
(1989) 10 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No's. 683, 791, 1510, 1547 and etc. etc. of 1989

Kasmir Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 26-10-1989

Acts Referred:

Army Act, 1950 — Section 179
Constitution of India, 1950 — Article 14, 161, 19, 21, 72
Criminal Procedure Code, 1973 (CrPC) — Section 428, 432, 432(7), 433, 433(6)
Transfer of Prisoners Act, 1950 — Section 3(2)

Citation : (1990) CriLJ 1417 : (1990) 2 RCR(Criminal) 541

Hon'ble Judges : A.P. Chowdhri, J

Bench : Single Bench

Advocate : J.S. Bhatti, for the Appellant; Jayshree Anand, (for No. 1) and M.P. Gupta, (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

A.P. Chowdhri, J.—This order will dispose of 16 Criminal Writ Petitions Nos. 1547, 683, 791, 1510, 1511, 1512, 1548, 1644, 1659, 1663, 2156, 2221, 2223, 2224, 2438 and 2470 of 1989 raising a common question of law.

2. Briefly stated, the material background is that the petitioners were convicted and sentenced to varying terms of imprisonment by the Court martial. They are undergoing imprisonment in various jails of the State of Punjab. Under the remission system in force in the State of Punjab, remissions were announced from time to time by the State Government or Inspector General of Prisons. The petitioners are not being given the benefit of those remissions on the ground that they had been convicted by the Court martial. It will be sufficient to refer to full facts in Criminal Writ Petition No. 1547 of 1989 Kashmir Singh v. Union of India and another as these are representative of the facts in the connected writ petitions. The petitioner was convicted by the Court Martial and sentenced to nine years imprisonment on 16-6-1985. He earned remission of one year 10

months and 29 days on account of his good conduct. The State of Punjab, respondent No. 2, granted remissions to various categories of prisoners lodged in the jails in the State in November, 1985 and August, 1986. According to the scale laid down in the order of remission, the petitioner was entitled to 8 months remission. On another occasion, the State of Punjab announced remission of one year to all the prisoners lodged in the jails in the State. On 19-12-1988 Inspector General of Prisons awarded 60 days remission to all the convicts lodged in the jail. The benefit of all remissions granted by the State Government of Punjab. Or the Inspector General of Prisons was not extended to the petitioner. Some other prisoners who were similarly situated have, however, been given the benefit of such remission. The petitioner had been discriminated against. The petitioner, therefore, challenged the action of the government in denying the benefit of remissions granted by the State Government or the Inspector General of Prisons as violative of Articles 14, 19 and 21 of the Constitution. The petitioner also claimed that he was entitled to the benefit of the period when he was in custody during the pendency of the trial resulting in his conviction.

3. In the return filed by the State of Punjab respondent No. 2, the stand taken is that the petitioner having been convicted by the Court Martial, was not entitled to remissions granted by the State Government to other prisoners convicted by ordinary criminal Courts. It was stated that the petitioner was being granted remission to which he was entitled under the rules. Along with the return, the State of Punjab produced State Government order dated August 19, 1986 whereby remission was granted to various categories of prisoners. In the endorsement of the said order the Superintendents of Jails were asked to furnish names and particulars of prisoners who had been convicted by the Court Martial so that the matter for the grant of remission could be taken up with the Ministry concerned. Though the Union of India did not file a return in the aforesaid writ petition, a return was filed in the connected writ petition No. 1511 of 1989. It was stated that the Army Act, 1950, contained elaborate provisions with regard to grant of pardon, remission etc. and detailed instructions had been laid down in Army Headquarters letter NO. 2248/PSI dated June 24, 1963. According to the instructions, periodic review was made on the basis of conduct of the prisoners and remissions were granted. It was further stated that the Supreme Court had already settled that a person convicted under the Army Act was not entitled to set off the period of custody during trial.

4. It may be stated at the outset that a person convicted by the Court Martial is not entitled to set off the period of detention in custody during trial u/s 428 of the Code of Criminal Code. This is settled by the Apex Court in Ajmer Singh and Others Vs. Union of India (UOI) and Others, and Ajit Kumar Vs. Union of India (UOI) and Others, . The petitioner is, therefore, not entitled to set off that period while counting the sentence undergone by him.

5. The contention of learned counsel for the petitioners is that the petitioners are entitled to remission according to the provisions of Punjab Jail Manual as the

petitioners are undergoing sentence in various jail of the State. This contention seeks support from a single Bench decision of this Court in Harbhajan Singh v. Union of India (1982) 2 CLR 705 (Punj & Har), The learned Judge construed the expression "until such person is discharged or removed in due course of law" occurring in Section 3(2) of the Transfer of Prisoners Act, 1950. Reference was made to a Division Bench decision in AIR 1969 252 (M.P.) , from which the following portion was extracted :--

"Now, the expression "in due course of law", appearing in Sub-section (2) of Section 3, in the context in which it appears, must be interpreted, as meaning "under some rule or enactment in force". In the view, detention of a prisoner is governed not only by the relevant rules and regulations in the Jail Manual of the particular State where he happens to be imprisoned for the time being but also by all the laws of that State governing all classes of prisoners."

