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IN THE HIGH COURT OF JUDICATURE AT PATNA

(LETTERS PATENT APPELLATE JURISDICTION)

L.P.A. No. _____ of 2014.

(Arising out of C.W.J.C. No. 9072/2010).

Ram Kripal Mandal.....Petitioner-Appellant.

Versus

The Union of India & Others.....Respondents.

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Ram Kripal Mandal.....Petitioner-Appellant.

Versus

The Union of India & Others.....Respondents.

SYNOPSIS

PRAYER:-

This letters Patent Appeal is directed for setting aside the impugned judgment dated 11.12.2013 passed by Hon'ble Mr. Justice Mihir Kumar Jha in C.W.J.C. No. 9072/2010, whereby the Hon'ble Single Judge has been pleased to dismiss the writ application without taking into consideration the pivotal ground that the earlier writ application so filed by the appellant was allowed by an order dated 02.02.2009 passed in C.W.J.C. No. 14975/2005, whereby the freedom Fighter Pension cancellation order in respect of the appellant was set aside and the matter was remitted back to the respondent

concerned, who again issued the same order containing the same issue as also the vital aspect of the matter could not be taken in to account by the Hon'ble Single Judge that the appellants Freedom Fighter pension was suspended and it was restored on being satisfied ~~that~~ ^{with} the query but the impugned order of the cancellation of the Freedom Fighter pension reopened the same issue despite the said fact.

Chronological date of events:-

- 23.05.89- Vide letter No. CZ/114 the petitioner was granted F.F. Pension with effect from 01.08.1980.
- 21.12.95- Appellant was disqualified from getting F.F. Pension and was directed to file show-cause.
- 11.11.97- On being satisfied with the explanation so furnished by the appellant the Under Secretary directed the Treasury Officer to pay F.F. pension to the appellant with retrospective effect.
- 16 Sep. 05- The petitioner's F.F. Pension was again cancelled.
- 02.02.09- C.W.J.C. No. 14975/2005 preferred by the appellant was disposed of with direction to the respondent concerned to consider the matter.

- 19.08.09- The Deputy Secretary issued show-cause^{notice} to the appellant for cancellation of F.F. pension and its recovery.
- 08.09.09- The appellant filed his show-cause.
- 31 Dec. 09- The Under Secretary issued letter to the Under Secretary, Home (Special) Department, Govt. of Bihar stating therein that it is not possible to restore the F.F. Pension of the appellant on account of fake G.R. Case.
- 23.02.10- The appellant's son got letter^{of D.H. Madhupura} dated 01.04.1987 under Right to Information Act.
- 11.12.13- C.W.J.C. No. ⁹⁰⁷²9702/2010 preferred by the appellant was dismissed without considering his grievance in right perspective.

Hence, this Letters Patent Appeal.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(LETTERS PATENT APPELLATE JURISDICTION)

L.P.A. No. _____ of 2014.

(Arising out of C.W.J.C. No. 9072/2010).

In the matter of an appeal Under
Clause 10 of the Letters Patent
of Patna High Court Rules;

And

In the matter of:-

Ram Kripal Mandal, son of late Babulal Mandal, resident of
Village & P.O.- Khurasan, P.S.- Salkhua, District-
Saharsa.

.....Petitioner/Appellant.

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, New Delhi.
2. The Deputy Secretary, Ministry of Home Affairs, Govt. of India, F.F.R. Division-C.Z. Section, Freedom Fighter Cell, 1st Floor, Lok Nayak, Khan Market, New Delhi-3.

3. The Under Secretary, Ministry of Home Affairs, Govt. of India, F.F.R. Division-C.Z. Section, Freedom Fighter Cell, 1st Floor, Lok Nayak, Khan Market, New Delhi-3.
4. ^{The State of Bihar through} The Director-cum-Deputy Secretary, Home (Special) Department, Govt. of Bihar, Patna.
5. The Under Secretary to the Govt., Home (Special) Department, Govt. of Bihar, Patna.
6. The Joint Secretary, Home (Special) Department, Govt. of Bihar, Patna.
7. The District Magistrate-cum-Collector, Madhepura.
8. The District Magistrate-cum-Collector, Saharsa.
9. The Sub-Divisional Officer, Simri, Bakhtiyarpur, District-Saharsa.
10. The Treasury Officer, Saharsa.

