent No.1. He had also submitted that the original respondent No.1 had stated his age on 06.06.1977 to be 40 years while deposing in Criminal Case No.1018/1974 (Trial No.381/77). Apart from this, in the Voter List of 1975, his age has been mentioned as 42 years.
- C Thus, at the age of 7 to 8 years, the claim that he participated in freedom struggle could not be said to be believable.

6. Per contra, the counsel for L.Rs. of the deceased respondent No.1 would submit that pension had been rightly sanctioned in 1997. Thereafter, in view of the report of Medical
- D Board, there was no reason to withdraw it as the age at the relevant time in 1942 would have been 13 years.

7. The main question for consideration is what was the approximate age of deceased respondent No. 1 on 15th
- E August, 1942. He has claimed that his age was 13 years when he went underground for a year w.e.f. 14th August, 1942 to 15th August, 1943.

8. The enquiry officer recorded oral statement indicating
- F that his age was much less. We discard such statement as oral statement cannot be a safe criteria for arriving at conclusion. However, the documentary evidence of the years 1975 and 1977 in the form of Voter List and deposition-sheet clinches the issue and establishes that the claim is not genuine.
- G Documentary evidence has to prevail, more so as there was no such dispute as to age at the relevant time. As per depositionsheet of criminal case, age was approximately 40 years in 1977. If the said date is taken as correct, the date of birth would come to the year 1937. As per Voter List of 1975, his age was 42 years. From aforesaid documents in
- H consideration, age in 1942 would have been above 5 years and

below 10 years. At such an age, participation in the incident in question is highly improbable as such cancellation of the pension in the facts and circumstances of the case, could not be said to be unwarranted at all.

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9. The freedom fighter pension is a form of gratitude extended by an indebted nation in recognition of the sacrifice made by the freedom fighters to achieving independence. We are conscious of the fact that liberal approach has to be adopted in such matters so that rightful persons are not deprived of deserving benefit for lack of evidence, after a lapse of long time. It has been laid down by this Court that such cases have to be decided on preponderance of probabilities and standard of proof beyond reasonable doubt is not to be applied.

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10. Relying upon *Gurdial Singh vs. Union of India* (2001) 8 SCC 8 in *Kamlabai Sinkar vs. State of Maharashtra & Ors.* (2012) 11 SCC 754, this Court has laid down thus :

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"6. Having perused the above materials on record, at the very outset, we wish to refer to the observations made by this Court in regard to the grant of freedom fighters' pension in the decision in *Gurdial Singh v. Union of India*. In para 7 of the judgment, this Court has highlighted the manner in which such claims are to be considered for grant of freedom fighters' pension. It will be worthwhile to make a reference to the said passage before expressing our conclusion with regard to the claim of the appellant's husband in the case on hand."

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7. Para 7 reads as under: (**Gurdial Singh case**)

"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

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- A 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 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 probalised 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."

[emphasis added]

- E 11. We are unable to rely upon determination of age by the Medical Board as it is based upon physical appearance only and not based upon any scientific medical test like ossification test and radiological examination. When it is based on such scientific tests as laid down in *Om Prakash vs. State of Rajasthan & Anr.* (2012) 5 SCC 201, it is of strong corroborative value. The Medical Board held on 11.4.2002 has opined on physical appearance basis age about 73 years. It is not based on scientific tests hence it cannot be accepted, more so in view of other documentary evidence on record.
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- G 12. This Court in *State of Orissa vs. Choudhury Nayak (D) through L.Rs. & Ors.* (2010) 8 SCC 796 has adversely commented on undeserving candidates availing the benefits of such welfare schemes, thus:
- H "9. It is of some interest to note from the statistics furnished



by the Central government in their additional affidavit, A  
that 1,70,813 freedom fighters/dependants have been  
sanctioned freedom fighters pension (as on 31.5.2010). At  
present as many as 60,000 persons are getting pension or  
family pension as freedom fighters/dependants. The  
average pension of a freedom fighter and after his/ B  
her death to the spouse is Rs.12,400/-p.m. and the average  
pension paid to a dependant unmarried daughter is  
Rs.3,000 per month. The expenditure for the year 2009-  
2010 under the scheme was Rs.785 crores. We have  
referred to these figures only to show that when false claims C  
come to the notice of the Central Government, it is bound  
to take stern action. Any complacency on the part of the  
Government in taking action against bogus claims under  
any scheme would encourage bogus claims under all  
schemes, by undeserving candidates who are "well D  
connected and influential". False claimants walking away  
with the benefits meant for genuine and deserving  
candidates has become the bane of several welfare  
schemes.

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11. Grant of freedom fighters' pension to bogus claimants  
producing false and fabricated documents is as bad as  
genuine freedom fighters being denied pension. The only  
way to respect the sacrifices of freedom fighters is to F  
ensure that only genuine freedom fighters get the pension.  
This means that the Government should weed out false and  
fabricated claims and cancel the grant when the bogus  
nature of the claim comes to light. In *Union of India vs. Avtar*  
*Singh* [(2006) 6 SCC 493] this Court therefore cautioned: G

"8.....The genuine freedom fighters deserve to be treated  
with reverence, respect and honour. But at the same time  
it cannot be lost sight of that people who had no role to play  
in the freedom struggle should not be permitted to benefit H

A from the liberal approach required to be adopted in the case of the freedom fighters, most of whom in the normal course are septuagenarians and octogenarians."

B 13. In the facts and circumstances of this case, we have no hesitation to restore the judgment and order passed by the Single Bench of the High Court at Patna. The judgment and order of the Division Bench is set aside. As the respondent has been wrongly allowed pension after rejecting claim at the first instance by the appellant, the High Court has directed suo motu inquiry and on this basis pension had been withdrawn, and also  
C considering the fact that the recipient of pension respondent No.1 has died, we direct that the amount paid to him shall not be recovered from his legal representatives.

14. The appeal is accordingly allowed. No costs.

D Devika Gujral

Appeal allowed.