

Before Ranjit Singh, J.

BALBIR KAUR MALHI,—Petitioner

versus

**THE SECRETARY TO GOVERNMENT OF INDIA,
NEW DELHI,—Respondents**

C.W.P. 3668 of 1997

13th March, 2008

Swatantrata Sainik Samman Pension Scheme, 1980—Constitution of India, 1950—Art. 226—Claim for grant of S.S.S. pension—Authorities resorting to hyper-technical approach in rejecting claims—Orders rejecting claims for grant of pension to freedom fighters or to their families found not to be justifiable, fair or reasonable—Action of respondents is totally unjustified, arbitrary and whimsical—Petitions allowed, respondents directed to release pension to petitioners.

Held, that bureaucratic approach seems to be at full play while denying the claim of the respective petitioners. The authorities have resorted to hyper-technical approach in rejecting their claims. In the case of Smt. Balbir Kaur Malhi, the facts are not in much dispute. She is wife of late L. Hawaldar Kuldip Singh. It is not even disputed that the husband of the petitioner had been a sufferer on being sent to New Guinea as part of INA. The petitioner is denied pension only on the ground that her husband continued to serve after independence and was discharged in the year 1955 on his own request. The second reason advanced is that Army record of office Ramgarh Cantt. does not indicate if the husband of the petitioner was associated with INA and that the recommendation of General Mohan Singh are available in the case of other co-sufferers and not in the case of husband of the petitioner. In the Scheme, it is nowhere provided that his pension is to be granted to only those sufferers who had been sent to New Guinea being part of INA and were not released or discharged from the Indian Army. This line of reasoning apparently has been invented by the authorities with the aim to deny the pension, which is certainly due to the petitioner,

being wife of a person who had undergone the sufferance facing hardships, starvation etc. The respondents cannot deny that some of the persons who had been co-sufferers of the husband of the petitioner had been granted this pension. It has specifically been averred by the petitioner that none of those who have been sanctioned this pension, had been released or discharged from the Indian Army either in 1946 or 1947. The third reason in rejecting the claim of the petitioner is totally misconceived and based on factual inaccuracies. The petitioner has clearly mentioned that Jagat Singh, a member of a Freedom Fighter Committee (INA) had prepared a list of those volunteers who had joined INA and who had been sent to New Britain or New Guinea. The name of the husband of the petitioner appears at Sr. No. 225 whereas the names of other four persons mentioned by the petitioner as similarly situated is also reflected in the list at Sr. Nos. 198, 16, 226 and 200. There is no evidence placed by the respondents on record to show if General Mohan Singh had given any list, which would not contain the name of husband of the petitioner. The petitioner, as such, is justified in crying foul against the attitude and the approach adopted by the respondents in rejecting her claim. The impugned order cannot be sustained on any of the reasons for which it is made and as such, deserves to be set aside.

(Para 13 and 14)

Further held, that coming on to the case of petitioner, Des Raj Pardeshi, it can be seen that the action of the respondents here also is totally unjustified, arbitrary and whimsical. The only reason given in support of the order of rejection is that the petitioner had not produced any accepted evidence in support of his claim. The petitioner has been able to substantiate his claim for his participation in the freedom movement and also in regard to his imprisonment undergone at District Jails Faridkot and Nabha. The order, rejecting his claim is made while ignoring the relevant material which has to be taken into consideration in terms of the policy formulated by the Government and as such, the same cannot sustain.

(Para 15 and 16)

Further held, that the case of Swaran Singh in CWP 2766 of 2004 is slightly different. He has made a prayer for grant of special pension to him being an Ex-Army person, who had revolted against the British authority. The evidence in the light of decision of the Joint Committee meeting on 13th November, 1997 would be sufficient enough to admit the claim of the petitioner as a Freedom Fighter and for grant of pension to him under the Scheme as formulated. There is no other reason for which the petitioner has been declined this Samman. He deserves it. He cannot be deprived from this Samman any more on any of the consideration that has weighed with the authorities so far. The impugned order dated 5th January, 2004 rejecting the claim of the petitioner, as such cannot be sustained and the same is set aside.

(Para 18 and 19)

Sunil Chadha, Advocate, *for the petitioner.* (In C.W.P. No. 3668 of 1997)

R. K. Gupta, Advocate, *for the petitioner.* (In C.W.P. No. 16570 of 2001)

Ms. Alka Chatrath, Advocate, *for the petitioner.* (In C.W.P. No. 2766 of 2004)

Gurpreet Singh, Standing counsel for Union of India.

RANJIT SINGH, J

(1) Freedom fighters seem to be standing in a queue, waiting for their turn to await decision regarding their pensionary rights. Very recently, this Court had decided two of the writ petitions, directing grant of freedom fighter pension either to the freedom fighter himself or to his family. While disposing of the said writ petition, this Court had expressed, its concern in the careless attitude and bureaucratic approach adopted by the persons dealing with such cases. That approach is clearly noticed in the present three cases where the claim for grant of freedom fighter pension to the freedom fighters or to their families has been denied with reasons which are not found justifiable, fair or reasonable.

(2) Through this order, three writ petitions Nos. 3668 of 1997 (**Balbir Kaur Malhi versus The Secretary to Government of India, New Delhi**), 16570 of 2001 (**Des Raj versus Union of India and others**) and 2766 of 2004 (**Sawaran Singh versus Union of India and another**) are being disposed of together as the common question of law arise for determination in these three writ petitions. Let us proceed to notice the facts in these three respective writ petitions, which would show that the authorities have not been considerate and kind enough to consider the claim of the respective petitioners in the spirit of the scheme that has been formulated by the Government to grant freedom fighter/Sainik Samman Pension, which is termed more as an honour rather than any pension as understood in the normal parlance.

(3) Smt. Balbir Kaur Malhi is a wife of Late L/Hawaldar Kuldip Singh, who served as a Clerk in the Sikh Regiment of the Indian Army. Nationalism in him had made him to join Indian National Army (INA) raised by General Mohan Singh with the aim of fight for freedom of this country. Having been enrolled as a Sepoy on 29th July, 1940, he had opted for being part of INA in the year 1942 and was sent to New Britain and New Guinea by Japanese. He embarked at the Indian port on 20th October, 1944. On 18th November, 1955, the husband of the petitioner was discharged from the Indian Army on his request and breathed his last on 6th April, 1967. Having learnt about the Scheme of freedom fighters pension, the petitioner applied for the same on 30th June, 1978. Her prayer, however, was rejected on 9th September, 1981 on the ground that her husband was discharged at his own request and not due to his association with INA.

(4) The Scheme having been renamed as Swatantra Sainik Samman Pension Scheme,—*vide* Annexure P-1 dated 31st January, 1983, with effect from the year 1980 entitling those persons for grant of pension who had been sent to New Guinea and had faced hardship, the petitioner renewed her request on 11th September, 1995 for grant of pension under the said changed scheme. The generation that has to deal now with the grant of such like pensions apparently is totally oblivious fighting for freedom of this country. Their attitude is such that such requests keep on lying for years without consideration and acknowledgment. No different was the fate of the present petitioner.

Having not heard anything, the petitioner seems to have taken courage to make a representation on 11th September, 1995. What gave her a cause to do so, was the information that many of the fellow colleagues of her late husband had been granted pension under the Sainik Samman Scheme. Still, she did not receive any response. The petitioner raised the level of demand by serving a legal notice on 27th October, 1995. This time, she was fortunate enough to receive a response, asking her to furnish discharge certificate of her late husband. On 29th January, 1996, the petitioner sent the copy of discharge certificate. Thereafter, again there was a total silence from the side of the respondents. On 2nd May, 1996, the petitioner filed a Civil Writ Petition No. 6473 of 1996, which was disposed of on the very next day with a direction to the respondents to decide the pending representation filed by the petitioner. On 16th October, 1996, the respondents rejected the prayer of the petitioner on totally whimsical and farcical grounds, which the petitioner countered with a notice, containing detailed reasoning to contest the rejected claim with a prayer to review the said order. The respondents have chosen to remain silent and, thus, the petitioner once again came before this Court through the present writ petition. After few preliminary hearing, the writ was ordered to be admitted on 22nd April, 1998. It has now come up for hearing.