.....Respondents-Respondents.

To,

The Hon'ble Ms. Justice Rekha M. Doshit, the Chief Justice of the High Court of Judicature at Patna and her Companion Justices of the said Hon'ble Court.

The humble memo of appeal on behalf of the Appellant above named;

Most Respectfully Sheweth:-

1. That, this letters Patent Appeal is directed for setting aside the impugned judgment dated 11.12.2013 passed by Hon'ble Mr. Justice Mihir Kumar Jha in C.W.J.C. No. 9072/2010, whereby the Hon'ble Single Judge has been pleased to dismiss the writ application without taking into consideration the pivotal ground that the earlier writ application so filed by the appellant was allowed by an order dated 02.02.2009 passed in C.W.J.C. No. 14975/2005, whereby the freedom Fighter Pension cancellation order in respect of the appellant was set aside and the matter was remitted back to the respondent concerned, who again issued the same order containing the same issue as also the vital aspect of the matter could not be taken in to account by the Hon'ble Single Judge that the appellant's Freedom Fighter pension was suspended and it was restored on being satisfied ~~with~~ ^{with} the query but

the impugned order of the cancellation of the Freedom Fighter pension reopened the same issue despite the said fact.

2. That, the appellant filed the writ application as stated above for issuance of a writ in the nature of certiorari or any appropriate writ for quashing the impugned order dated 31.12.2009 contained in letter issued by respondent Under Secretary, Ministry of Home Affairs and the same was enclosed as Annexure-8 to the writ application, in the garb of the implementation of the order/direction of this Hon'ble Court dated 02.02.2009 passed in C.W.J.C. No. 14975/2005 preferred by the appellant and the same cancellation order was issued by the impugned order which is Annexure-8 to the main writ application.
3. That, the appellant being freedom fighter, which honour was given to him after thorough enquiry and recommendation sent to the Ministry of the Home Affairs for granting freedom fighter pension. However, the appellant was finally recommended by the State Advisory

Committee and on completion of all the requisite formality the appellant was honoured by granting freedom fighter pension with effect from 01.08.1980 vide letter No. CZ/114 dated 23.05.1989. However, the appellant was getting his freedom fighter pension accordingly with effect from 01.08.1980 but all of a sudden the appellant received a letter dated 21.12.1995 issued by respondent Under Secretary, Ministry of Home Affairs, whereby the appellant was disqualified from getting F.F. Pension on account of use of photo copy of the G.R. Case No. 689/41-42 in which he was made accused, has been found fabricated since the record of G.R. Case was not available in Madhepura record room. However, by letter dated 21.12.1995 as aforesaid, the appellant's F.F. Pension was suspended and the appellant was directed to show-cause as to why the freedom fighter pension granted to him be not cancelled. Copy of the said letter is annexure-1 to the main writ application.

4. That, the appellant in compliance to the aforesaid order submitted his show-cause petition and furnished his

explanation in respect of the said allegation. However, after being satisfied with the explanation, the respondent Under Secretary, Ministry of Home Affairs issued letter dated 11.11.1997 addressed to the Accountant General (A & E), copy whereof was also forwarded to the appellant for apprising that his freedom fighter pension has been restored and the Treasury Officer concerned be directed to pay the freedom fighter pension with retrospective effect i.e. from the date of suspension. The said letter restoring the F.F. Pension of the appellant is made annexure-2 to the main writ application.

5. That, the appellant was being paid F.F. Pension after due enquiry and verification as aforesaid particularly in respect of G.R. concerned and purportedly the same was found quite genuine, as such the appellant's suspended F.F. Pension was restored to its original form with retrospective effect.
6. That, the appellant was again subjected to another show-cause on different grounds that the records of the said criminal case reveals that it was some sort of private

litigation between the local vendor and the petitioner which was related to the case of the freedom fighter movement. However, the appellant submitted his reply to the said show-cause notice which resulted into cancellation of F.F. Pension of the appellant with effect from the date it was initially sanctioned i.e. with effect from 01.10.1980. However, the appellant was also communicated the said decision in which it is asserted that the authenticity of the said G.R. case is not established on the ~~same~~^{short} point i.e. the copy of the G.R. is not verified on which the appellant based his claim. Hence, the pension cannot be granted. Copy of the said letter is contained in Annexure-3 to the main writ application.

