

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No. 287 of 2018**

1. Anish Kumar Bunde, son of Panna Lal Bunde, aged about 38 years, resident of S.A.F. Line, Katul Road, in front of Danendra Kirana Store, Durg, District Durg (C.G.) at present he is in jail at Central Jail Durg, District Durg (C.G.)

2. Rohit Kumar Thakur, son of Shiv Prasad Thakur, aged about 38 years, resident of 31/2 G, Risali Sector, Bhilai, P.S. Risali, District Durg (C.G.) at present he is in jail at Central Jail Durg, District Durg (C.G.)

----Petitioners/ (In jail)**Versus**

1. State of Chhattisgarh, Through : The Secretary, Department of Home, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)

2. The Jail Correctional Service, Chhattisgarh, Director General (Prisoners) Jail Road, Raipur (C.G.)

3. The Jail Superintendent, Central Jail, Durg, District Durg (C.G.)

---- Respondents

For Petitioners : Shri B.P. Singh, Advocate.

For Respondents : Shri Anant Bajpai, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****08/04/2019**

1. The petitioners have been convicted for the offence punishable under Section 37(A) of the Army Act, 1950 (henceforth "Act, 1950") for causing a mutiny in the military forces of India and sentenced to undergo rigorous imprisonment for 10 years by Summary General Court Martial. Thereafter, as the petitioners are resident of District Durg, they have been transferred from Leh-Laddak to Central Jail, Durg as per the Transfer of Prisoners Act, 1950 (henceforth, "TP Act, 1950"). They made an application for grant of parole to meet

the family members before the Central Jail Durg and the Central Jail Durg forwarded it to the General Officer Commanding {Competent Authority} for considering the said application. The said competent authority has rejected the application finding no merit, against which instant writ petition (Cr.) has been preferred.

2. Learned counsel appearing for the petitioners would submit the impugned order rejecting their application for grant of parole is bad and unsustainable in law, which is liable to be set aside.

3. On the other hand, counsel for the State would submit that the competent authority has rightly rejected the application for grant of parole filed before the Central Jail, Durg as M.P/C.G. Prisoners Leave Rules, 1989 is not applicable to the petitioners' case because the said Rule is only applicable to those persons, who have been convicted & sentenced by courts lying within the jurisdiction of the State of Chhattisgarh whereas the petitioners were the employees of Force (Military) whereas order of conviction and sentence has been passed against them under Section 37(1) of the Army Act, 1950 by Summary General Court Martial, therefore, the writ petition is liable to be dismissed.

4. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also went through the record with utmost circumspection.

5. At this stage, it would be appropriate to notice Section 179 (d) of the Army Act, 1950 & Section 3 of the M.P/C.G. Prisoners Leave Rules, 1989, which state as under :-

“179. Pardon and remission.- When any person subject to this Act has been convicted by a court-martial of any offence, the Central Government or [the Chief of the Army Staff] or, in the case of a sentence, which he could have confirmed or which did not require confirmation, the officer commanding the army, army corps, division or

independent brigade in which such person at the time of conviction was serving, or the prescribed officer may -

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) xxx xxx xxx

(D) either with or without conditions which the person sentenced accepts, release the persons on parole.

Section 3 of the Madhya Pradesh Prisoner's Leave Rules, 1989 states as under:-

3. **Application.**- They shall apply to the prisoners sentenced by the Courts in Madhya Pradesh and undergoing sentence in the Jails of Madhya Pradesh”

(6) A careful perusal of the material available on record would show that the petitioners have been convicted by Summary General Court Martial under Section 37(a) of the Army Act, 1950 but as they are resident of District Durg, they have been transferred from Leh-Laddak to Central Jail, Durg as per the Transfer of Prisoners Act, 1950 (henceforth, “TP Act, 1950”) where they made an application for grant of parole to meet the family members and the Central Jail Durg forwarded it to the General Officer Commanding {Competent Authority}, who is competent to grant parole to the petitioners under Section 179 (d) of the Army Act, 1950. In the instant case, Central Jail, Durg has forwarded the application for grant of parole to the General Officer Commanding, who has rejected the application for grant of parole. The remedy of the petitioner is to question that order to the court having jurisdiction.

(7) In view of the aforesaid discussion, it is clear that provisions contained in Section 3(A) of the Madhya Pradesh Prisoner's Leave Rules, 1989 would apply to those prisoners who have been convicted & sentenced by the Courts lying within the jurisdiction of the

State of Chhattisgarh and merely because the petitioners have been transferred to the Central Jail, Durg, provisions of Section 3(A) of the Madhya Pradesh Prisoner's Leave Rules, 1989 would not apply.

(8) Accordingly, the petition as framed and filed is not maintainable and it is liable to be and is hereby dismissed. However, the petitioners are at liberty to proceed in accordance with law.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

