

(2004) 12 GAU CK 0004

Gauhati High Court (Agartala Bench)

Case No: Writ Petition (C) No. 43 of 2000

Shanti Ranjan Bhattacharjee

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision: Dec. 13, 2004

Hon'ble Judges: A.B. Pal, J

Bench: Single Bench

Advocate: A.L. Saha, for the Appellant; K. Bhattacharjee, for the Respondent

Final Decision: Allowed

Judgement

A.B. Pal, J.

By this writ petition the petitioner who claims to be a freedom fighter seeks a direction to the Union of India to sanction in his favour the pension under the Freedom Fighters' Pension Scheme after setting aside the communication of the Under Secretary to the Government of India at Annexure-7 that as the petitioner being only 15 years of age at the time of his participating in the freedom struggle was not eligible for pension for the reason that presumably he suffered imprisonment not in Jail but in either Borstal Jail or Juvenile house or reformatory house.

2. Shorn of details, the petitioner claimed to be a freedom fighter and suffered imprisonment for one year nine months in connection with the Quit India Movement in 1942 and in support of his claim he had to his credit certificates from the Chairman of Freedom Fighters' Pension Scrutiny Committee, Government of Tripura, Sri Kanailal Chakraborty, a co-prisoner, Sri Ramani Mohan Debnath, an ex-freedom fighter pensioner, Sri Sachindra Lal Singha, ex-Chief Minister, Tripura, Sri Promod Dasgupta, ex-MLA, Tripura Legislative Assembly, Sri Ashok Bhattacharjee, President, Tripura Pradesh Congress Committee and others. The petition along with all the certificates seeking pension was submitted on 16.12.1972, but he received a communication from the Joint Secretary to the Government of Tripura in August 1996 that the Government of India had referred his case to the

Government of West Bengal to verify his claim of suffering imprisonment in Bengal Prison. He was requested to take up the matter with the Ministry of Home Affairs, Government of India. He submitted several representations thereafter to the Government of India, but on 29.5.1997 vide Annexure-5 he was informed that his case would be considered only after receipt of the verification report from the Government of West Bengal. Then on 9.12.1999, he got the impugned communication rejecting his prayer on the ground that as per his own statement he was only 15 years old in the 1942 and since he was minor he did not have to suffer any imprisonment. He was either kept in Borstal Jail or Juvenile house or reformatory house.

3. The Union of India contested the claim by filing counter affidavit admitting that the petitioner's claim could not be considered because of the income limit and his prayer was rejected accordingly on 20.11.1974. But when in August 1980, the income ceiling was lifted he again applied for pension which was referred to by the Union of India to the State Government in March 1984 for examination by the State Review Committee. The Union of India further admitted that in July 1987, the Government of Tripura had recommended his case for grant of pension on the basis of the recommendation of the State Committee. But in order to verify his claim of imprisonment for one year nine months, his case was referred to the Government of West Bengal wherefrom no reply came for a long time. Thereafter, the Union of India examined the case and held that as at the time of Quit India Movement, the petitioner was only 15 years of age, he certainly did not suffer imprisonment in any Prison and he might have been kept in a Borstal Jail or Juvenile house or reformatory house. Only for this reason, his application was rejected on 9.12.1999.

4. It is, therefore, an admitted position that his case was duly recommended by the State Review Committee and the State Government for grant of pension under the Scheme and that his earlier prayer for pension under the 1972 Scheme could not be allowed at that time only because his annual income was more than Rs. 4,999. But when he again applied for pension under the Scheme of 1980, the question came whether he had suffered imprisonment in any Prison or in Borstal Jail or in reformatory house. The only ground of rejecting his second prayer was that he did not suffer imprisonment in any Prison. Now, if we have a look to the Scheme of 1972 and 1980, it would be clear that confinement in Prison was not the only criteria for determining the actual imprisonment for a period of six months. Even in Clause IV(c) of the Scheme provides that a person in termed in his home or ex termed from his district for a period of six months or more was also eligible for pension under the Scheme. The respondent presumed that as he was 15 years old, he was not in Prison, he might have been in a Borstal Jail or Juvenile house or reformatory house. The word "Borstal Jail" has been used by the respondent in its counter affidavit and this leaves no doubt that it was also treated as Jail. Whatever may be the position, there is no controversy that wherever he was placed during the period of one year nine months, he was certainly under confinement. If confinement in one's own

house can be treated as imprisonment for the purpose of pension Scheme, it stands to no reason why confinement in a Borstal Jail or a Juvenile or reformatory house should not be treated as imprisonment for the purpose of this Scheme. Admittedly, the claim of the petitioner was verified and recommended by the State level committee as well as the State Government, though it could not be verified by Union of India from the records of the Bengal Jail due to no response from the Government of West Bengal. When the Union of India took up the case for consideration on the basis of the available records including the recommendation of the State level committee and the State Government, it ran into an unreasonable and unjustified presumption that the petitioner might have been detained in Borstal Jail or reformatory or Juvenile house which did not amount to the imprisonment. This being the only ground for rejection of the claim does not appear to be at all justified.

5. For the reasons discussed above, the petition is allowed setting aside the impugned communication dated 9.12.1999 (Annexure-7) of the Union of India and directing the Union of India to sanction immediately the pension under the Scheme of 1980 in favour of the petitioner with effect from 1st August, 1980 when income bar was lifted. There shall be no order as to cost.