7. That, the appellant being aggrieved by the aforesaid order, preferred C.W.J.C. No. 14975/2005, which was allowed by an order dated 02.02.2009 passed by Hon'ble Mr. Justice Mihir Kumar Jha and the impugned order of cancellation of F.F. Pension dated 16th September, 2005 cancelling the freedom fighter pension of the appellant

was set aside and the matter was remitted back to the Govt. of India to consider the matter on certain point and dispose of the matter within the fixed time. Copy of the order dated 02.02.2009 passed in C.W.J.C. No. 14975/2005 is annexure-4 to the main writ application.

8. That, pursuant to the said order passed in favour of the appellant by this Hon'ble Court, the Deputy Secretary issued show-cause notice dated 19th August, 2009 to the appellant mentioning ground for cancellation of F.F. Pension and recovery of the pension already drawn by the appellant be made. However, the appellant submitted reply on 08.09.2009 to the show-cause notice dated 19th August, 2009 to the respondent Under Secretary. However, show-cause notice and its reply are Annexures-5 and 6 respectively to the main writ application.
9. That, the appellant was surprised to receive the impugned letter dated 31st December, 2009 addressed by the respondent Under Secretary to the Under Secretary, Home (Special) Department, Govt. of Bihar, copy whereof was also forwarded to the petitioner whereby it is

communicated that it is not possible to restore the F.F. Pension of the appellant on this premise alone that the letter of the District Magistrate, Madhepura dated 12.12.1986 states that in absence of the record, it is not possible to verify the ^{enti} ~~cont~~ of the copy of the G.R. in question and further ^{the} letter of the District Magistrate, Madhepura is shown to have indicated that the original record of the concerned G.R. was never received in his office. Thus, on the ground of forgery the appellant's F.F. pension has been cancelled, which is completely erroneous and illegal.

10. That, the appellant's show-cause and the supplementary show-cause petition were considered by the respondent concerned and the impugned letter/order dated 31st December, 2009 was communicated to the appellant by the respondent Under Secretary to the effect that it is not possible to restore the F.F. pension to him. The said impugned order of the cancellation of the F.F. pension is annexure-8 to the main writ application.

11. That, since the respondent ministry of Home Affairs declined to restore the F.F. pension of the appellant on account of fake G.R. Case, as such the son of the appellant filed an application before the District Information Officer, Madhepura under Right to Information Act for supply of letter ^{of D.H., Madhepura} dated 01.04.1987. However, the said letter of the District Magistrate, Madhepura was provided to the appellant. The said letter was communicated through letter dated 23.02.2010. Copies of the said letters are contained in Annexure-9 to the main writ application.
12. That, the instant writ application was heard and dismissed by the impugned order dated 11.12.2013 passed by Hon'ble Mr. Justice Mihir Kumar Jha in C.W.J.C. No. ⁹⁰⁷² ~~9702~~/2010.
13. That, while passing the impugned order, the Hon'ble Single Judge did not take into account that the appellant who is now aged about 92 years and he is being compelled to knock the door of this Hon'ble Court time and again on the same point and issue concerning the

genuineness of G.R. case which has already been confirmed to be genuine as such on account of benefit of doubt, the appellant's F.F. Pension was restored with retrospective effect.

14. That, the appellant has not moved this Hon'ble Court earlier for setting aside the impugned order as aforesaid.

Being aggrieved by and dissatisfied with the impugned order/judgment dated 11.12.13 passed in C.W.J.C. No. 9072/2010 by Hon'ble Mr. Justice Mihir Kumar Jha, the appellant above named begs to move this Hon'ble Court, on amongst others, the following

GROUND S :-

- i) For that the Hon'ble Single Judge has erred in law as well as on facts.
- ii) For that the Hon'ble Single Judge has committed gross error of law by not deciding to grant F.F.

Pension in favour of the appellant on account of solitary fact that in the year 1995 itself show-cause notice was issued to the appellant in respect of the same charge and on the strength of satisfaction on the part of the respondent concerned, the appellant's F.F. pension was restored by order dated 11.05.1997 as also the Hon'ble Single Judge did not take into account the vital issue that the respondent concerned have unburied the same issue which was decided earlier one's for all and the appellant's F.F. pension was restored with retrospective effect.