(5) Des Raj Pardesi, petitioner in Civil Writ Petition No. 16570 of 2001, is a bit fortunate that his writ petition has come up for hearing within 7 years of its filing/admission. He has also remained unsuccessful in convincing the respondents in regard to his entitlement for grant of freedom fighter/Sainik Samman Pension. The petitioner had participated in Quit India Movement and had vigorously associated himself in Praja Mandal Movement in Faridkot State, leading to his arrest on 10th February, 1946. He claims to have remained at Faridkot Jail from this date to 16th May, 1946 alongwith one Rasal Singh, his co-prisoner. The petitioner is also a founder member of Shishu Sewak Dal and subsequently remained underground from June 1946 to February 1947, participating in the propaganda activities of Praja Mandal Movement. The petitioner was again arrested in April 1947 and lodged in Nabha Jail till July 1947. On learning about, the Pension Scheme, he applied for freedom fighter pension on 8th August, 1993 through an

application dated 15th April, 1993, which was duly attested by Magistrate and verified by Ex.M.L.A. Chaudhary Fateh Singh. On 19th October, 1993, the petitioner applied to the Central Government for grant of pension. This application was recommended by Giani Zail Singh, former President of India. Thereafter, followed trails of representations and waits but despite several requests from the year 1993 to 2000, the petitioner received only the intimation that his case was under consideration. On 3rd March, 2000, the Central Government asked the State Government to forward its recommendations in terms of the Swatantra Sainik Samman Pension Scheme. The State also took time at its leisure. State had constituted Haryana Swatantra Sainani Samman Samiti to consider the case of freedom fighters for grants of pension. The case of the petitioner was considered on 25th August, 2000. The Samiti also interviewed the petitioner, leading to unanimous recommendation dated 19th December, 2000 for grant of pension to him. The Haryana Government, however, still rejected the claim of the petitioner on 31st January, 2001, whereupon the petitioner made a detailed representation on 3rd February, 2001. The Central Government, on the other hand, was asking and waiting for recommendation from the State Government. Ultimately, on 9th May, 2001, the State Government sent the case of the petitioner informing the Central Government that Samiti had recommended the grant of freedom fighter pension to the petitioner. Central Government, however, rejected the claim of the petitioner mainly on the ground that State has not recommended the same. What weighed with the Central Government to reject the claim of the petitioner is that he had undergone imprisonment from 10th February, 1946 to 16th May, 1946 for a period of three months and six days. The grievance of the petitioner is that his imprisonment at Nabha Jail from April 1947 to July 1947 has been wrongly ignored and so also the fact that the petitioner had remained underground for nine months, which was not verified on account of non-availability of the record. The petitioner, thus, is before this Court.

(6) The Case of Sawaran Singh, petitioner in Civil Writ Petition No. 2766 of 2004, is slightly different. His grievance is that he is entitled to Army special pension in terms of the scheme formulated in this regard, which is denied to him without justification. His claim is

based upon the fact that while serving the Indian Army, he had revolted against the British Authorities and, thus, was made to face a Court Martial and sentenced to undergo transportation of life on 28th July, 1940. The petitioner had undergone the sentence of nearly 7 years from 1940 to 4th January, 1947, when he was released. Then came the scheme for grant of Freedom Fighter Pension, which was subsequently named as Swantarta Sainik Samman Pension in the year 1980. To show his credential, the petitioner refers to a fact that on 25th anniversary of independence he was awarded Tamra Patra by the Government of India. He is also recipient of commendation certificate from the State of Punjab issued to him on 26th January, 1997 for his remarkable contribution in the freedom struggle. It is in this background that the petitioner seeks grant of special pension under the Scheme formulated by the Government of India for those Ex. Army personnel who revolted against the British Authorities and had to suffer for atleast six months or more on account of participation in mutiny. This scheme is stated to have been formulated on 22nd July, 1996. The petitioner says that he is suffering the effect of an inadvertent typing mistake in the documents, whereby name of the Regiment while listing those who had participated in the mutinies is wrongly mentioned as 3/12 Punjab Regiment whereas it was earlier known as 12th Frontier Force Regiment. The petitioner complains that the respondents have failed to consider the correction carried out in a meeting of the joint committee of freedom fighters and officials held on 13th November, 1997, where it was resolved that name of 3/12 Punjab Regiment be changed as Royal Frontier Force and 16-20 persons whose details could not be verified by the Ministry of Defence, be granted pension on the basis of certificates given by them. The petitioner had submitted his application with all necessary documents to the Department for consideration for grant of said pension. He is still without pension. He was apprised on 8th August, 2000 that his case is under consideration and for verification for grant of Army Special Pension. While verifying, it is stated that ex-Sepoy Sawaran Singh son of Sher Singh belonged to Kumaon Regiment whereas the petitioner was from 12th Frontier Force. The petitioner pointed out to the correction, which had earlier been noted in a meeting held on 13th November, 1997. The petitioner sent various reminders, which only received response that verification report was awaited. The petitioner rightly

