

**CONSTITUTIONAL WRIT****PRESENT: THE HON'BLE MR. JUSTICE SYAMAL KANTI CHAKRABARTI****Judgement on : 18.06.2010****W. P. No. 28408(W) of 2008*****Sri Pulin Behari Maity******Vs******The Union of India & Ors.*****POINTS**

FREEDOM FIGHTER'S PENSION – Record of a freedom fighter is not available– District authorities and another freedom fighter certified– Whether the recommendation of can be relied upon to give effect to the benevolent object of the scheme – Swatantrata Sainik Samman Pension Scheme, 1980.

**FACTS**

Writ Petitioner Claims to be a Freedom Fighter taking active part during the Quit India Movement in 1942. Government of India granted pensionary benefits to the freedom fighters with effect from 1<sup>st</sup> August, 1980 in recognition of their dedication and sacrifice of lives for the liberation of the country. It was provided therein that deserving freedom fighters may apply for such pension on the

basis of the personal knowledge certificate of the concerned district provided records pertaining to the period of their suffering are not available.

Accordingly the present petitioner submitted his application on the basis of a certificate from an eminent freedom fighter of Midnapore district under the Swatantrata Sainik Samman Pension Scheme, 1980 since no relevant records of his suffering were available from any other source which will be evident from Non-Availability of Record Certificate of the District Magistrage of undivided Midnapore. The further case of the petitioner is that the Government of India has further released the relevant guidelines and allowed the applicants praying for pension to submit personal knowledge certificate from other freedom fighters, if no record during the period of his suffering is available but such certificate would be relied upon subject to verification of the same by the State Government regarding genuineness of his certifier's sufferings.

**HELD**

Since relevant records are not available and such non-availability of record has been duly certified by the district authorities, the recommendation of another freedom fighter and pension holder who is acquainted with the activities of the writ petitioner, has to be relied upon to give effect to the benevolent object of the scheme which is not a grace on the part of the nation but a manner of showing regard to the freedom fighters of the country.

**CASES CITED**

1.Gokul Chandra Panja -Vs.- Union of India, reported in Cal L.T 1999(1) HC - 241

2.Indu Bhusan Jana reported in 2009(1) CHN – 27

3.Sudhanshu Maity reported in 2009(1) CLJ (Cal) – 922

For the Petitioner : Mr. Prasanta Mukherjee,  
Mr. Ram Dulal Manna.

For the Respondent

Nos. 1 to 3 : Mr. Anil Gupta.

For the State : Mr. Subrata Mukherjee.

**Syamal Kanti Chakrabarti, J.:**

The writ petitioner, Pulin Behari Maity claims himself to be a freedom fighter taking active part during the Quit India Movement in 1942 while he remained underground for a period of more

than six months to avoid an order of his detention. The petitioner along with his other associates joined in subversive activities towards disruption of the transport communication by dismantling the communication system from Midnapore to Calcutta by cutting out the telegraph and telephone apparatus and by setting fire in the police jeeps of the concerned police station resulting in police firing whereby and whereunder several persons sustained injuries. Following the said incident an order of his detention was issued for which he had to abscond for the aforesaid period.

2. It is further claimed that the Government of India granted pensionary benefits to the freedom fighters with effect from 1<sup>st</sup> August, 1980 in recognition of their dedication and sacrifice of lives for the liberation of the country. It was provided therein that deserving freedom fighters may apply for such pension on the basis of the personal knowledge certificate of the concerned district provided records pertaining to the period of their suffering are not available.
3. Accordingly the present petitioner submitted his application on the basis of a certificate from an eminent freedom fighter of Midnapore district under the Swatantrata Sainik Samman Pension Scheme, 1980 since no relevant records of his suffering were available from any other source which will be evident from Non-Availability of Record Certificate of the District Magistrate of undivided Midnapore. The further case of the petitioner is that the Government of India has further released the relevant guidelines and allowed the applicants praying for pension to submit personal knowledge certificate from other freedom fighters, if no record during the period of his suffering is available but such certificate would be relied upon subject to verification of the same by the State Government regarding genuineness of his certifier's sufferings.

4. It is further submitted that in the instant case the District Level Advisory Committee recommended the case of the petitioner on the strength of a certificate issued by Sri Rabindra Nath Giri who is an eligible certifier of Midnapore district. After acceptance of such recommendation the State Government forwarded his application through a letter dated 29.03.1990 to the Government of India but the same was not considered even after submission of a representation on 05.05.1994. Therefore, he was compelled to prefer a writ petition being C. O. No. 12498(W) of 1994 in which by an order dated 19.08.1994 this Hon'ble Court directed the Government of India to dispose of the application of the petitioner in accordance with law taking into consideration of the recommendation made by the State Government within two months from the date of communication of the order. But the Government of India has not accepted the recommendation of the State Government based on the personal knowledge certificate issued by another pension holder and freedom fighter Rabindra Nath Giri of undivided Midnapore district and communicated their decision to the writ petitioner in a letter dated 30<sup>th</sup> November, 1994. The main contention of the Government of India in refusing the prayer of the writ petitioner is that alternative source of information in the form of relevant Village Crime Note Book (V.C.N.B.) which is a permanent record is available and the same is lying with all police stations.
5. Being aggrieved by such decision the writ petitioner submitted another representation addressed to the Under Secretary to the Government of India, Ministry of Home Affairs for reconsideration of their decision but to no effect. Therefore, he filed another writ petition being W. P. No. 1555(W) of 1996 seeking leave of the Hon'ble Court to pray for supply of materials relied upon by the Government of India while passing their order of refusal dated 30<sup>th</sup> November, 1994 for reconsideration of his prayer afresh. By a letter dated 25.09.2008 the

