

by the petitioner in this Court does not entitle her to be reinstated into service by nullifying the order of dismissal as the language of Rule 16.2(2) of the Punjab Police Rules, is mandatory as it provides that in case any enrolled police officer who is sentenced judicially to rigorous imprisonment exceeding one month and if, such sentence is not quashed on appeal or revision, then he shall be dismissed from service.

(11) We, therefore, find that the impugned order Annexure P-17, does not call for any interference and as such, the writ petition is dismissed in limine without any order as to costs.

R.N.R.

Before M. M. Kumar and T.P.S Mann, JJ

JAGAT SINGH,—Petitioner

versus

UNION OF INDIA AND OTHERS,—Respondents

C.W.P. No. 11441 of 2007

25th January, 2008

Constitution of India, 1950—Art. 226—Swatantrata Sanik Samman Pension Scheme, 1980—Claim for grant of S.S.S pension—Petitioner submitting affidavits issued by co-prisoners—State Government while relying upon certificates of two eligible certifiers recommending case of petitioner for grant of pension—Provisional pension sanctioned in favour of petitioner by UOI—Minor variation in describing actual freedom struggle in which petitioner participated—Petitioner also failing to submit fresh certificates/affidavits of two eligible certifiers since they have died—Petition allowed, respondent directed to restore pension of petitioner.

Held, that the certificates of the two eligible certifiers as required had already been submitted by the petitioner before the pension was initially sanctioned in his favour. The State Government had recommended the case of the petitioner for the grant of pension. While doing so, it relied upon the certificates of Bahal Singh and Inder Singh, co-prisoners of the petitioner

to verify the sufferings actually undergone by him. However, it appears that for some minor variation in describing the actual freedom struggle in which the petitioner participated, whether it was Quit India Movement or Individual Satyagraha, that the Union of India decided to first suspend the pension and thereafter cancel the same altogether. Besides the respondents have asked the petitioner to submit fresh certificates/affidavits of the two eligible certifiers. The petitioner has taken a specific stand that the two certifiers have since died and therefore, he is not in a position to comply with the requirement. The respondents have not denied the fact that the two certifiers are now no more in this world. In such a situation, the respondents are unnecessarily insisting upon the petitioner to send fresh certificates/affidavits.

(Para 8)

Gurnam Singh, Advocate *for the petitioner.*

S. K. Sharma, Additional Central Government Standing Counsel
for respondent No. 1.

Charu Tuli, Senior Deputy Advocate General, Punjab *for respondents No. 2 and 3.*

T.P.S. MANN, J.

(1) The petitioner has prayed for quashing show cause notice dated 26th march, 1990 (Annexure P.6) issued by respondent No. 1 requiring him to show as to why the provisional pension granted to him earlier be not cancelled and also for recovering the amount of provisional pension that has been received by him. He has also sought quashing of order dated 1st July, 2005 (Annexure P.16) passed by respondent No. 1 intimating him that his suspended pension cannot be revoked.

(2) The case of the petitioner is that he had undergone imprisonment from 14th February, 1941 to 13th August, 1942 in Central Jail, Lahore on account of taking part in Quit India Movement/Individual Satyagraha. The petitioner applied for Swatantrata Sainik Samman Pension, as he was eligible under the Scheme started in 1980. However, he could not obtain necessary proof of his incarceration in jail. Instead, as permitted by respondent No. 1, he obtained certificates from Inder Singh and Bahal Singh, who had already been granted the pension and, thus, treated as eligible certifiers by

the Government of India. Both of them vouch safed the fact that the petitioner also remained in jail with them during the freedom movement. The application of the petitioner was recommended by Deputy Commissioner, Patiala, who felt satisfied about the genuineness of the petitioner as a freedom fighter. The State Government thereafter forwarded the case of the petitioner to Central Government. Ultimately, on 9th September, 1988, respondent No. 1 sanctioned the grant of pension to the petitioner and respondent No. 3 was directed to release the pension along with arrears to the petitioner with effect from 1st August, 1980. The pension so granted was for life time of the petitioner.

(3) However, he received order dated 26th March, 1990 passed by respondent No. 1 informing him that his freedom fighter pension was being suspended on the ground that he was not a *bonafide* freedom fighter, as he never went to jail or remained underground against warrant of arrest in connection with freedom struggle. He was, therefore, asked to show cause against the proposed action of cancelling the pension and the recovery of pension amount already received by him.

(4) The petitioner replied to the show cause notice by tendering his affidavit stating therein that he was a *bonafide* freedom fighter, as he had suffered imprisonment in Central Jail, Lahore on account of taking part in the freedom struggle for the country. When no response was received by him from the Government of Inda, he filed a writ petition, which was disposed of by this Court with a direction to the respondents to take a final decision on his reply to the show cause notice. The petitioner against sent his reply to the earlier show cause notice and along with the same sent his affidavit once again. In the meantime, the petitioner also filed C.W.P. No. 13273 of 1993 seeking directions for restoring the freedom fighter pension to him. The same came to be finally decided on 14th October, 1999 when this Court disposed of the same by directing union of India to reappraise the evidence and arrive at a proper conclusion in regard to the entitlement of the petitioner by taking into consideration the decision rendered in case **Bhagwan Singh versus Union of India and others** (C.W.P. No. 12554 of 1993) decided on 22nd March, 1994. Instead of deciding to restore the pension, respondent No. 1 again issued a show cause notice to him

on 13th February, 2001 asking him to reply within a period of 21 days. It was stated therein that the petitioner had made contradictory statements while submitting his application for the grant of freedom fighter pension. The petitioner once again submitted his reply on 27th February, 2001. As the respondent-Authorities failed to follow the directions issued on 14th October, 1999 by this Court while disposing of his writ petition, the petitioner filed a petition under the Contempt of Courts Act. In response thereto, the respondents filed their written statement along with which they annexed a copy of order dated 1st July, 2005,—*vide* which the case of the petitioner for the grant of freedom fighter pension stood rejected.