points out that he is in receipt of freedom fighter pension from the Punjab Government. He has also submitted an affidavit, certifying that he had served in the 12th Frontier Force and took part in mutiny in Central India Force, leading to his incarceration from 28th July, 1940 to 4th January, 1947. In support of his claim, the petitioner has submitted an affidavit of another freedom fighter, Bhagwant Singh son of Bhakhtawar Singh to show that the petitioner was his co-prisoners for more than six years. The bureaucratic approach, however, would sleep over the matter and has not taken any action to respond to the requests of the petitioner, which should follow more as a honour to him rather than any pecuniary consideration. Left with no alternative, the petitioner filed Civil Writ Petition No. 12527 of 2003. This Court disposed of the said writ petition with a direction to decide the representation filed by the petitioner by passing a speaking order within three months. Then followed, the order dated 5th January, 2004, rejecting the claim of the petitioner for grant of Army Special Freedom Fighter Pension. The ground on which the claim is rejected is the same i.e the absence of particulars of the petitioner in the notification issued by the Ministry of Defence. The petitioner rightly complains that no one is looking into the correction carried out in a joint meeting of authorities and the freedom fighters Committee on 13th November, 1997, where it was decided to change the name of 3/12 Punjab Regiment to that of Royal Frontier Force. Grievance even further is that the affidavits dated 17th November, 2000 has not been taken into consideration. The petitioner, as such, is again before this Court through the present writ petition.

(7) There is nothing common in facts in all the three cases except that these reflect the common least bothered attitude of bureaucrats going to the extent of being careless on the part of the authorities who are dealing with the cases of freedom fighters. They need to realise that these persons did so much for us all to enjoy the fruits of freedom as we have today. As already noticed, this certainly is not a way to express our gratitude towards those who did not care for their comforts and did something extraordinary, so that we are able to enjoy the flow of freedom. The purpose of the scheme and the spirit behind it perhaps is not being realised by those who are dealing with such like cases. They need to remind themselves that such cases are not normal cases

of grant of pension governed by any pensionary rules and limitations. This Scheme was introduced on the occasion of 25th Anniversary of independence by Government of India with effect from 15th August, 1972 and was named as Freedom Fighters Pension Scheme. This Scheme was renamed as Swantarta Sainik Samman Pension Scheme, in the year 1980. The copy of the scheme has now been placed on record by Union of India as Annexure R-7 in Civil Writ Petition No. 3668 of 1997. A perusal thereof would show that the scheme is meant from grant of pension to all deserving cases of freedom fighters. This pension was to commence with effect from 15th August, 1972. It was specifically provided that the families of martyrs or those freedom fighters, who are no longer alive, will also receive such pension. This pension was normally for the life time of the recipients and a meager sum of Rs. 200/- was allowed as a pension. The family of the freedom fighter was also defined to include mother, father, widow, widower and unmarried daughters etc. Those eligible for grant of such pension were also enumerated in the scheme itself. As per the eligibility criteria, the persons whose properties were confiscated/attached or sold for participation in the national movement were also made eligible for grant of this pension. The persons eligible for pension were required to apply in duplicate on the prescribed proforma alongwith the documents. The Freedom Fighter Pension Scheme underwent a change with effect from 1980. As already noticed, it came to be called as 'Samman Pension'. It is mentioned in Annexure R-7, that it is extended to all freedom fighters as token of Samman. The income ceiling of Rs. 5,000 per annum or less for being eligible for pension was removed. The eligibility to get Samman Pension was sufferance of minimum six months imprisonment. The meaning of actual imprisonment was also explained in the Scheme. In 1985, the Scheme came to be named as 'Swatantrata Sainik Samman Pension' and made applicable to those, who participated in Arya Samaj Movement which took place in former Hyderabad State.

(8) The other salient features, which are relevant to decide the present writ petitions may also be noticed. The eligibility criteria is regulated by Para 4 of the Scheme. Explanation has been given under the clause of imprisonment to say that the detention under the orders of a competent authority will also be considered as an imprisonment.

Period of normal remission upto one month is to be treated as a part of actual imprisonment. Under trial period where the trial ends in conviction is also to be counted towards actual imprisonment suffered. The broken period is to be totalled up for computing the qualifying period. Criteria for treating a person having remained underground is also provided. A person who has lost his job in Central or State Government for participation in the National Movement is also held eligible for grant of pension. It is also defined that a martyr is a person who died or who was killed in action or in detention or was awarded capital punishment while participation in a National Movement for emancipation of India. It will include an Ex.INA or Ex.Military person who died fighting the British. It may also need a notice that apart from the main stream of the liberation struggle, the movement/mutinies, which were directed against the British (French in case of Pondicherry and Portuguese in the case of Goa), with the freedom of country as its ultimate goal are also treated as a part of National Freedom Struggle for the purpose of grant of pension unless any such movement is specifically decided as not qualifying for grant of Samman Pension. Movement for merger of erstwhile princely States within the Indian Union after 15th August, 1947 is also considered as a part of National Freedom Movement for the purpose of grant of this pension.

(9) The evidence which would be required to substantiate the claim has also been laid down in the Scheme itself. To substantiate the proof of imprisonment/detention, an applicant is required to get a certificate from the concerned jail authorities, District Magistrate or the State Government and in case of non-availability of such certificate, co-prisoner's certificate from a sitting M.P. or M.L.A. or an Ex.M.P. or Ex.M.L.A., specifying the jail period. To show that one had remained underground, documentary evidence by way of Courts's/Government's order proclaiming the applicant as an offender, announcing an award on his head or for his arrest or ordering his detention is required. Alternatively, substitute is a certificate from a veteran freedom fighter who had themselves undergone imprisonment for five years or more if official records are not forthcoming due to its non-availability. Order of internment or externment or any other corroboratory documentary evidence to show internment or externment is to be provided. This

aspect can also be certified by a prominent freedom fighter as is in the case of person having remained underground. The Scheme has also made a provision to show a proof of loss of a job or property and the manner in which this pension is received etc.

(10) The Scheme, thus, had made a comprehensive provision regulating all eventualities. In fact, there should not be any difficulty in applying the provisions of the Scheme to decide the cases of eligible persons. Still, the authorities would dither and make this Samman Pension a matter of litigation and a combatant bout with the Swatantrata Samanis who are required to be conferred this Samman. It is not without reason that even the Hon'ble Supreme Court has to express its anguish on the bureaucratic attitude adopted by the Government while dealing with such cases. The person dealing with this Pension, which is a Samman Pension, should and is expected to realise that it is an honour which is bestowed on a freedom fighter and is not to reward or compensate the freedom fighter. He should not be, thus, made to beg for it. If the person who had filed reply to defend these cases had gone through the observation made by the Hon'ble Supreme Court in **Mukund Lal Bhandri and Others versus Union of India and Others, (1)**, perhaps he may have adopted a different attitude. The Hon'ble Supreme Court says :—

“As has been pointed out above, the Scheme was introduced in 1972 on the occasion of the Silver Jubilee of our National Independence. It is not suggested that some of the freedom fighters were not in need of financial assistance prior to that date. When the Scheme came into force for the first time, it was also restricted to those who were in need of such assistance and hence only such freedom fighters were given its benefit, whose annual income did not exceed Rs. 5,000. It is only later, i.e., from 1st August, 1980, that the benefit was extended to all irrespective of their income. The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all

(1) J.T. 1993(3) S.C. 342

for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively.”

