

In the High Court of Punjab and Haryana at Chandigarh

**CRWP No. 11734 of 2021
Date of Decision: 10.1.2022**

Hira Lal

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Balraj Gujjar, Advocate
for the petitioner.

Mr. Dheeraj Jain, Senior Counsel
for respondent No. 1-UOI.

Mr. Pardeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

(Through video conferencing)

1. The petitioner was convicted by the Special Court constituted under the BSF Act, 1968. The order of conviction, as made upon the petitioner, is appended with the petition as Annexure P-1.
2. The learned counsel for the petitioner submits, that though the SP, Fatehabad, as disclosed by Annexure P-3, had made a report to the District Magistrate, Fatehabad in respect of declining of facility of parole, hence as claimed by him. However, he also challenges Annexures P-2, and, P-3, on the ground that they are ridden with vices of whimsicalitie(s), and, arbitrariness, as the recommendations against grant of parole to the petitioner, as made therein, are not based upon any valid or tangible ground.

3. Be that as it may, the afore made report *prima facie*, at this stage, cannot be considered by the District Magistrate, Fatehabad, rather for the relevant purpose, as the latter is not jurisdictionally competent, to either grant or decline, the relief, as claimed by the petitioner, before this Court.

4. The reason for making the afore inference, is drawn from the factum of Section 128, of the Border Security Forces Act, 1968, provisions whereof are extracted thereafter, enclosing a complete code with respect to the jurisdictional empowerment rather of the Deputy Inspector General concerned, within whose command, the convict, at the time of his conviction, hence was serving, to grant the facility of parole to the petitioner.

“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 require 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.”*

5. Though on a perusal of Annexure P-1, it is revealed, that the confirmation of sentence, as handed down to the petitioner, was made by

Chandigarh. Nonetheless, there is no material at this stage, before this Court which is suggestive of the fact, that the above confirming officer, did at the relevant time, hence held command over the petitioner-convict.

6. Therefore, without making any interference, at this stage, with the impugned reports appended with the petition, as Annexures P-2 and P-3, it is deemed fit to direct the petitioner to forthwith move an application, for the relevant purpose, before the Additional Director General (WC), Head Quarter, Special, DG BSF, Chandigarh, and, the latter shall upon his objectively discovering from the relevant material, that at the relevant time, he was holding command over the convict petitioner, hence thereafter proceed to decide it, in accordance with law, within three weeks thereafter.

7. However, in case the Additional Director General (WC), Head Quarter, Special, DG BSF, Chandigarh comes, to an objective conclusion that at the relevant time, he was not holding command over the petitioner-convict, thereupon, he shall forthwith, forward the application to the competent authorities concerned, and, the latter shall make a decision thereon, within three weeks thereafter.

8. It is clarified that in the afore decision making process, all the relevant codal formalities, shall be borne in mind by the competent authorities concerned, and, also the authorities concerned may not bear in mind Annexures P-2, and, P-3, as become appended with the petition.

9. The application concerned, is permitted to be moved personally by the petitioner through the Superintendent of the Jail concerned, to the authorities concerned.

10. This Court appreciates the assistance given to this Court by Mr. Balraj Gujjar, Advocate, appearing on behalf of the petitioner, and, by

Mr. Dheeraj Jain, Senior Counsel appearing for Union of India, and, by
Mr. Pardeep Prakash Chahar, DAG, Haryana.

11. The petition stands disposed of.

(SURESHWAR THAKUR)
JUDGE

January 10, 2022
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes