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*Before M.M. Kumar, J.*

KARTAR SINGH—*Petitioner*

*versus*

UNION OF INDIA AND OTHERS—*Respondents*

C.W.P. No. 19127 of 2001

18th January, 2006

*Constitution of India, 1950—Art. 226—Swatantrata Sainik Pension Scheme, 1980—Govt. of India formulating a scheme for grant of pension to those freedom fighters who had undergone imprisonment for a minimum period of 3 months during freedom movement—Govt. further amending scheme w.e.f. 1st August, 1980 that any person who suffered imprisonment for a minimum period of 6 months in the main land jails before independence was eligible to claim pension—Petitioner drawing pension along with other benefits from the State Govt.—State Govt. recommending the application of petitioner accompanied by two certificates issued by Freedom Fighters for grant of Freedom Fighters Pension by Central Govt. under the 1980 Scheme—Rejection of—Govt. not accepting certificates of co-prisoners submitted in favour of petitioner on the ground that those persons were issuing certificates in favour of a large number of persons—Challenge thereto—No certificate issued by the aforesaid two co-prisoners has ever been found to be incorrect or false—Merely because they issued a number of certificates would not render those certificates as invalid unless it has been found to be so in a particular case by holding an enquiry—Petition allowed while holding the petitioner entitled to grant of Freedom Fighter Pension under the 1980 Scheme.*

*Held*, that it is admitted position that State of Punjab has forwarded the application of the petitioner to respondent No. 1 with regard to grant of Freedom Fighter Pension on 22nd November, 1988. The aforementioned application was duly accompanied by two certificates issued by the, Freedom Fighters, namely S/Shri Som Parkash Gir and Gopal Singh Quami. Both are admittedly eligible to issue such certificate. There are large number of persons who have obtained pension on the basis of certificates issued by the aforesaid two person. It is further admitted position that respondents No. 2 and

3 have accepted those certificates and have granted pension to the petitioner,—*vide* order dated 13th February, 1991. Accordingly, the petitioner had been getting pension and other related benefits like free travelling etc. in the State of Punjab. No certificate issued by S/Shri Som Parkash Gir and Gopal Singh Quami have ever been found to be incorrect or false. Merely because the aforementioned certifiers had issued a number of certificates would not render those certificates as invalid unless it has been found to be so in a particular case by holding an enquiry. Moreover, the petitioner is victim of huge delay at the instance of respondent No. 1. Moreover, the petitioner has also been granted Mann Patra recognizing the petitioner for his dedicated and devotion to duty in rendering valuable services to the motherland. The Mann Patra was presented to him on the 50th Anniversary of Quit India Movement on 8th August, 1993 at Ludhiana. Therefore, I am of the view that the claim of the petitioner could not be rejected on the preposterous grounds of allegation that the aforementioned certifiers were issuing certificates indiscriminately and, therefore, these certificates were liable to be rejected. Individual case of the petitioner has been duly verified and accepted by the Punjab Government.

(Paras 13, 15 & 16)

A.K. Walia, Advocate for the petitioner.

Mrs. Daya Chaudhary, Asstt. Solicitor General.

Satish Bhanot, Sr. DAG, Punjab

### JUDGMENT

**M.M. KUMAR, J**

(1) This is third round of litigation initiated by the petitioner in order to claim freedom-fighter pension. The instant Writ Petition has been filed under Article 226 of the Constitution for issuance of a writ in the nature of certiorari quashing memo No. 52/PB/HC/370/98-FF (NZ), dated 1st December, 1998 (P-8), issued by Union of India—respondent No. 1 rejecting the claim of the petitioner for grant of freedom-fighter pension under the Swatantrata Sainani Samman Pension Scheme. The claim has been made w.e.f. the date of his application along with interest @18% per annum.

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(2) Brief facts of the case are that respondent No. 1 formulated a scheme titled as Freedom Fighter Pension Scheme, 1972, for the grant of pension to those freedom fighters who had undergone imprisonment for a minimum period of three months during freedom movement. Respondent No. 1 subsequently issued various instructions increasing or decreasing the period of imprisonment for sanction of pension. Under this Scheme pension used to be released on production of jail certificate issued by a competent authority.