(11) This object was again explained by the Hon’ble Supreme Court in **Gurdial Singh versus Union of India and Others, (2)**. “The scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from the foreign country is very cumbersome and expensive. Keeping in mind the object of the scheme, the concerned authorities are required that in appreciating the scheme for the benefit of freedom fighters a rationale and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the scheme are supposed to be such persons who had given the best part of their life for the country.”

(12) In **Gurdial Singh's case** (*supra*), Hon'ble Supreme Court has laid down a criteria regarding standard of proof needed for deciding such claims. The relevant observations are as under :—

“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 required to be followed while determining the merits of the case of a person seeking under the scheme. It should not be forgotten that the persons intended to be covered by scheme have 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 touch-stone 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.”

(13) Taking up the cases, one by one, it can be noticed that bureaucratic approach seems to be at full play while denying the claim of the respective petitioners. The authorities have resorted to hyper-technical approach in rejecting their claims. In the case of Smt. Balbir Kaur Malhi, the facts are not in much dispute. She is wife of late L. Hawaldar Kuldip Singh. It is not even dispute that the husband of the petitioner had been a sufferer on being sent to New Guinea as part of INA. The petitioner is denied pension only on the ground that her husband continued to serve after independence and was discharged in the year 1955 on his own request. The second reason advanced in that

Army record of office Ramgarh Cantt. does not indicate if the husband of the petitioner was associated with INA and that the recommendation of General Mohan Singh are available in the case of other co-sufferers and not in the case of husband of the petitioner. In the Scheme, it is nowhere provided that this pension is to be granted to only those sufferers who had been sent to New Guinea being part of INA and were not released or discharged from the Indian Army. This line of reasoning apparently has been invented by the authorities with the aim to deny the pension, which is certainly due to the petitioner, being wife of a person who had undergone the sufferance facing hardships, starvation etc. The respondents can not deny that some of the persons who had been co-sufferers of the husband of the petitioner had been granted this pension. It has specifically been averred by the petitioner that none of those who have been sanctioned this pension, had been released or discharged from the Indian Army either in 1946 or 1947. The third reason in rejecting the claim of the petitioner is totally misconceived and based on factual inaccuracies. The petitioner has clearly mentioned that Jagat Singh, a Member of a Freedom Fighter Committee (INA) had prepared a list of those volunteers who had joined INA and who had been sent to New Britain or New Guinea. The name of the husband of the petitioner appears at Sr. No. 225 whereas the names of other four persons mentioned by the petitioner as similarly situated is also reflected in the list at Sr. Nos. 198, 16, 226 and 200. There is no evidence placed by the respondents on record to show if General Mohan Singh had given any list, which would not contain the name of husband of the petitioner. The petitioner, as such, is justified in crying foul against the attitude and the approach adopted by the respondents in rejecting her claim.

(14) The impugned order cannot be sustained on any of the reasons for which it is made and as such, deserves to be set-aside. The impugned order, dated 16th October, 1996, is accordingly set-aside. The petitioner is held entitled to grant of Sainik Samman Pension. In terms of the Scheme introduced by the Government and in terms of the law laid down by the Hon'ble Supreme Court in the case of **Mukand Lal Bhandari** (*supra*), the pension is admissible to the petitioner with effect from the date of her application, which is 30th June, 1978. Since the

petitioner has been denied her rightful dues, the arrears due to her on account of grant of this pension would carry an interest @ 9% from the date it is due to the date of payment.

