
(1986) 01 MP CK 0035
In the Madhya Pradesh High Court

Jandel Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-01-1986

Acts Referred:

Army Act, 1950 — Section 167, 179, 182, 189
Constitution of India, 1950 — Article 14, 161, 21, 22, 33
Criminal Procedure Code, 1973 (CrPC) — Section 432, 433

Citation : (1987) CriLJ 1387 : (1987) JLJ 497 : (1987) 32 MPLJ 100 : (1987) MPLJ 100

Hon'ble Judges : T.N. Singh, J;K.M. Agrawal, J

Bench : Division Bench

Judgement

T. N.Singh, J.

The short order, which we have proposed to pass in this case, leaves us clear and excuses us from considering several weighty submissions made by the petitioner's counsel on several aspects of the Us.

What is not disputed in this case is that the petitioner was convicted in the course of a Court-martial proceeding held under the Army Act, 1950, (for short the "Act") and he was sentenced to undergo rigorous imprisonment for life. He is serving his sentence in Gwalior Central Jail from where he preferred this petition to this Court claiming inter alia that his application u/s 182 of the Army Act is awaiting consideration of the Chief of the Army Staff (Respondent No. 2) for the last five months.

What Shri Mittal, Counsel for the respondents, contends is that though the application was filed admittedly on 23-8-1985 the petitioner's confinement ought to be computed in terms of Section 167 of the Act. However, we are not prepared to enter into this broad question despite what is said in Bhagirath Vs. Delhi Administration, because what has alarmed us is the callous attitude of the authorities in dealing with the petition filed five months ago. The entire conspectus of all the provisions embraced by Chapter XIV of the Act which deals

with the case of "pardons, remission and suspensions" make it transparently clear that the power repositied in Section 182 must be exercised in a reasonable manner and within reasonable period. The Chief of Army Staff u/s 182 of the Act is statutorily empowered to consider a prayer for suspension of sentence imposed by Court-martial and as such it is the duty of the second respondent to act reasonably in the matter by considering and ? disposing of the application expeditiously. We have no manner of doubt that the power is saddled with the duty to do so which must be discharged by the statutory authority in a reasonable manner and the authority is not authorised to sit over the application and refuse to render any decision thereon. To hold to the contrary would be to allow the authority to act arbitrarily, which cannot be constitutionally done.

Shri Jain has drawn our attention to the decision in *Sher Singh and Others Vs. State of Punjab*, which deals with the cognate provisions, constitutional as well as statutory, and lays down that in dealing with the petitions under Articles 72 and 161 of the Constitution of India or under Sections 432 and 433 Cr. P.C. "A self-imposed rule should be followed by the executive authorities rigorously." Indeed, it was held that such petitions shall be disposed of within a period of three months from the date on which it is received holding that long and interminable delays in the disposal of these petitions is a serious hurdle in dispensation of justice and tends to shake the confidence of the people in the very system of justice. Our attention is also drawn to the decision in *Mansaram Vs. S.P. Pathak and Others*, . Wherein it was held that an administrative action can be challenged when it concerns exercise of statutory power, if the power is not exercised "in a reasonable manner and within a reasonable time, if time is not stipulated in statute." That indeed is the moot question here as Section 182 of the Act does not speak of any time limit and this lacuna is being made capital by the second respondent by sleeping over the application made by the petitioner without rendering any decision thereon.

Because of what is stated in the return we looked at the application in question (Annexure-5) which is captioned as being made u/s 182, and not u/s 179 of the Act, as contended in the return. It appears that the sentence passed by the General Court-martial on 16-6-1980 against the petitioner was confirmed on 22-7-1980 and as such by virtue of the provisions of Sub-section (2) of Section 182, as indeed also of Section 189 of the Act, it was the bounden duty of the second respondent to consider the prayer for suspension of sentence made in terms of the application. Though the second respondent is highest functionary of the Army and the petitioner is an ex member of the Armed Forces (being dismissed from service after conviction). He has to act nevertheless under the Army Act in discharging his duty u/s 182 and legislative acts against judicial challenge. The as such his actions are not immune to challenge under Articles 14 and 21 of the Constitution as Article 33 merely insulates judicial mandate of *Sher Singh* 1983 Cri LJ 803 (supra) or even of *Maneka Gandhi* AIR 1978 SC 597 must bind all authorities including the second respondent empowered to act u/s 182 of the Act. Reference in this connection may also be made to the decision of the

Apex Court in Sabir Ahmed Vs. Union of India (UOI), , wherein it was observed, in relation to the power of revocation of preventive detention, that the power was coupled with a duty to consider expeditiously the representation made by the detenu. According to us, the power of suspension of sentence reported in Section 182(3) of the Act is almost of the same nature, though in one case constitutional mandate of Article 22(5) operates while in the other case it is that of Articles Hand 21,as earlier observed. See also, Gauhati F.B. case, Hitendra Nath Goswami 1984 Cri LJ 1558.

We are, therefore, of the opinion, that we must take care of petitioner's grievance as we are constitutionally obligated to do so. We direct the second respondent to dispose of the petitioner's application filed u/s 182 of the Act on 23-8-1985 within a period of two months from today, A copy of this order shall be furnished to respondent's counsel, Shri N. P. Mittal, to enable him to communicate the same to the authorities concerned for compliance.

In the result, the petition succeeds and is allowed to the extent indicated. However, there shall be no order as to costs.