

**(2014) 06 SHI CK 0106**  
**In the High Court Of Himachal Pradesh**  
**Case No : C.W.P. No. 8025 of 2013**

Kashmir Singh

APPELLANT

Vs

State of H.P.

RESPONDENT

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**Date of Decision :** 06-06-2014

**Acts Referred:**

**Citation :** (2014) 06 SHI CK 0106

**Hon'ble Judges :** Sureshwar Thakur, J

**Bench :** Single Bench

**Advocate :** Bimal Gupta, Advocate for the Appellant; R.S. Verma, Additional Advocate General, Advocate for the Respondent

**Final Decision :** Disposed Off

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## Judgement

Sureshwar Thakur, J.—The petitioner, who, was sentenced to undergo life imprisonment, is, undergoing the aforesaid imposed sentence in Open Air Jail, Bilaspur. The petitioner, is, aggrieved by the orders rendered, on, 13.7.2013, by, respondent No. 2, rejecting the case of the petitioner, for, his pre mature release. Besides the prayer made, in, the petition, is, of respondents No. 1 to 3 being directed to reconsider the case of the petitioner for his pre-mature release, in, consonance with the guidelines and para 421 of the Jail Manual.

2. In the reply, filed by the respondents, it is contended that the case of the petitioner has been considered by the competent authority and his claim for his being prematurely released from jail has been rejected.

3. A perusal of Annexure P-2 divulges that a State Sentence Review Board, has been constituted for the premature release of prisoners from jail. The said Annexure, also, enunciates the eligibility criteria to be fulfilled by the prisoners, for equipping them, to, claim a pre-mature release from jail. The case of the petitioner was considered by the duly constituted State Sentence Review Board and the State Sentence Review Board, in, its observations qua the petitioner at page 90, though recorded the fact of the age of the convict and his good conduct

during the 14 years of incarceration to be rendering him deserving for premature release, yet, owing to the fact that he had recently completed 14 years of substantive sentence, hence, deferred its recommendations for his premature release, for one year. When the case of the petitioner was again taken by the duly constituted State Sentence Review Board, the Board, in, its recommendations existing at page 108 of the paper book, recommended the premature release of the petitioner. However, the recommendations of the State Sentence Review Board have not come to be accepted by the competent authority, being the Council of Ministries. The non acceptance of the recommendations of the State Sentence Review Board by the Council of Ministries, is, by a cryptic and non-speaking order.

4. A perusal of recommendations of the State Sentence Review Board, which had met twice divulge that the petitioner had not indulged in such behavior nor his conduct was such so, as, to not afford him the benefit of his being pre-maturely released from jail. On the contrary, the recommendations of State Sentence Review Board, for, the premature release of the petitioner from jail, are, founded upon a well scrutinized analysis and on a consideration of the entire relevant material on record. The said material on record, when, placed before the competent authority necessitated either its acceptance or rejection. In case the competent authority in its wisdom thought, it, fit to reject the recommendations of State Sentence Review Board, it was imperative as well, as, it was under an onerous legal obligation, while coming to repulse the recommendations of the competent authority, which would visit the petitioner with penal consequences, to, hence, not render a cryptic order, as rendered, rather it was obliged to render a communicative and a speaking order. In other words, the competent authority was obliged to render an order furnishing full and complete reasons taking with its sweep the recommendations made by the State Sentence Review Board. Hence, the said cryptic order, as, rendered by the competent authority, which comes to supplant and substitute the recommendations of the Board, is, infected with the vice of non-application of mind. As an aftermath, it necessitates, its, not being accepted. As a result, in view of the prayer/relief, urged in the writ petition, the competent authority is directed to consider the claim of the petitioner, for, his premature release from jail. The decision as would come to be rendered on a reconsideration of the claim of the petitioner, ought to be an informed decision. It is also required to be a communicative order disclosing the reasons which weigh with the competent authority in its coming to any conclusion.

5. Consequently, this court is of the view that since the order of the competent authority is infected with the vice of thorough non-application of mind, it, also, is capricious, hence, necessitates it being set aside. It is directed that the competent authority shall reconsider the claim of the petitioner and render an informed speaking decision upon the claim of the petitioner. Petition stands disposed of, so also the pending applications.