(3) However, respondent No. 1 realising the difficulties of those freedom-fighters who could not produce jail certificate relaxed the policy by not insisting upon the production of jail certificate as proof of jail sufferings. As a consequence it was decided to accept the certificate issued by a co-prisoner, Member of Legislative Assembly and Member of Parliament. This scheme was further amended and renamed as **Swatantarta Sainik Samman Pension Scheme, 1980**. It was made effective w.e.f. 1st August, 1980. According to the scheme any person who has suffered a imprisonment for a minimum period of six months in the main land jails before independence was made eligible. The period of actual imprisonment for grant of pension was reduced to three months in the case of women, SC/ST freedom-fighters under the Scheme. The application for pension were required to be verified by the Government of India, Freedom Fighters Division, Ministry of Home Affairs, New Delhi.

(4) The petitioner filed an application on the prescribed form mentioning therein that he had undergone imprisonment for a period of six months in the Quit India Movement 1942—45 and was imprisoned in the Central Jail, Lahore on account of participation in the freedom struggle of the country. The State of Punjab and respondent No. 2 and 3 duly received the application in the year 1987. The second copy of the application on the prescribed performa, which was sent by the petitioner to respondent Nos. 2 and 3 was forwarded to the Under Secretary, Ministry of Home Affairs, Freedom Fighters Division, New Delhi,—*vide* letter No. 1(10)1033-70 II-86/7923, dated 21st July, 1987.

(5) Respondent Nos. 2 and 3 through Deputy Commissioner, Patiala made enquiries and after due verification came to be conclusion that the petitioner was a genuine freedom-fighter. The Deputy Commissioner sent his report on the following facts :—

- (i) Whether both the co-prisoners had undergone more than 6 months imprisonment during the freedom struggle of the country ?

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(ii) Whether they were getting pension from the Union of India ?

(iii) Whether they were holder of Tammir Patras ?

(6) The case of the petitioner was recommended to the State Government. Accordingly the Deputy Secretary, Freedom Fighter, Department of General Administration Reforms (Political Cell-2 Branch) intimated the Treasurer of the Charitable Endowments, Punjab, Sector-17, Chandigarh, on 13th February, 1991 (P-1) that the President of India has been pleased to grant financial help to the petitioner @ Rs. 150 per month w.e.f. 30th May, 1998 to 14th August, 1998, @ Rs. 250 w.e.f. 15th August, 1998 to 30th June, 1990 and @ Rs. 300 per month w.e.f. 1st July, 1990 to 30th September, 1990. For the further period, the petitioner was granted sanction for payment of pension @ Rs. 300 per month. In that regard the correspondence dated 24th August, 1990 shows that the President of India conveyed sanction for grant of provisional pension @ Rs. 300 per month w.e.f. 1st October, 1990 (P-2). In pursuance to the aforementioned sanction the petitioner was eventually given pension @ Rs. 300 per month as is evident from the Pension Payment Order (P-3). Accordingly, the petitioner has been getting pension w.e.f. 1st October, 1990 from respondent Nos. 2 and 3. At the time of filing the petition in 2001, the petitioner was drawing pension @ Rs. 500 along with other benefits like free travelling in the State of Punjab. It is appropriate to mention that the petitioner was awarded *Maan Patra* on 8th August, 1993 by the *Philatelic Congress of Punjab* (P-4).

(7) The second application which was forwarded by respondents Nos. 2 and 3 to respondent 1 for grant of Freedom Fighter Pension by the Central Government was also duly recommended by the respondent 2 and 3 for grant of pension under the *Swatanterta Sainik Samman Pension Scheme, 1980 (for brevity, '1980 Scheme')*. The application of the petitioner was submitted along with the applications of others to a High Powered Committee known as West Punjab Committee headed by Sardar Darbara Singh, Ex-Chief Minister, Punjab. The aforementioned High Powered Committee also recommended the case of the petitioner for grant of Freedom Fighter Pension. However, respondent 1 did not release pension to the petitioner. The petitioner made a representation on 27th January, 1994 to respondent No. 1 (P-5), disclosing all the above-mentioned

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facts. It was also pointed out that co-prisoner S/Shri Jodh Singh, Balbir Singh, Surain Singh, Inder Singh and Kartar Singh have been getting the pension @ Rs. 1000 per month from the Central Government. A request was made to release the pension to the petitioner as already requested by respondents No. 2 and 3,—*vide* letter No. 1(10)103-7 C-86/12417, dated 22nd November, 1988. When nothing was done, the petitioner was compelled to file C.W.P. No. 18133 of 1997. On the statement made by the counsel for respondent No. 1 that the claim of the petitioner would be decided within a period of three months by passing a speaking order, the petition was disposed of by a Division Bench of this Court. It was clarified that in case of failure to decide the case of petitioner within the specific period then he would be entitled to payment of 15% interest from the date of accrual till the date of actual payment. The order dated 22nd September, 1998 was placed on record (P-7). However, no action was taken in the matter compelling the petitioner to file COCP No. 661 of 2000. During the pendency of the contempt proceedings respondent No. 1 passed memo No. 52/PB/HC/370/98-FF(NZ), dated 1st December, 1998, rejecting the claim of the petitioner for pension. However, he was further informed that in case certificate of two other co-prisoners were submitted then the case of the petitioner could be re-considered (P-8).