(15) Coming on to the case of petitioner, Des Raj Pardeshi, it can be seen that the action of the respondents here also is totally unjustified, arbitrary and whimsical. The only reason given in support of the order of rejection is that the petitioner had not produced any acceptable evidence in support of his claim. This is followed by another communication, dated 3rd October, 2001 where some reasons are found disclosed. It is noticed that period of imprisonment at Faridkot Jail is for 3 months and 6 days. The claim of the petitioner for his imprisonment at Nabha Jail has not been accepted as his name is not found mentioned in the list of persons imprisoned in the said jail during 1946-47. His claim regarding underground period and suffering is rejected on the ground that it is from Police Station Jaitu, which is not acceptable. It is not understood as to how the application, dated 17th August, 2001 of the petitioner was ignored and not taken into consideration. As per this representation, the case of the petitioner was verified by the following freedom fighters :—

- “(i) Shri Parma Nand, Jhansi, President, All India Freedom Fighters Sangh.
- (ii) Seth Ram Nath, Ex. Minister Pepsu, Freedom Fighter, President, Erstwhile Nabha State Parja Mandal and Chairman, Punnjab Government, Regional Committee.
- (iii) Comm. Ram Kishan, Ex. Chief Minister, Punjab.
- (iv) Ch. Rishal Singh, Freedom Fighters, President, Freedom Fighters Association, District Jind (Co-Prisoner in Faridkot Jail).
- (v) Master Mansha Ram, Freedom Fighter, President, Punjab Freedom Fighter Committee, Punjab.
- (vi) Shri Durga Dass, Freedom Fighters, Cashier, Punjab Freedom Fighter Committee, Punjab.

(16) Though the reference is made to the view taken by the Government of Haryana but no allowance has been given to the opinion expressed by State Advisory Committee of the Haryana Government which had recommended the case of the petitioner, finding that he had undergone a period of 1 year and 4 months imprisonment. The petitioner has also made reference to the certificates of VIP co-prisoners, pensioners, Superintendents Jail, Nabha and Faridkot to show that he had undergone suffering and period of imprisonment for 1 year and 4 months. The petitioner has also placed on record a certificate from Risal Singh, freedom fighter, who is President of District Jind Swatantarta Sainik Samman Samiti. He has certificate that the petitioner had remained in jail for 8 months. Reference can also be made to certificate, Annexure P-2, given by Ram Nath Seth and Annexure P-3, Mansa Ram, Master. It is required to be noticed and appreciated that Superintendent, Maximum Security Jail, Nabha, had given a certificate on an application given by the petitioner that admission register of undertrials pertaining to the period the petitioner had remained in the said jail, is not available in records. In this background, reasons given by the respondents in rejecting the claim of the petitioner that his name is not mentioned in the list received from Jail at Nabha obviously is without justification. It is required to be seen that the petitioner perhaps had not remained at Nabha as a convict but as an under trial. His name accordingly would not be found mentioned in those who had been kept in jail as convict prisoners. In the absence of jail records, the alternative mode of certification by co-prisoners or any prominent freedom fighter would have sufficed. No allowance appears to have been given to the certificate given by prominent freedom fighters in favour of the petitioner and also to the recommendation of the Haryana Swatantarta Sainik Samman Samiti, copy of which is on record as Annexure P-9. I am of the considered opinion that the petitioner has been able to substantiate his claim for his participation in the freedom movement and also in regard to his imprisonment undergone at District Jails Faridkot and Nabha. The order, rejecting his claim, is made while ignoring the relevant material which has to be taken into consideration in terms of the policy formulated

by the Government and as such, the same cannot sustain. Normally, in such like cases the option available before the Court would have been to set-aside the impugned order and direct re-consideration of the case of the petitioner in the light of the evidence and the material placed on record. Since the petitioner has already made this as a second round just to get the Samman, it would not be appropriate to make him further wait and undergo another round of litigation due to insensitivity of the authorities in dealing with such matters. I would accordingly set-aside the impugned order dated 6th September, 2001 (Annexure P-17) and order dated 3rd October, 2001 (Annexure P-18) and direct that the petitioner has made out a case for grant of pension, which is due to him under the Scheme and would order that the same be released to him from the date it is due i.e. the date of the application in terms of the law laid down by the Hon'ble Supreme Court in the case of **Mukand Lal Bhandari** (*supra*). The arrears due to the petitioner in this case would also carry interest @ 9% per annum from the date it is due to the date of payment.

