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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 1817/2018**

RANA PRATAP SINGH

..... Petitioner

Through Counsel (appearance not given)

versus

DIRECTOR GENERAL (PERSON HEAD QUARTERS

GOVT. OF NCT OF DELHI

..... Respondent

Through

Ms. Richa Kapoor, ASC for

State with Mr. Chaitanya

Bansal, Adv.

Mrs. Shiva Lakshmi, CGSC for
R2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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17.12.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying as under:

- “a) Direct the DG(Prisons) to follow the procedure established by law viz. Parole/Furlough : Guidelines 2010 for assessing the furlough application of the Petitioner.
- b) Direct the DG (Prisons) to follow point No. 29 of the Parole/Furlough : Guidelines 2010 for assessing the application of furlough of the Petitioner.

- c) Direct the DG(Prisons) to not to forward the application of the Petitioner for Furlough to the DG(BSF) because that is not a procedure established by law and is thus arbitrary and violative of Articles 14 and 21 of the Constitution of India.
- d) Compensate the Petitioner for the lost opportunity of availing 13 Furloughs since 2012, when the Petitioner became eligible to apply for Furloughs, due to the rejection of the Petitioner's application of Furlough because the Respondent followed a procedure not prescribed by law."

2. The petitioner is, essentially, aggrieved by his applications for furlough being forwarded to Director General, Border Security Force (DG, BSF). According to the petitioner, his applications are required to be considered by the Director General (Prisons) and in accordance with the Delhi Prison Rules, 2018 and the relevant guidelines.

3. The learned counsel appearing for the petitioner contended that the procedure adopted by the Prison Authorities to forward his applications for furlough to DG, BSF is without authority of law.

4. In view of the above, the limited controversy to be addressed in this petition is whether the applications of BSF officials/ex-officials for furlough, are required to be considered by DG, BSF.

5. The petitioner was enrolled in BSF as a constable. He underwent his Basic Recruit Training at BTC, CSWT, Indore from 15.05.2006 to 10.02.2007 and thereafter Advance Combat Training from 19.02.2007

to 31.03.2007. He joined 10th Battalion, BSF on 20.05.2007.

6. On 10.05.2008, while the petitioner was deployed at BOP Dangaparra, he was permitted to go to a local market for taking his photographs in order to complete the CPF Forms. He consumed liquor at Daspara and went to a village (village Malipara), which was within the jurisdiction of Police Station Chopra. He tried to molest a girl and was involved in a scuffle with civilians. It is stated that he was thereafter rescued from the custody of civilians that had surrounded him and was brought back to the Battalion Head Quarter. He was tried summarily and was awarded the punishment of Rigorous Imprisonment for a period of twenty-eight days in Force Custody.

7. There was another incident on 24.10.2008, where he is alleged to have caught hand of one girl who was cutting grass. He was punished for this offence as well.

8. On 16.11.2008 at about 2115 hours, while the petitioner was on Ambush duty in AOR, Nayabari, he crossed over to Bangladesh border (Village Moynaguri) by scaling fence gate No.44, Near BP No.435/2-S in contravention of the Standing Operating Procedure. Thereafter, he opened fire indiscriminately from his service rifle. Resultantly, three Bangladeshi civilians were killed and one was grievously injured. He was over powered and beaten up by Bangladeshi villagers. However, Bangladesh Rifle (BDR) personnel rescued him. He sustained injuries on his head and right shoulder. BDR Personnel administered medical treatment.

9. A Sector Commander level border flag meeting was held between the officials of DIG SHQ BSF, Kishangarh and Sector Commander, BDR, Rangpur on 17.11.2008. It is reported that the officials saw the bullet ridden dead bodies of three persons and carcass of one dead cow.

10. The petitioner was charged for committing offence on six counts. He was convicted and awarded life imprisonment and dismissed from service with effect from 26.02.2010. The petitioner is serving sentence in a prison in Delhi.

11. It is contended on behalf of the respondents that the procedure to forward the applications of the petitioner to DG, BSF are in conformity to Section 128 of the Border Security Force Act, 1968 (BSF Act).

