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ITEM No.2 Court No. 9 SECTION IVB
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.2342/2000

(From the judgement and order dated 09/07/1999 in CWP 11462/98
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

UNION OF INDIA & ORS. Petitioner (s)

VERSUS

MANOHAR LAL AZAD AND ANR. Respondent (s)

(With Appln(s). for c/delay in filing SLP)
(For Final Disposal)

Date : 02/11/2000 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SYED SHAH MOHAMMED Q
HON'BLE MR. JUSTICE S.N. PHUKAN

For Petitioner (s) Mr. AK. Srivastava, Adv. for
Ms. Sushma Suri,Adv.

For Respondent (s) Mr. Rajeev Sharma, Adv.

UPON hearing counsel the Court made the following
O R D E R

Delay is condoned.

Leave is granted.

The appeal is allowed.

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(S.Thapar) (Kanwal Singh) @@
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PS to Registrar Court Master@@
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The signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6210 OF 2000@@
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(Arising out of SLP(C)No.2342 of 2000)

Union of India & Ors. ...Appellant(s)

Versus

Manohar Lal Azad & Anr. ...Respondent(s)

O R D E R@@
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Delay is condoned.

Leave is granted.

The Union of India & Others - respondents 1to 3 in the Writ Petition - are in appeal before us assailing the order of the High Court of Punjab & Haryana in Civil Writ Petition No.11462 of 1998 dated July 9, 1999. By the impugned order the High Court quashed the order of respondent No.3 dated June 3, 1998 and held that respondent No.1 was entitled to grant of pension under Swantantarta Sainik Samman Pension Scheme 1980 (for short, the Samman Pension Scheme) with effect from 1.8.1980.

The first respondent applied to the first appellant for grant of pension under the said scheme. The third respondent, by a reasoned order, rejected the claim which was communicated vide letter No.27/F/2206/81-FF(PB)(NZ) dated Nil May, 1998 (June 3, 1998). That order was assailed by him before the High Court in the writ petition, noted above. The impugned order of the third respondent was quashed and the writ petition was allowed by the High Court on June 3, 1998, holding that the first respondent was entitled to pension. From the said order of the High Court this appeal arises.

Mr.A.K.Srivastava, learned counsel appearing for the appellants contends that, admittedly, the first respondent does not fulfil the eligibility criteria, therefore, the High Court was in error in quashing the order of the third appellant. Mr. Rajeev Sharma, learned counsel appearing for the first respondent, on the other hand, contends that the fact that Court awarded sentence of punishment of six months imprisonment to a freedom fighter is enough and that actually undergoing the imprisonment for the whole period is not necessary. He relied on the decision of this Court in Surja & Others Vs. Union of India & Others (JT 1994 (4) SCC 184) in support of his contention.

The short question that arises for consideration is whether the first respondent is entitled to pension under the Samman Pension Scheme.

The Samman Pension Scheme was introduced during the silver jubilee year by the Government of India. Indeed it is a modification of earlier scheme known as

Freedom Fighter s Pension Scheme of 1972 . From August 1, 1998, the benefit of the Samman Pension Scheme has been extended to all freedom fighters as a token of Samman to them. The eligibility criteria to earn pension under the Samman Pension Scheme is that one should be a freedom fighter. For purposes of this scheme a freedom fighter is defined in para 4 of the said scheme. Clause (a) of para 4 which is relevant for our purpose, is quoted hereunder :

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> (a) A person who had suffered a minimum imprisonment of six month in the mainland jails before independence. However, ex-INA personnel will be eligible for pension of the imprisonment detention suffered by them was outside India.

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A perusal of this clause makes it abundantly clear that what is germane is suffering a minimum imprisonment of six months in the mainland before independence but not merely suffering an order awarding imprisonment of six months by a competent court. Explanation 2 to para 4, however, treats the period of normal remission upto one month as part of actual imprisonment.

In the case of Surja & Ors. (supra) the writ petitioners were sentenced to imprisonment for a term exceeding six months. While they were undergoing sentence, without their praying for any remission, a general amnesty was declared by the then Nizam on his birthday. Consequently, the sentence was reduced and the petitioners were set free. It was in the backdrop of these facts that this Court observed :

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> On the facts of the case it would be appropriate to hold that each of the petitioners satisfied the condition for earning the benefit of pension and the fact that while undergoing sentence which was for a period beyond six months remission had been granted and they were let off earlier would not take away their right to earn person. Learned Attorney General appearing for the respondents has accepted this construction of this entitlement clause.

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From the above observation it is clear that on the peculiar facts of that case it was held that each of the petitioners therein satisfied the condition for earning the benefit of pension. We are unable to read that judgment as laying down that where a person has been sentenced to imprisonment for six months or more but if he comes out within a month or so, for whatever reason, without serving his sentence, he will still be a freedom fighter within the meaning of the scheme and eligible for the Samman pension. To say so, in our opinion, would amount to giving a go-by to the definition of the expression freedom fighter and substituting a new eligibility criteria for the scheme

enlarging its scope which is not only impermissible but also contrary to the spirit of the scheme framed on the basis of the material and keeping in mind the class of the political sufferers who would be the beneficiaries of the Samman Pension Scheme.

For these reasons, we are unable to sustain the judgment of the High Court under challenge. It is accordingly set aside. The appeal is allowed and the Writ Petition filed by the first respondent is dismissed. In the circumstances of the case, there shall be no order as to costs.

& & & & & & & & & & & & ..J.
(Syed Shah Mohammed Quadri)

& & & & & & & & & & & & ..J.
(S.N. Phukan)

New Delhi,
November 02, 2000.