(8) The petitioner has claimed that on 19th September, 1999 he had intimated to respondents No. 1 that the certificates of other two co-prisoners, namely, Shri Bhagat Singh and Sher Singh had been submitted to the State Government with a request for re-consideration of his case on that basis. It is pertinent to mention that earlier the certificate of co-prisoners S/Sh. Som Parkash Gir and Shri Gopal Singh Quami were submitted by the petitioner. Another reminder was sent on 13th July, 1999 (P-9) alongwith copies of certificates issued by S/Sh. Bhagat Singh and Sher Singh (P-10 and P-11). The affidavit of both the co-prisoners were also attached with the reminder sent on 13th July, 1999. (P-12 and P-13). It was further pointed out that the aforementioned co-prisoners have been getting pension and their Pension Payment Order were also sent (P-14 and P-15) along with the reminder.

(9) The stand of respondents No. 2 in the reply is that the pension cannot be claimed under the *1980 Scheme* as a matter of

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right. However, it has been admitted that the case of the petitioner was recommended to respondent No. 1 by respondent No. 2,—*vide* letter No. 1(10)103-7PII-86/7922, dated 21st July, 1987, for consideration of *Swatantrata Sainik Samman Pension* to the petitioner. It has further been conceded that on 22nd November, 1988 certificate of co-prisoners namely S/Sh. Harbans Singh s/o Shri Budh Singh in favour of the petitioner was also sent to respondent No. 1.

(10) The stand taken by respondent No. 1 in the short reply filed by the Under Secretary of Home Affairs is that the claim of the petitioner for pension was rejected by respondent No. 1 primarily on the ground that both S/Sh. Som Parkash Gir and Gopal Singh Quami were issuing certificates in favour of a large number of persons including the petitioner, therefore, their certificates were not acceptable. In this regard, reliance has been placed on a Division Bench judgment of this Court in CWP No. 16280 of 1995 titled as **Mulka Singh and other versus Union of India and others**. It has been pointed out that Shri Gopal Singh Quami has issued 207 certificates and Shri Som Parkash Gir had issued 88 certificates to the co-prisoners. Accordingly, the claim made by the petitioner was rejected,—*vide* No. 52/Pb/Hc/370/98-FF (NZ), dated 1st December, 1998 (P-8), and a justification has been furnished by the affidavit dated 26th September, 2003.

(11) When the matter came up for motion hearing, the Division Bench found that there is no assertion made by respondent No. 1 to the effect that certificates issued by S/Sh. Som Parkash Gir and Gopal Singh Quami were false or unsustainable. It was further held that the certificate issued by other co-prisoners, namely, S/Sh. Bhagat Singh and Sher Singh were also sent by the petitioner and the claim of the petitioner on the basis of the aforementioned certificates was not considered by respondent No. 1. Accordingly, the Division Bench on 5th August, 2003, passed the following order :—

“By the impugned order dated 1st December, 1998, the claim of the petitioner for grant of financial benefits under the Swatantrata Sainik Samman Pension Scheme has been declined. A perusal of the impugned order reveals that certificates of co-prisoners of the petitioners namely S/Sh. Som Parkash Gir and Shri Gopal Singh Quami have not been accepted on account of the fact that the aforesaid two individuals have issued a number of certificates.

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The factual position disclosed in Annexure P-8 as also in the various written statements and affidavits filed before this Court do not reveal whether or not the certificates issued by the aforesaid individuals ( S/Sh. Som Parkash Gir and Shri Gopal Singh Quami) have ever been found to be incorrect by respondent No. 1. In order to solicit further details in this behalf, respondent No. 1 is directed to file an affidavit through a senior officer disclosing whether or not any of the certificates earlier issued by the aforesaid individuals have been found to be incorrect or false. Needful be done within 3 weeks from today.