- iii) For that the same issue was raised by the respondent concerned and the F.F. pension of the appellant was cancelled on the same ground though the Hon'ble Single Judge did not decide the matter by holding that the question of verification of G.R. in question is itself indicative of its genuineness as the letter so issued by the District Magistrate, Madhepura as annexed in the writ application is

based on G.R. Index, which was issued to the appellant under R.T.I. However, the Index is also part of the records as it contains the brief description of the police case, thus the certified copy of the G.R. concerned in respect of appellant so submitted by him is genuine based on the correctness of the said case/G.R. but the same was not taken into consideration by the Hon'ble Single Judge.

- iv) For that the Hon'ble Single Judge ought to have taken into consideration the letter issued by the then District Magistrate, Madhpura dated 01.04.1987 contained in Annexure-9 to the main writ application, which clearly shows that the verification of the said G.R. was made on the basis of the G.R. Index, as such its genuineness can not be suspected being part of the record.
- v) For that the Hon'ble Single Judge ^{ought} ~~could~~ to have noticed the irregular practice of the respondent concerned to harass the old person like the appellant in the

manner so held in the two writ applications as aforesaid preferred by the appellant as also the present appeal.

- vi) For that the Hon'ble Single Judge has failed to apply its judicial mind that the appellant being aged about 92 years is again being compelled to move this Hon'ble Court in appeal on account of non-consideration by the Hon'ble Single Judge, who in casual manner dismissed the writ application preferred by the appellant by not deciding the vital fact as also law involved in the said writ application.
- vii) For that the Hon'ble Single Judge ought to have taken into consideration the fact that the similarly situated several persons, whose case were based on the respective G.R., this view was taken that the Index Register itself is genuine evidence, as such they are still continuing to get the F.F. pension.

- viii) For that in any view of the matter the impugned order reveals that the error is manifest in the same as the serious issue in the writ application in respect of Swatantrata Senani Samman Pension was cancelled on account of fake document without verification of its genuineness.
- ix) For that in any view of the matter the impugned order passed by the Hon'ble Single Judge is fit to be set aside.

It is, therefore, prayed that your lordships may graciously be pleased to admit this memo of appeal, issue notice, call for the records and after hearing the parties be further pleased to set aside the impugned order dated 11.12.2013 passed in C.W.J.C. No. 9072/2010 by Hon'ble Mr. Justice Mihir Kumar Jha.

And/or

Pass such other order or orders as
your Lordships may deem fit and
proper in the facts and circumstances
of the case.

And for this, the appellant shall ever pray.

AFFIDAVIT

I, Ram Kripal Mandal, aged about 93 years, son of late Babulal Mandal, resident of Village & P.O.- Khurasan, P.S.- Salkhua, District- Saharsa, do hereby solemnly affirm and state as follows:-

1. That, I am appellant in this Memo of appeal and as such am well acquainted with the facts and circumstances of the case.
2. That, the contents of this petition have been read over and explained to me in Hindi which I have fully understood the same and they are true to my knowledge and belief.

~~XXXXXXXXXX~~

CERTIFICATE

Hereby certify that the grounds set forth above are good grounds for Letters Patent Appeal.

My instructions are that the matter out of which revision arises has not come before this Hon'ble Court earlier.

I further certify that no notice either to the Attorney General of India or to the Advocate General of Bihar is necessary to be served under Order 27A, Rule 1 of the Code of Civil Procedure.

Advocate.

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9072 of 2010

Ram Kripal Mandal, S/O Late Babu Lal Mandal, Village & P.O. Khurashan, P.S. Salkhua, District-Saharsa.

..... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, New Delhi.
2. The Deputy Secretary, Ministry of Home Affairs Govt. of India, F.F.R. Division-C.Z Section Freedom Fighter Cell First Floor, Lok Nayak Khan Market New Delhi-3.
3. The Under Secretary, Ministry of Home Affairs, Govt. of India, F.F.R. Division-C.Z Section Freedom Fighter Cell First Floor, Lok Nayak Khan Market New Delhi-3.
4. The Director cum Deputy Secretary, Home (Special), Department, Govt. of Bihar, Patna.
5. The Under Secretary to Government, Home (Special), Department, Govt. of Bihar, Patna.
6. The Joint Secretary, Home (Special), Department, Govt. of Bihar, Patna.
7. The District Magistrate cum Collector, Madhepura.
8. The District Magistrate cum Collector, Saharsa.
9. The Sub-Divisional Officer, Simri Bakhtiyarpur, District-Saharsa.
10. The District Magistrate cum Collector, Saharsa.

..... Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra, Advocate.

For the State : Mr. Shashi Shakher Pd. Sinha, AC to GA 13

For the Union of India : Mr. Satya Prakash Tripathy, Sr. S.C.

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

6 11-12-2013

Heard learned counsel for the parties.

The prayer of the petitioner in this writ application

GOVT. OF BIHAR
 REGISTRATION, EXCISE & PROHIBITION DEPT.
 PATNA SCORE PATNA
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 INDIA
 Authorization/No. 2676
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reads as follows:

"..... for quashing the impugned order contained in letter dated 31st December 2009 issued by the Under Secretary, Ministry of Home Affairs (respondent no. 3) contained in Annexure-8 communicated to the Under Secretary, Govt. of Bihar, Home (Special), Department (Respondent no. 2), the copy whereof has been forwarded to the petitioner, whereby in the garb of implementation of the order dated 02.02.2009 passed by this Hon'ble Court in CWJC No. 14975/2005 preferred by the petitioner has been decided not to restore the Freedom Fighter Pension sanctioned/granted to the petitioner subject from 01.08.1980, whereas the impugned order has been passed in contravention of the order passed as aforesaid passed in favour of the petitioner in the earlier writ application."

Learned counsel for the petitioner has submitted that when the order, depriving the petitioner from payment of Freedom Fighter Pension, was earlier quashed by this Court vide order dated 02.02.2009 in CWJC No. 14975, the same ground could not have been reiterated for rejecting the case of the petitioner. He has submitted that a certified copy of the record of G.R. No. 683/41 was produced by the petitioner on which the District Magistrate, Saharsa had made recommendation and, therefore, its authenticity cannot be questioned by the Government of India.

In this case, a counter affidavit has been filed on behalf of the Deputy Secretary to the Home (Special) Department Government of Bihar as also by the Under Secretary to the Government of India, Ministry of Home (FFR Division-CZ Section) wherein, while supporting the impugned order, a clear stand has been taken that in absence of the authentic documents relating to confinement of the petitioner, the petitioner will not be entitled for grant of Freedom Fighter Pension.

In the considered opinion of this Court, the Scheme of Freedom Fighter Pension is duly circumscribed by certain requirement which has to be fulfilled by the person claiming such

pension. One of them is the proof of confinement in jail custody in relation to some incident during freedom struggle i.e. prior to independence. The petitioner, in fact, has claimed such pension on the basis of his being in custody in connection with G.R. No. 683/41. The respondents have sought to make verification of such claim but have found that there is no authentic document to support the same.

In fact, on an earlier occasion the pension of the petitioner was cancelled by an order dated 16.09.2005 which was assailed in CWJC No. 14975 of 2005, this Court having found that the grounds taken in the show cause notice were entirely different to the ultimate reasons recorded in the impugned order of cancellation of pension. The Court had quashed the same on the ground of violation of principles of natural justice and had remitted the matter back to the Government of India to reconsider the case of the petitioner as would be apparent from the operative portion of the order of this Court dated 02.02.2009 relevant part whereof is quoted herein below:

"This Court is of the view that while it is true that even on the earlier occasion the petitioner was given a benefit of doubt while restoring his pension by an order dated 17.2.1997 but then in the subsequent notice dated 17.2.1998 not a word was said with regard to authenticity or otherwise of the document (G.R. Case No. 683 of 1941). Obviously, if that was not the ground in the show cause notice at least the impugned order as contained in Annexure-8 could not have been passed on the ground of lack of authenticity or verification of the records of G.R. Case No. 683 of 1941.