12. Section 128 of the BSF Act is set out below:

“128. Pardon and remission – When any person subject to this Act has been convicted by a Security Force Court of any offence, the Central Government or the Director-General or, in the case of a sentence, which he could have confirmed or which did not required confirmation, an officer not below the rank of Deputy Inspector-General within whose command such person at the time of conviction was serving, or the prescribed officer may –

- (a) Either with or without conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded; or
- (b) Mitigate the punishment awarded; or

- (c) Commute such punishment for any less punishment or punishments mentioned in this Act;
- (d) Either with or without conditions which the person sentenced accepts, release the person on parole.”

13. Ms. Richa Kapoor, the learned Additional Standing Counsel appearing for the State also referred Section 78 of the BSF Act, which reads as under:

“78. Application of Act during term of sentence.

- (1) When a person subject to this Act is sentenced by a Security Force Court to imprisonment, this Act shall apply to him during the term of his sentence, though he is dismissed from the Force, or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.
- (2) When a person subject to this Act is sentenced by a Security Force Court to death, this Act shall apply to him till the sentence is carried out.

14. It is apparent from a plain reading of Section 128 of the BSF Act that the power to mitigate any punishment awarded is with the concerned officer – not below the rank of Deputy Inspector-General, BSF – within whose command, the convict was serving at the relevant time. This Court is of the view that the word ‘mitigate’ is of a wide import. This would entail providing any kind of measure that has the effect of lessening the punishment awarded to a convict or providing any relief in that respect.

15. The learned counsel appearing for the petitioner contends that furlough is granted for good conduct and therefore, it would be fundamentally different from the mitigation of a punishment. This contention is unpersuasive. The word ‘mitigate’ is defined in ***Shorter Oxford English Dictionary, 6th ed. Oxford University Press, p.1805.*** as under:

“**1. verb trans.** Make milder in manner or attitude, make less hostile; mollify.
2. verb trans. Give relief from (pain, suffering, etc.); lessen the suffering or trouble caused by (an evil or difficulty of any kind).”

16. As observed above, the word ‘mitigate’ is of a wide import and this Court finds no reason to hold that the same is used in Section 128 of the BSF Act in a restrictive sense.

17. The term furlough is defined in ***Shorter Oxford English Dictionary, 6th ed. Oxford University Press, p.1059*** as under:

“**A noun. 1** (A permit for) leave of absence, esp. as granted to a soldier, missionary, etc.
2. A passport; a permit.
B verb. Chiefly US.
1 verb trans. Grant (a person) a furlough; give leave of absence to.
2 verb intrans. Spend a furlough.”

18. Clause 17 of Rule 2 of the Delhi Prison Rules, 2018 defines the term ‘Furlough’ as under:

“FURLOUGH means leave as reward granted to a convicted prisoner who has been sentenced

to rigorous imprisonment for five years or more and has undergone three years thereof.”

19. Undisputedly, furlough is granted as a reward for good conduct. Whilst furlough may be granted as a reward, there is no denying the fact that it reduces the rigours of the sentence awarded. This would clearly fall within the broad sweep of mitigating the sentence.

20. It is also pointed out that the period of furlough is included in the period of custody and thus, considered as part of the sentence served by the convict. In one sense, the period of punishment stands reduced as the convict does not undergo the rigours of imprisonment when released on a furlough but the said period continues to be counted as sentence served. In this view, grant of a furlough is, undoubtedly, in the nature of remission of sentence to a limited extent.

21. It is also relevant to refer to Section 129 of the BSF Act, which reads as under:

“129. Cancellation of conditional pardon, release on parole or remission. – (1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission had not been granted;

(2) A person whose sentence of imprisonment is carried into effect under the provisions of sub-section (1) shall undergo only the unexpired portion of his sentence.”

22. It is clear from the plain reading of Section 129 of the BSF Act that release on parole or remission of punishment is also subject to the opinion of the concerned Authority under the BSF Act.

23. In view of the above, this Court finds no infirmity in referring the petitioner's applications for furlough to the DG, BSF.

24. The prayer made by the petitioner for grant of compensation for not granting furlough is bereft of any merits. It is well settled that furlough is not a matter of right but is awarded on account of person's good conduct. The petitioner cannot claim compensation for appropriation of any vested right in this regard.

25. The petition is dismissed with the aforesaid observations. It is clarified that the petitioner is not precluded from challenging the order of refusal of furlough on merits.

VIBHU BAKHRU, J

DECEMBER 17, 2019
DR