During the course of hearing of this case, respondent Nos. 2 and 3 have produced the official file maintained in respect of the applications made by the petitioner for monetary benefits under the Swatantrata Sainik Samman Pension Scheme. The original file contains affidavits of S/Sh. Sher Singh and Bhagat Singh [whose particulars have been mentioned in paragraph 14 (iii) of the writ petition]. The petitioner alleges that the aforesaid Bhagat Singh and Sher Singh were also co-prisoners with the petitioner. According to learned counsel representing respondents No. 2 and 3, the recommendation for monetary benefits to the petitioner under the Swatantrata Sainik Samman Pension Scheme, was made to respondent No. 1, by taking into consideration the affidavits of the aforesaid S/Sh. Sher Singh and Bhagat Singh. The pleadings filed on behalf of respondent No. 1, however, demonstrate that the said affidavits have not been taken into consideration.

In view of the above, we direct learned counsel for respondents No. 2 and 3 to prepare Zerox copies of the affidavits of S/Sh. Sher Singh and Bhagat Singh (from the original record) and to retain the same. The originals of the affidavits submitted by S/Sh. Sher Singh and Bhagat Singh be handed over to the learned counsel representing respondent No. 1. The claim of the petitioner shall be reconsidered by respondent No. 1 by taking into consideration the aforesaid affidavits within 3 weeks from today.

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List again on 26th August, 2003.

Order dasti on payment of usual charges.”

(12) In pursuance to the direction by the Division Bench, respondent No. 1 again rejected the claim of the petitioner on the ground that the certificate issued by Shri Bhagat Singh cannot be accepted because he remained imprisoned in the Central Jail, Lahore, only for a period of about 7 months from 20th October, 1942 to 25th April, 1943. According to respondent No. 1 Shri Bhagat Singh was not eligible to issue a certificate under the *1980 Scheme* inasmuch as a minimum period of one year is prescribed for making such a person eligible for issuance of certificates. With regard to the certificate issued by Shri Sher Singh, the stand taken is that he is eligible to issue the certificate as he remained imprisoned from 20th October, 1942 to 20th October, 1943 in the Central Jail, Lahore. However, the certificate issued by him that the petitioner remained in jail for the same period i.e. 20th October, 1942 to 20th October, 1943 is in conflict with the claim of the petitioner, who had asserted that he imprisoned from 20th August, 1942 to 26th April, 1943.

(13) However, with regard to certificate issued by S/Shri Som Parkash Gir and Gopal Singh Quami, a categorical stand has been taken in para 2 (ii), which is to the effect that no instance has come to the notice of respondent No. 1 that a co-prisoners' certificates issued earlier by S/Shri Som Parkash Gir and Shri Gopal Singh Quami were/ have ever been found to be incorrect or false. It has further been accepted that their names were included in the approved list of Freedom Fighters eligible for issuance of such certificates. It was, however, during 1995 that respondent No. 1 found that both the aforementioned persons have been issuing certificate indiscriminately and they started to reject their certificates. A copy of the detailed order dated 12th September, 2003 (R.1/1) has been placed on record with the affidavit filed by one Shri Beni Ram, Under Secretary, Ministry of Home Affairs.

(14) After hearing learned counsel for the parties, I am of the considered view that this petition deserves to be allowed. It is admitted position that respondent No. 2 has forwarded the application of the petitioner to respondent No. 21 with regard to grant of Freedom Fighter Pension on 22nd November, 1988. The



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aforementioned application was duly accompanied by two certificates issued by the Freedom Fighters, namely, S/Shri Som Parkash Gir and Gopal Singh Quami. Both are admittedly eligible to issue such certificate. There are large number of persons who have obtained pension on the basis of certificates issued by the aforesaid two person. It is further admitted position that respondent Nos. 2 and 3 have accepted those certificates and have granted pension to the petitioner,—*vide* order dated 13th February, 1991. Reference in this regard has been made to the Pension Payment Order Annexure P-3. Accordingly, the petitioner had been getting pension and other related benefits like free travelling etc. in the State of Punjab. The Punjab Government after due enquiry through the Deputy Commissioner on three questions has granted pension to the petitioner and he is enjoying the same with effect from 30th May, 1988 along with other benefits. Thus, the question arises is as to whether both the co-prisoners had undergone more than six months imprisonment during the freedom struggle of the country which obviously refers to the names of S/Shri Som Parkash Gir and Gopal Singh Quami. It is undisputed that both S/Shri Som Parkash Gir and Gopal Singh Quami have suffered more than one year and were duly eligible to issue certificate for pension.