That being so, since the impugned order has been passed only on a ground which was never confirmed to the petitioner in show cause notice the same must be held to be in teeth of the principles of natural justice. accordingly, Annexure-8 is hereby set aside and the matter is remitted back to the Government of India to reconsider the matter and in the event the authorities would like to re-examine the matter on any other ground except those mentioned in the show cause notice dated 17th of February, 1998 they would be obliged to give a fresh show cause notice to the petitioner. Such action, if any, must be taken within a period of three months from the date of receipt/production of a copy of this order. It is however, made clear that if the respondents would rely only on the reasons mentioned in the show cause notice 17th of February 1998 then they would be at liberty to pass a fresh

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order without issuing any fresh show cause notice and only after considering the show cause reply filed by the petitioner.

In any event, since the payment of pension of the petitioner has been withheld from 1998, an appropriate decision in the matter must be taken within a period of six months from the date of receipt/production of a copy of this order."

It is not in doubt that the Government of India in compliance of the aforesaid order of this Court thereafter on 19th August 2009 had issued show cause notice wherein the petitioner was asked to explain as follows:

"In pursuance of the directions dated 02.02.2009 of the Hon'ble Patna High Court in the matter mentioned above, you are informed that the deficiencies have been observed in your claim for Central Pension and it is proposed to cancel the pension already sanctioned to you on following grounds:-

- i) The primary evidence on which the claim is based is a copy of G.R. No. 683/41.
- ii) As per District Magistrate, Madhepura's letter dated 12.12.1994 (copy enclosed) and O/o District Magistrate, Madhepura's letter dated 13.7.1995 (copy enclosed), the copy of the GR in question is not verified. Therefore, its authenticity is not established. Accordingly, the question of remaining any pension on the basis of the averments in the said copy of the GR do not even arise.
- iii) Thus, on the short point that the copy of the GR on which the claim is based is not verified, no pension can be granted (on the basis of this copy of the GR).
- iv) The pension of Shri Ram Kripal Mandal, accordingly, has to be cancelled on this very short point (of the copy of the GR in question not being verified).
- v) In the absence of verified & acceptable primary evidence, Shri Ram Kripal Mandal has also not furnished any secondary evidence (non-availability of records certificate and personal knowledge certificate) in support of his claimed underground suffering.

Accordingly, you are hereby given a 'Show Cause' as to why provisional pension sanctioned to you should not be cancelled on the grounds mentioned above and recovery be made of the pension already drawn by you.

You are required to submit your reply within 21 days of issue of this "Show cause Notice" failing which it will be presumed that you have no reply/comments to offer and decision will be taken on the basis of available records etc. to cancel the pension and to make recovery of the pension already drawn by you."

From the averments made in the writ application and the documents enclosed therein, it is also clear that the petitioner on 08.09.2009 had filed his show cause reply wherein all that was said by him in relation to the aforementioned show cause notice

was as follows:

" 4. It is reiterated that the sole ground for the proposed cancellation of my pension is the copy of G.R. Case No. 683/1941, whereas on early occasion also photo copy of the certified copy of the said G.R. Case No. 683/1941 was submitted before the Ministry as a result whereof the decision dated 11th November 1997 i.e. suspension order concerning payment of my pension was revoked. Though I am again compelled to enclose the copy of the certified copy of G.R. Case No. 683/1941, which is being enclosed in the show cause reply.

5. As regards letter dated 12.12.1986 from the D.M., Madhepura, it is submitted that the said letter was addressed to the Under Secretary, Home (Special) Department, Bihar, Patna, wherein it was reported that the photo copy of the certified copy of the G.R. Case No. 683/1941 is being enclosed, which has been issued by the D.M., Madhepura but the main record of the case is not available. The contents of the said letter does not indicate that the zerox copy of the certified copy of the G.R. Case No. 683/1941 is forged one. However it was the duty of the D.M., Madhepura to treat the said certified copy of the G.R. Case No. 683/1941 to be genuine one. Hence, the proposed cancellation of my pension on the said ground is not justified as also viable in the eyes of law.

In fact, the petitioner had also filed a supplementary show cause reply on 5.10.2009 wherein he had enclosed certain documents in support of his claim.

The impugned order, in fact, has been passed only after considering the show cause reply as well as the supplementary show cause reply filed by the petitioner wherein it has been held as follows:

"2. The points stated by Shri Ram Kripal Mandal and mentioned in para 1(i) to para 1(iii) above, relate to the documents/grounds on the basis of which pension case of Shri Mandal was initially recommended by the State Government and are not very relevant from the point of view of the issues raised in the show cause notice. As regards the contention of Shri Mandal stated in Para 1(iv) above, it may be stated that the letter of DM, Madhepura dated 12.12.1986 states that in the absence of the records, it is not possible to verify the contents stated in the copy of the GR and the letter of District Magistrate, Madhepura dated 13.7.1995 clearly indicates that the original record of the concerned GR was never received in their office. It clearly establishes that the documents on the basis of which the pension was sanctioned to Shri Mandal, were forged ones.