(17) The case of Sawaran Singh, petitioner in Civil Writ Petition No. 2766 of 2004, as already noticed, is slightly different. The petitioner in this case has made a prayer for grant of special pension to him, being an Ex.Army person, who had revolted against the British authorities. The grant of this pension, apparently is also regulated by the same scheme i.e. Freedom Fighter/Sainik Samman Pension. This can be seen from Annexure P-7, which is an extract of the minutes of the Joint Committee of the Freedom Fighters and officials held on 13th November, 1997. It would be advantageous to reproduce the minutes of this meeting, which are as under :—

“Ex. Army Personnel covered by the special pension scheme should be brought under the Swatantrata Sainik Samman Pension Scheme as per the recommendation made in the last Joint Committee Meeting.

Further, the name of 3/12 Punjab Regiment may be changed as Royal Frontier Force and 16-20 persons whose details could

not be verified by Ministry of Defence may be granted pension on the basis of certificates given by the Special Pensioners.”

(18) In fact, this is the same minutes and a decision which has been heavily relied by the petitioner to say that the name of 3/12 Punjab Regiment was directed to be changed as Royal Frontier Force with the further recommendation that 16 to 20 persons whose details could not be verified may be granted pension on the basis of a certificate given by the special pensioners. According to the petitioner, this change is not being noticed and as such, his claim has been rejected on a totally inappropriate ground that the Ministry of Defence has not been able to furnish any verification report. It would have been a different matter if, on verification, the claim of the petitioner would have been found not made out. Such an indifferent attitude towards a person who sacrificed his life for the sake of nation ? One may need to appreciate that for a trained soldier it is very difficult to resort to a mutiny against a alien ruler. Instead of enjoying the comforts of service, the petitioner chose a difficult path for which he faced a Court martial and a sentence for transporation of life. He had undergone an imprisonment of almost seven years and in return, he is just praying for a sum of Rs. 200/-/ 300/- as a Samman being a Freedom Fighter Pension. Beni Ram, Under Secretary to the Government of India, who has expressed his regrets and inability to admit the claim of the petitioner can not realise the agony, torture and suffering the petitioner would have undergone for the cause of getting freedom for this Nation. He also needs to go through the observations made by the Hon'ble Supreme Court, as reproduced above, to understand the nature and purpose of the Scheme as well as the object and the standard of proof required in such cases. He obviously has not taken any care to notice the decision taken in the Joint Committee meeting on 13th November, 1997, whereby the claim of 16 to 20 persons, which could not be verified by the Ministry of Defence were to be granted pension on the basis of the certificates given by the Special

Pensioners. If he had taken a bit of a care, then he would have taken into consideration the affidavit given by Bhagwant Singh, Freedom Fighter, who had been a co-prisoner of the petitioner at Selular Jail, Andaman from October, 1940 to 10th February, 1942. As per this certificate, Bhagwant Singh was also the co-prisoner of the petitioner at Indore Jail from 23rd May, 1942 to September, 1946. Bhagwant Singh is a recipient of a pension from the Central Government as well as from the Punjab Government. How could this evidence be ignored except for totally indifferent attitude of those dealing with the cases. I am of the considered view that this evidence in the light of decision of the Joint Committee referred to above would be sufficient enough to admit the claim of the petitioner as a Freedom Fighter and for grant of pension to him under the Scheme as formulated. There is no other reason for which the petitioner has been declined this Samman. In my view, he deserves it. He cannot be deprived from this Samman any more on any of the consideration that has weighed with the authorities so far.

(19) The impugned order dated 5th January, 2004, rejecting the claim of the petitioner, as such, cannot be sustained and the same is set-aside. Direction is hereby issued for grant of Sainik Samman Pension due to the petitioner. Further direction is to the effect that the pension be released to the petitioner from the date he had moved application in this regard and the arrears be released to him alongwith 9% interest from the date it is due to the date of payment.

(20) The above-noted three writ petitions are accordingly allowed in the terms as noted. The respondents are directed to calculate and release the pension to the respective petitioners within a period of three months from the date of receipt of copy of this order. I am refraining from awarding exemplary costs in these cases since I have directed release of pension with interest.