

(1998) 11 P&H CK 0093

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1388 of 1997

Balwinder Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-11-1998

Acts Referred:

Citation : (1999) 1 RCR(Criminal) 556

Hon'ble Judges : R.L.Anand, J

Advocate : Rajesh Gumber, R.S. Randhawa, Advocates for appearing Parties

Judgement

R.L. Anand (Oral)

1. Balwinder Singh Sepoy No. 33669252, formerly Sikh Regimental Centre, Ramgarh has filed the present petition under Article 226 of the Constitution of India for issuing writ, order or direction for counting the period of his pretrial custody towards the sentence of life imprisonment awarded to him in view of the amended provisions of the Army Act.

2. The case set up by the petitioner is that he was tried by the court martial at Sikh Regiment Centre, Ramgarh and was transferred to Central Jail, Amritsar for undergoing the period of sentence of life imprisonment awarded to him by the court martial. He is serving the sentence. It has come to his notice that his pretrial custody is not being counted towards life imprisonment awarded to him. Thus it has caused serious prejudice. This is the short case which has been put up by the petitioner.

3. The defence of the respondents is that the benefit of provisions of Section 169A of the Army Act can only be given to those where the individual is awarded imprisonment by the court martial under the Army Act and not the sentence of life imprisonment as the two sentences are separate. As the petitioner is serving life imprisonment therefore, he cannot enjoy the benefit of Section 169 read with Section 123 of the Army Act.

4. After considering the submissions raised by the learned counsel for the parties I am of the considered opinion that the petitioner is entitled to the benefit of pretrial custody undergone by him though he has been ultimately sentenced to undergo life imprisonment by the court martial. Life imprisonment will also include imprisonment for the purpose of Section 169A of the Army Act and in this connection I may refer to provisions of Section 169A which lays down that "when a person or officer subject to this Act is sentenced by court martial to a term of imprisonment not being an imprisonment in default of payment of fine, the period spent by him in civil or military custody during investigation, inquiry or trial of the case, and before the date of order of such sentence, shall be set off against the term of imprisonment imposed upon him and the liability of such person or officer to undergo imprisonment on such order of sentence shall be restricted to the remainder, if any of the term of imprisonment imposed upon him." A reading of this provision would clearly show that the Legislature has not made any reservation nor has tried to distinguish between imprisonment and life imprisonment by incorporating provisions of section 169A of the Army Act. If the Legislature wanted to deprive the lifers of this benefit it could have specifically made a mention in the substantive provisions under section 169A itself. Rather the Legislature in its wisdom used the word imprisonment which would mean a substantive imprisonment from the day of arrest upto life imprisonment. I cannot forget this fact that Section 169A has been introduced for the benefit of the convicts and in the circumstances the interpretation described by the learned counsel for the petitioner is taken to be correct. I am not inclined to accept the contention of the learned counsel for the respondent that Section 169A only talks of imprisonment which is different from the life imprisonment. A case of lifer would also be covered as a case of short term. It has been categorically mentioned in Section 169A itself that a person who has been sentenced to undergo imprisonment is entitled to the benefit of that custody which he spent during investigation, inquiry or trial. Learned counsel for the petitioner has drawn my attention to Bhagirath v. Delhi Administration, AIR 1985 SC 1050 wherein Hon"ble Supreme Court has clearly stated that where army official/officer is sentenced for a term of imprisonment, he is entitled to set off the period of detention undergone by him subject to the provisions of Section 433A. In other words the petitioner is entitled to the benefit of pretrial custody.

5. Resultantly, the present petition is hereby allowed and directions are given to the respondents to count the pretrial custody period of the petitioner for the purposes of determination of the premature release of the petitioner, after counting the said period necessary orders shall be passed by the respondents on merits and according to law within a period of two months from the receipt of the copy of this order.

Petition allowed.