petitioner duly requested the State Government as well as the Government of India to take all steps for complying with the solemn order of this Hon'ble Court dated 5<sup>th</sup> August, 1996 passed in the said writ petition being W. P. No. 1555(W) of 1996. The order of the Hon'ble Court dated 5<sup>th</sup> August, 1996 is quoted below:

*“ This writ application is disposed of by giving leave to the petitioner to make a representation to the State Government for the purpose of obtaining necessary information and evidence from official records of jail and/or record-certificate as would be necessary for the Union of India for the purpose of granting political pension to the petitioner. If such application is filed, the State Government shall take steps and find out whether there are documents as indicated in the order and thereafter forward the same to the Central Government for consideration.*

*There will be no order as to costs. ”*

6. Yet both the authorities remained silent. Following bifurcation of the undivided Midnapore district, the petitioner is now a resident of village Dalimbachak within Sutahata P.S. of Purba Midnapore. But without thorough and proper enquiry the competent authority has turned a deaf ear to his prayer. The petitioner still claims that his prayer will certainly come under the zone of consideration as per paragraph 9(h)(ii) of the Swatantrata Sainik Samman Pension Scheme, 1980 and the refusal of the Government as communicated in their memo dated 30<sup>th</sup> November, 1994 is liable to be set aside. The petitioner is a senior citizen now more than 90 years old. Therefore, he has filed the instant writ petition praying for a Writ in the nature of Mandamus directing the respondent authorities to grant pension from the date of his

application pursuant to the recommendation made by the State Government dated 29.03.1990 without giving effect to the memo issued by the Government of India dated 30.11.1994 with prayer for quashing the said memo.

7. Learned lawyer for the respondent no. 3 has opposed the move and contended that the impugned order of the Government of India is justified, inasmuch as, it was based upon due consideration of all relevant facts including the circumstances indicated therein asserting existence of alternative source of information regarding the writ petitioner from the permanent record, i.e., Village Crime Note Book in question.
8. In the above context it is to be decided whether in absence of any available alternative source of information the personal knowledge certificate issued by another pension holder and freedom fighter having acquaintance with and knowledge of the circumstances in which the petitioner freedom fighter was involved in Quit India Movement, 1942 and his underground stay to avoid detention order.
9. Having heard learned lawyer for both parties this Court called for the relevant V.C.N.B. of Sutahata P.S. of East Midnapore District for the relevant year because the present petitioner claims himself to be a denizen of Dalimbachak under Sutahata P.S. The same was produced before this Court on 26.04.2010 and liberty was given to the learned lawyers for both the parties to go through the same to trace out any tangible clue to the underground operation of the writ petitioner, if recorded therein. Their answer being negative the area of consideration of the instant prayer has been further reduced to the extent as to whether in absence of any

other source of information including the relevant V.C.N.B. rejection of the prayer of the writ petitioner is justified or not.

10. In Annexure P-1 to the writ petition the writ petitioner has produced a copy of relevant certificate issued by the District Magistrate, Purba Midnapore which runs as follows:

*“This is to certify on the basis of reports received from the Officer-in-Charge of the concerned police station that no relevant records relating to issue of warrants to the proclamations and prosecutions during the period 1930 to 1946 are available.”*

In case of consideration of an application of a freedom fighter who remained underground the relevant guidelines are contained in Swatantrata Sainik Samman Pension Scheme, 1980 formerly known as “Freedom Fighters’ Pension Scheme, 1972”. In Explanation 1 of Clause 4 thereof it has been clarified that detention under the orders of the competent authority will be considered as imprisonment and in Clause 4(a) the eligibility criteria has been fixed for general candidates as under:

*“4(a) A person who had suffered a minimum imprisonment of six months in the mainland jails before Independence. However, ex.-INA personnel will be eligible for pension if the imprisonment/ detention suffered by them was outside India ”*

The documents to be relied upon in support of such claim has been further indicated in Clause 9(b) which is quoted below:-



*“9(b) REMAINED UNDERGROUND:*

- (i) *Documentary evidence by way of Court’s/ Government orders proclaiming the applicant as an offender, announcing an award of his head, or for his arrest or ordering his detention.*
  - (ii) *Certificates from veteran freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not forthcoming due to their non-availability.”*
11. From the aforesaid provision it is crystal clear that the scheme envisages acceptance of certificates from veteran freedom fighters who had themselves undergone imprisonment for five years or more if the official records are not forthcoming due to their non-availability.
12. In the light of the above provision let us examine the validity of the certificate issued by another freedom fighter in favour of the present writ petitioner.
13. In Annexure P-2 of his application the writ petitioner has claimed the following:

*“Joined the Quit India Movement in 1942 and worked under the then Congress leaders. I took active part in the movement. Due to my subversive activities participating in the movement warrant of arrest was issued against me. But I evaded arrest going underground from October, 1942 to May, 1943. Rabindra Nath Giri and Nitai Chandra Jana’s certificates are attached herewith”*

Another freedom fighter hailing from Reapara under Nandigram P.S. (PPO No. Pol-4201/C) in his certificate dated 20.09.1981 has endorsed to the following effect:

*“Therefore, I solemnly declare that my jail suffering was for 5 years 2 months 26 days as stated above. I do hereby certify that Sri Pulin Behari Maity, son of Kshirod Chandra Maity of village Dalimbachak, Post Kumorpara under Sutahata P.S., District Midnapore was a bona fide freedom fighter who remained underground for more than six months for the period from October, 1942 to May, 1943 and was one for whose detention orders were issued, but he evaded arrest on account of his participation in Quit India Movement during the Freedom Struggle of India in the year 1942. To the best of my knowledge and belief, he did not secure reprieve on account of any oral or written apology tendered by him. He also went underground neither of his own accord nor for fear of police torture, but exclusively for continuance of his services to the country under my guidance.”*

This type of certificate obviously is the outcome of personal knowledge and acquaintance of Rabindra Nath Giri, another freedom fighter with the present writ petitioner and his subversive activities in 1942. Therefore, in absence of any other source of information particularly non-availability of any information regarding him from the relevant V.C.N.B. it is to be decided whether such certificate dated 20<sup>th</sup> September, 1981 issued by another freedom fighter should be relied upon by the Government of India for consideration of his application of pension.

14. From the object of the scheme it is clearly stated that

*“The benefit of the pension scheme has been extended to all freedom fighters as a token of Samman to them.”*

The provisions laid down in the scheme, therefore, are to be interpreted and accepted liberally so as to fulfil the objects mentioned in the scheme. Restrictive interpretation of the provisions importing new ideas in the scheme will obviously frustrate the object of the scheme to the utter disappointment of the superannuated applicant who claims himself as a freedom fighter for the liberation of India.

15. The detailed record of the village Dalimbachak in which the petitioner resides are incorporated in relevant V.C.N.B. Volume III, Block II from page 95 to 120. The first entry against serial no. 1 relates to Sutahata Police case no. 9 dated 24.08.1943 at page 95. The last entry ends at page 119 relating to the affairs of 1980. Therefore, it is evident that the Village Crime Note Book in question preserves records of the village of the petitioner for the period from 24.08.1943 to 1980. The relevant period of abscondance of the writ petitioner relates to the period from October, 1942 to May, 1943. Therefore, it is obvious that the relevant V.C.N.B. will not be of any help to the administration for verification of the genuineness of the claim of the present petitioner. Needless to say that the State Government has already verified genuineness of certifier's sufferings through its District Level Advisory Committee as required under the Scheme.
16. In the case of Gokul Chandra Panja -Vs.- Union of India, reported in Cal L.T 1999(1) HC - 241 it has been held that where relevant records are missing which can be otherwise stated that the records which would be relevant to the petitioner's case were not available, the

certificate of personal knowledge granted by R. N. Giri is to be taken as proof of the petitioner's claim in terms of pension scheme (paragraph 35). In another unreported case being M. A. T. No. 1604 of 1999 the same principle has been adopted and the ratio therein postulates that the scheme itself provided that in absence of the available records, the certificate of respective freedom fighter can be accepted for the purpose of holding that a freedom fighter is entitled to a pension under the said scheme and his claim cannot be ignored. In the case of Indu Bhusan Jana reported in 2009(1) CHN – 27 and in the case of Sudhanshu Maity reported in 2009(1) CLJ (Cal) – 922 the same principle has been echoed in deciding the merit of some type of application. In the case of Subal Chandra Maity decided in W. P. No. 12041(W) of 1998 also such type of certificate was relied upon on the backdrop of absence of official records.

17. Relying upon the above principles I hold that since relevant records are not available and such non-availability of record has been duly certified by the district authorities, the recommendation of another freedom fighter and pension holder who is acquainted with the activities of the writ petitioner, has to be relied upon to give effect to the benevolent object of the scheme which is not a grace on the part of the nation but a manner of showing regard to the freedom fighters of the country. Therefore, I hold that there are sufficient merits in the present application of the writ petitioner. The impugned order dated 30<sup>th</sup> November, 1994 of the Government of India, Ministry of Home Affairs is accordingly set aside and the respondent nos. 1 to 3 are directed to dispose of the application of the present petitioner in the light of the above observation within a period of one month from the date of receipt of the order and to communicate their decision to the petitioner within a fortnight from the date of

taking such decision on the basis of the recommendation of the respondent nos. 4 to 6 representing the State of West Bengal.

18. The writ petition is thus disposed of.

19. Let the V.C.N.B. be returned at once.

20. I make no order as to cost.

21. Urgent certified photostat copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

**(Syamal Kanti Chakrabarti, J.)**