(5) Pleading that he had undergone imprisonment for a period of more than one year, i.e., from 14th February, 1941 to 13th August, 1942 in Central Jail, Lahore on account of taking part in freedom struggle and that Inder Singh and Bahal Singh, who were eligible certifiers had already given their certificates in that regard, the petitioner prayed for setting aside of the show cause notice Annexure P. 6 and final order Annexure P.16.

(6) While opposing the claim of the petitioner, Union of India-respondent No. 1 submitted that after the sanctioning of the freedom fighter pension in favour of the petitioner on 9th September, 1988 with effect from 1st August, 1980, some complaints were received in about 21 cases of district Patiala, including that of the petitioner and on examining the entire record, some contradictions were found and subsequently the pension of the petitioner was suspended. After receipt of the directions from this Court given on 14th October, 1999, the petitioner was advised,—*vide* letter dated 16th February, 2000 to furnish the certificates of co-prisoners along with own affidavit regarding jail sufferings in regard to freedom movement. However, no response was received from the petitioner. Reminders were sent to him but in reply thereto he submitted his own affidavit dated 9th October, 2000, which was not found satisfactory. Therefore, a show cause notice was once again issued to the petitioner for cancelling his pension because it itself stood already suspended. The petitioner did submit his reply dated 27th February, 2001, but there were contradictions in his documents, which were not subsequently explained. Besides, the revised co-prisoners

certificates were also not supplied. Accordingly, the order was passed on 1st July, 2005 cancelling the pension of the petitioner.

(7) We have heard learned counsel for the parties and gone through the pleadings, besides the documents brought on record.

(8) It is not denied by the Union of India that the freedom fighter pension was sanctioned in favour of the petitioner on 9th September, 1988 with effect from 1st August, 1980. For sanctioning such a pension, the said respondent had relied upon the affidavit submitted by the petitioner, besides the certificates given by the two eligible certifiers, namely, Inder Singh and Bahal Singh, who had verified the fact that the petitioner also remained confined along with them in Central jail, Lahore from 14th February, 1941 to 13th August, 1942 on account of taking part in freedom struggle. The certificates of the two eligible certifiers as required had already been submitted by the petitioner before the pension was initially sanctioned in his favour. The State Government,—*vide* Annexure P.3, had recommended the case of the petitioner for the grant of pension. While doing so, it relied upon the certificates of Bahal Singh and Inder Singh, co-prisoners of the petitioner to verify the sufferings actually undergone by him. However, it appears that for some minor variation in describing the actual freedom struggle in which the petitioner participated, whether it was Quit India Movement or Individual Satyagraha, that the Union of India decided to first suspend the pension and thereafter cancel the same altogether. Besides, the respondents have asked the petitioner to submit fresh certificates/affidavits of the two eligible certifiers. The petitioner has taken a specific stand that the two certifiers have since died and therefore, he is not in a position to comply with the requirement. The respondents have not denied the fact that the two certifiers are now no more in this world. In such a situation, the respondents are unnecessarily insisting upon the petitioner to send fresh certificates/affidavits.

(9) In **Mukund Lal Bhandari and others versus Union of India and others** (1) it was held that the application made for the grant of freedom fighter pension has to be accepted when made and it was immaterial whether the same was not made before the prescribed date or

(1) AIR 1993 S.C. 2127

not accompanied by requisite eligibility data. The Court further chastised the government for raising pleas of limitation against the claims made by those who had given the best part of their life for the country. The following observations are worth noticing :—

“As regards the contention that the petitioners had filed their applications after the date prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even by inhabiting the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country it ill behoves the Government to raise pleas of limitation against such claims. In fact, the Government if it is possible for them to do so, should find out the freedom fighters or their dependents and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes. The Scheme has rightly been renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its object.....”

(10) A Division Bench of this Court in **Mohan Singh versus Union of India and another (2)**, held that a liberal and not a technical approach was required to be followed while determining the merits of claims made by those who had given their all for the country. Standard of proof required in such cases was not such standard which is required in a criminal case so as to establish that such an individual remained lodged in jail during freedom struggle.

(11) In view of the above, we are of the considered view that the impugned show cause notice Annexure P. 6 and order Annexure P. 16 issued by respondent No. 1 are liable to be quashed and the freedom fighter pension of the petitioner which was initially suspended and thereafter cancelled, deserves to be restored.

(12) The petition is, accordingly, allowed by quashing the impugned show cause notice and order. The respondent-Authorities are directed to restore the pension of the petitioner forthwith, including paying the arrears within two months from the date a copy of this order is received by them.

R.N.R.

Before Hemant Gupta & Mohinder Pal, JJ

NO. 4475333 EX.RECT BALDEV SINGH & ANOTHER,—

Petitioner

versus

UNION OF INDIA AND OTHERS,—*Respondents*

C.W.P. No. 7842 of 2007

4th February, 2008

Constitution of India, 1950—Art. 226—Pension Regulations for Army—Reg. 173, Rls 7(b) & 7(c), Appendix II—Enrollment of petitioner as a Soldier in Indian Army—While on military training within six months after enrollment petitioner diagnosed with ‘Schizo affective disorder’—Invalidated from military service with 30% disability—Competent authority accepting proceedings of Invalidating Medical Board—Claim for disability pension—Rejection of—Medical Board finding disability was of a constitutional disorder which was neither attributable to nor aggravated by military service—Psychotic disease—Cannot be detected during preliminary examination—Petitioner failing to place any material to show that disease was attributable to or aggravated by military service—Petition dismissed.