

Cpl Sandeep Singh Rawat vs Union Of India And Ors on 27 September, 2019

Author: S. Muralidhar

Bench: S.Muralidhar, Talwant Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 10497/2019
CPL SANDEEP SINGH RAWAT Petitioner
Through: Mr.Ajit Kakkar, Advocate.
versus
UNION OF INDIA AND ORS. Respondents
Through: Mr.Anil Soni, CGSC, Mr. Dilbagh
Singh and Ms.Ridhima Gaur,
Advocate for UOI.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH
ORDER

% 27.09.2019 C.M.No.43362/2019 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 10497/2019

2. Notice. Notice is accepted by learned counsel for the Respondents. The Petitioner has filed the present petition against an interlocutory order dated 6th September, 2019 of the Armed Forces Tribunal (AFT), New Delhi dismissing the M.A. No. 1655/2019 filed by the present Petitioner seeking suspension of a sentence awarded by the District Court Martial (DCM) pending the disposal of his appeal O.A.No.994/2019 in the AFT.

3. Given the nature of the matter and in the facts and circumstances explained hereinafter, the Court proceeds to dispose of the writ petition at this stage itself.

4. The facts in brief are that the Petitioner was tried before the DCM for the offences under Sections 38(1) 41(2), 40(c) of the Air Force Act, 1950 (the Act) pursuant to a charge-sheet dated 24th April, 2019. While he was held 'not guilty' of the first and third charges, he was held 'guilty' of the offence under Section 41(2) of the Act. By a sentence order dated 21st May, 2019 of he was sentenced by the DCM to rigorous imprisonment (RI) of twelve months including dismissal from service.

5. By a subsequent confirmation order dated 6 th July, 2019 the above sentence of twelve months was commuted to nine months.

6. Aggrieved by the sentence of the DCM, the Petitioner filed the aforementioned O.A.994/2019 in the AFT, Principal Bench. The appeal itself is pending disposal and is stated to be listed next before the AFT on 6th March, 2020.

7. It was in the above circumstance that the Petitioner filed the aforementioned application M.A. 1655/2019 under Section 15 of the Act read with Section 389 of the Code of Criminal Procedure, 1973 for suspension of sentence and grant of bail.

8. The Petitioner has pointed out that he had been placed under close custody even at the beginning of the trial before DCM on 27th February, 2019. As on date, therefore, the Petitioner has already served seven months of his sentence. As already noticed, his sentence at the confirmation stage was reduced to nine months. In other words of the nine months' sentence, the Petitioner has already served seven months and his appeal before AFT is not going to be taken up till 6th March, 2020. Effectively this means that if his sentence is not suspended he would have served out his entire period of sentence even before his appeal is finally heard by the AFT. This one ground by itself was sufficient for the AFT to have suspended his sentence, particularly, since it had decided not to take up the appeal for hearing at an early date. It would be a gross injustice if the Petitioner were to ultimately succeed in the appeal but would have already served out the entire sentence by then.

9. The impugned order of the AFT discusses the merits of the case at some length and holds that the offence for which the Petitioner has been convicted is 'very serious'. What was perhaps overlooked in the process was the fact that the 12 months' sentence awarded to the Petitioner initially by the DCM was reduced to nine months at the stage of confirmation. The impugned order does not even notice that the Petitioner has already served seven months of the sentence of nine months.

10. The Court accordingly, sets aside the impugned order dated 6 th September, 2019 of the AFT, in so far as it dismisses the M.A. No. 1655/2019. The Court directs that during the pendency of the appeal of the Petitioner before the AFT, the sentence awarded to the Petitioner shall remain suspended and he shall be released on bail subject to his furnishing a personal bond in the sum of Rs.15,000/- with one surety of like amount to the satisfaction of Registrar, AFT. The matter be listed before the Registrar, AFT on 1st October, 2019 for the above purpose.

11. The writ petition is disposed of in the above terms. Copy of the order be given dasti, under the signature of Court Master.

S. MURALIDHAR, J.

SEPTEMBER 27, 2019
mr

TALWANT SINGH, J.