It was held that the remissions and the procedure for premature release of the petitioners who were admittedly governed by the Punjab Jail Manual were to be regulated in accordance with the said Jail Manual.

6. Reliance was also placed on observations occurring in a Division Bench decision in Jhanda Singh Vs. The State of Punjab and Another, quoted in Sukhpal Singh and Another Vs. State of Punjab and Others, , the following paragraph from the Division Bench decision was quoted. It needs as under (at p. 365 of AIR) :--

"by virtue of the provisions of Sub-section (2) of Section 3 of the Prisoners Act, the extra territorial efficiency of only writ, warrant or order of the Court by which the prisoner had been committed or the power of the government of the transferor State to remit or commute the sentence of such a prisoner, is preserved which by necessary implication would mean that in regard to all other matters, the transferred prisoner would be subject to the provisions of the Jail Manual of the transferee State as also other laws bearing upon the detention of a prisoner in its jail."

7. The learned counsel further referred to an observation made by the Supreme Court in Ajit kumar Vs. Union of India (UOI) and Others, in which while dealing with the main question whether a prisoner convicted u/s 179 of the Army Act and lodged in the civil prison was entitled to set off the period of custody during trial u/s 428 of the Code of Criminal Procedure, it was observed that the petitioner "may be" entitled to remissions as provided in the jail manuals, but not set off u/s 428 of the Code. Lastly, it was argued that the subject of remission was dealt with in Chapter XX of the Punjab Jail Manual without making any specific exception in the case of persons convicted under the Army Act by the Court Martial and lodged in the jail of a State.

8. After careful consideration, I am unable to accept any of the contentions of the learned counsel for the petitioners.

9. The point under consideration stands clinched by the provisions of the Constitution of India. A comparison of Article 72 of the Constitution of India relating to powers of the President to grant pardon, reprieve, respite or remission of punishment with Article 161 relating to similar powers of the Governor shows that only the President is empowered to exercise those powers in cases where the punishment or sentence is by a Court Martial. No such power is given to the Governor. In all cases, therefore, where the punishment or sentence is by a Court Martial, it is President alone who is competent under Article 72 of the Constitution, inter alia, to grant remissions. This seems to be the reason why the State Government in the order of remission Annexure P.1 asked the Superintendents of Jails to furnish the particulars of prisoners convicted by the Court Martial so that the matter of grant of remissions could be taken up with the Ministry concerned of the Central Government.

10. Section 432 of the Code of Criminal Procedure relating to powers to suspend or remit sentences talks of the appropriate government. The expression "appropriate government" is defined in Sub-section (7) of Section 432 of the Code in the following words :--

"(7) In this section and in Section 433, the expression "appropriate Government" means :--

(a) in cases where the sentence is for an offence against, or the order referred to in Sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed."

11. It follows that as the executive power of the Union extends to matters under the Army Act, it is the Central Government which is the appropriate Government for purpose of Section 432 of the Code. Apart from some specified set of statutory rules, the Punjab Jail Manual consists of executive instructions issued on the subject from time to time and these instructions have to be applied subject to provisions of the statutory law. In other words, nothing said in the Punjab Jail Manual or that part of the Manual which is non statutory in character can prevail over the provisions of a statute such as Section 432 of the Code. This is apart from the provisions of the Constitution which are paramount and would apply in preference to all statutory provisions. Section 179 of the Army Act contains detailed provisions with regard to the exercise of powers of pardon, remission etc. by the Central Government or the Chief or the Army Staff. In fact, detailed instructions have been issued by the Central Government for implementing Section 179 of the Army Act and one such set of instructions was produced for perusal by the learned counsel for the petitioners themselves. This is dated November 13, 1986 and in particular deals with review of sentences awarded by the Court Martials and grant of remissions. It also deals with furlough and parole. According to Section 5 of the Code of Criminal Procedure,

nothing contained in the Code applies to any special or local law in the absence of a specific provisions to the contrary. There being a specific provision in the special law, namely, Army Act, 1950, no provision of the Code of Criminal Procedure would apply in the absence of a specific provision to the contrary. The cases relied upon by the learned counsel for the petitioners are of no assistance of the simple reason that none of these cases related to a sentence imposed by the Court Martial under the Army Act and, therefore, the main question arising herein did not arise in those cases.

12. After careful consideration and for the reasons discussed above, the petition must fail. It is held that the petitioners are not entitled to remission granted by the State Government or any officer of the State Government unless the same is agreed to by the President or an Officer of the Army authorised under the Army Act. All these petitions are accordingly dismissed.