(15) When the matter came up for consideration before the Division Bench on 5th August, 2003 a specific direction was issued to respondent No. 1 to file an affidavit of a Senior Officer disclosing whether or not any of the certificate earlier issued by S/Shri Som Parkash Gir and Gopal Singh Quami have ever been found to be incorrect or false. In response to the aforementioned direction, an affidavit by Shri Beni Ram, Under Secretary in the Ministry of Home Affairs, Union of India has been filed. In para 2, the following statement has been made :—

“That I am the concerned Under Secretary dealing with this case and as such, I am well conversant with the facts and circumstances of the case in my official capacity. Having been fully authorized and otherwise also as competent to file this affidavit on behalf of Respondent No. 1 i.e. Union of India, I have myself gone through the contents of Para 2 of order dated 5th August, 2003 passed by this Hon’ble

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Court in the C.W.P. No. 19127/2001 and understood the same. I am making the following submissions before this Court which are as under:—

- (i) Penison file of both the certifiers viz. S/Shri Som Parkash Gir and Shri Gopal Singh Quami are held by the Respondent.
- (ii) No instance has come to our notice that co-prisonership certificates (CPCs) issued earlier by both S/Shri Som Parkash Gir and Shri Gopal Singh Quami were ever been found incorrect and false. Their names were included in the approved list of freedom fighters eligible for issue of such certificates.
- (iii) However, later during 1995 after making an analysis it was found that Shri Gopal Singh Quami had issued 207 CPCs and that, Shri Som Prakash Gir and issued 80 CPCs; as such they were involved in issuance of such CPCs indiscriminately. So we started not to accept their CPCs. Our decision in regard to non-acceptance of CPCs from the certificates involved in issuance of certificate indiscriminately is also supported by a judgment dated 9th September, 1996 passed by Punjab and Haryana High Court in C.W.P. No. 16200/95 titled as Mulkha Singh and Others *versus* U.O.I. and Others. The Hon'ble Court had observed that "It is unthinkable that persons issuing these certificate can possibly remember exact date and the period of their innumerable co-prisoners after such a long time".

(16) A perusal of the aforementioned paras shows that no certificate issued by S/Shri Som Parkash Gir and Gopal Singh Quami have ever been found to be incorrect or false. Merely because the aforementioned certifiers had issued a number of certificates would not render those certificates as invalid unless it has been found to be so in a particular case by holding an enquiry. Moreover, the petitioner is victim of huge delay at the instance of respondent No. 1. His application was forwarded on 22nd November, 1988 by

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respondent Nos. 2 and 3, which could be decided only on 1st December, 1998 (P-8) that too after filing of writ petition, namely, C.W.P. No. 18133 of 1997 and COCP No. 661 of 2000. The certificate came to be de-recognised only in 1995, whereas those certificates were issued by S/Shri Som Parkash Gir and Gopal Singh Quami to the petitioner somewhere in 1987. There was no de-recognition applicable to those certificates which were issued in 1987. Therefore, respondent No. 1 cannot claim on the basis of de-recognition of 1995, that the certificates issued in 1987 have to be regarded as wholly incorrect. Any de-recognition in any case has to be prospective not retrospective. For the aforementioned proposition reliance could be placed on a judgment of the Supreme Court in the case of **Suresh Pal versus State of Haryana (1)**.

(17) Moreover, the petitioner has also been granted *Mann Patra* recognizing the petitioner for his dedicated and devotion to duty in rendering valuable services to the motherland. The *Maan Patra* was presented to him on the 50th Anniversary of Quit India Movement on 8th August, 1993 at Ludhiana. Therefore, I am of the view that the claim of the petitioner could not be rejected on the preposterous grounds of allegation that S/Shri Som Parkash Gir and Shri Gopal Singh Quami were issuing certificates indiscriminately and, therefore, these certificates were liable to be rejected. Individual case of the petitioner has been duly verified and accepted by the Punjab Government.

(18) For the aforementioned reasons, this petition succeeds. Accordingly, order dated 1st December, 1998 (P-8) passed by respondent No. 1 is set aside. The petitioner is held entitled to grant of Freedom Fighter Pension under the '1980 Scheme' with effect from the date of his application dated 21st July, 1987, which he had filed before respondent Nos.2 and 3. The arrears shall be calculated and be paid within a period of three months from the date a certified copy of this order is received by respondent No.1. The petitioner shall also be entitled to simple interest @ 6% per annum from the date of his entitlement till the date of payment. No costs.

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**R.N.R.**