

(1998) 09 P&H CK 0110
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1752 of 1997

Sadha Singh, Ex.Nb/Sub.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-09-1998

Acts Referred:

Citation : (1998) 4 RCR(Criminal) 816

Hon'ble Judges : K.K.Srivastava, J

Advocate : Kamal Sehgal, S.S. Johal, Advocates for appearing Parties

Judgement

K.K. Srivastava, J. (Oral)

1. The petitioner, ExNaib Subedar Sadha Singh, was tried by the General Court Martial and convicted and awarded life imprisonment and dismissal from service on 13.11.1986. The petitioner seeks his release from imprisonment on the ground that he has already undergone 16 years 8 months and 29 days of imprisonment, which is detailed in para 5 of the petition as under :

1. Actual period spent in custody 11 yrs. 1 Month 0 day.

2. Period spent in custody : 1 yr. 7 months 29 days.

3. Earned remission in jail 4 yr.

16 yrs. 8 months 29 days.

2. The petitioner contends that he has already spent more than 14 years in custody and, thus is entitled to be released.

3. Notice was issued to the respondent Union of India and respondents 2 to 4. Written statement has been filed on behalf of respondents 1 and 3 i.e. Union of India, Chief of the Army Staff and Commanding Officer, 13th Battalion, the Sikh Light Infantry c/o Army Headquarters P.O. DHQ, New Delhi. The stand taken by the respondents is that Section 169(A) of the Army Act is not applicable to the life convict. It has been further contended that by virtue of Section 433A, of the

Code of Criminal Procedure, the petitioner is required to undergo 14 years actual imprisonment. It has also been contended that as per note below para 3(d) of Army Headquarters letter No. 49629/AG/DV1 dated 13.11.1986 amply clarifies that person convicted for an offence of murder shall not be released from prison until he has served atleast 14 years actual imprisonment. On merits, it was contended, interalia that the petitioner was tried by the General Court Martial on two charges under Section 69 of the Army Act corresponding to Section 302 of the Indian Penal Code, conviction wherein was awarded for life imprisonment.

4. So far as the contention of the learned Standing counsel for the respondents regarding the provisions contained in Section 169(A) of the Army Act debarring the applicability thereof to the cases of persons sentenced to imprisonment for life, the same is not provided in the said section. For proper appreciation of the point, it will be useful to refer to the provisions of Section 169A of the Army Act, which reads as under :

"When a person or officer subject to this Act is sentenced by a courtmartial 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 same 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."

"Section 169A of the Army Act does not specifically exclude the case of a person or officer subject to this Act, who has been sentenced to imprisonment for life. The exclusion of such a case can neither be held by necessary implication. There is, thus, no merit in the submission of the learned counsel for the respondent."

5. The learned counsel for the petitioner relied on a judgment of the Hon'ble Supreme Court in the case of *Ajit Kumar v. Union of India*, 1988(1) RCR(CrL.) 21 : AIR 1988 SC 283 , in support of his submission that the petitioner is entitled to remissions granted under the Jail Manuals. The Apex Court held that a person convicted and sentenced by the General Court Martial under the Army Act, 1950, is entitled to remission as provided in Jail Manuals.

6. In view of the law laid down in the case of *Ajit Kumar* (supra) by the Apex Court, the petitioner in the instant case would be entitled to remissions earned in Jail and in that view of the matter, the total period spent by him would come to 15 years 8 months 29 days which is obviously exceeding 14 years, I do not think it appropriate to go into the contention regarding the period spent in custody being included for the purpose of disposal of this application as even otherwise the period spent by the petitioner exceeds 14 years.

7. Resultantly, this petition is allowed and the petitioner is directed to be released on the ground of having already undergone imprisonment exceeding 14 years. The respondents are directed to comply with this direction expeditiously.