3. In view of the above, the clarifications offered by Shri Mandal cannot be considered satisfactory and cannot be accepted. Hence, Shri Mandal does not fulfill the eligibility conditions of the Swantranta Sainik Samman Pension Scheme,

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4. Therefore, it is not possible to restore the pension of Shri Ram Kripal Mandal.”

A question would, therefore, arise as to when the solitary document/paper on which the petitioner was claiming his payment of Freedom Fighter Pension is capable of being verified and the petitioner has also not produced any secondary evidence as specifically asked in show cause notice in paragraph 5, there would be little for this Court but to hold that the petitioner even otherwise would not be entitled for grant of Freedom Fighter Pension,

The issue, in fact, becomes more jinxed because the respondents in their counter affidavit have also taken a plea that there were two persons, one being Ram Kripal Yadav and the other Ram Kripal Mandal and the identity of the two could not be held to be of the same person, in absence of the record of G.R. Case No. 680/1941. In this regard, it would be also relevant to quote paragraph no. 25 of the counter affidavit of respondent nos. 1 to 3 which would itself go to show that the factum relating to the petitioner being a freedom fighter on the basis of his confinement in G.R. Case No. 683/1941, is seriously in doubt. Paragraph no. 25

of the counter affidavit of Government of India reads as follows:-

“25. That with regard to the averment in paras 15 & 16, it is submitted that the letter of Smaharnalaya, Madhepura dated 23.2.2010 enclosed a letter of the same office dated 1.4.1987 which is from DM Madhepura addressed to Director-cum-Deputy Secretary, Home (Special), Department Patna stating that verification reports in respect of GRs Nos. 649/8/42, 631/67/42, 683/41/42, 646/3/42, 902/137/42, 675/33/42, 755/112 were sent on the basis of GR registers. This position has already been stated in para 4 above and rather it was on the basis of this letter dated 1.4.1987 that pension was initially sanctioned to the petitioner vide letter dated 23.05.1989. But from the other letters of the District authorities it transpired that the position explained in the letter dated 1.4.1987 is a general statement without verifying the contents of the individual GRs. From this letter it cannot be construed that the contents of the copy of the extracts of GR 683/41 submitted by the petitioner were verified. On the other hand the letter of DM Madhepura dated 12.12.1986 has clearly stated that in

the absence of the original record it is not possible to verify the contents of photocopy of certified copy of GR 683/41. Further the letter of Prabhariupsamahar District Madhepura dated 13.7.1995 clearly mentions that the record of the concerned GR was never made available to Madhepura Abhilekhar. Thus, it becomes quite clear that the documents on the basis of which the pension was sanctioned in the Mandal were not verified from the office records and were not authentic ones. Hence, the decision of the answering respondent not to restore his pension was quite reasonable."

Thus, when the petitioner is not in a position to establish from any secondary evidence with regard to his confinement in jail custody in relation to freedom movement and the records of G.R. Case No. 683/41 is not available for verification, this Court would find it difficult to direct the Government of India to restore Freedom Fighter Pension of the petitioner. The photostat copy of a certified copy of a document which is incapable of being verified from its original, cannot be held as an authentic proof of the claim of the petitioner of being a freedom fighter. Such a decision has to be infact drawn by the authorities of Government of India which is bound follow the prescribed norms in a uniform manner for grant of such Freedom Fighter Pension. This Court, in fact, for this very purpose, had remitted the matter back to the Government of India and now finds that there is no error in the decision making process. The impugned order, therefore, cannot be said to bad either on fact or in law.

In the result, this writ application must fail and is, accordingly, dismissed.

Sd/- (Mihir Kumar Jha, J)

Sujit/-

APPOINTED TO BE THE JUDGE

S. Mukherjee
For Joint Registrar (d)
Patna High Court
Authorised 11/5 76 Act 1 of 1972

16.1.2014
0.5.2014