



Serial No.02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

W.P. (Crl.) No.3/2021

Date of order: 02.11.2022

Pradip Kumar Hajong Vs. Union of India & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner : Mr. S. Deb, Adv.

For the Respondents : Dr. N. Mozika, DSGI with
Ms. S. Rumthao, Adv.
Ms. K. Gurung, Adv.

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| i) | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The principal ground urged by the writ petitioner in assailing the order of punishment inflicted by the Security Force Court of the Border Security Force is that the review preferred by the petitioner was not appropriately dealt with.

2. Indeed, it is rightly pointed out on behalf of the respondents that Section 117 of the Border Security Force Act, 1968 provides for a petition being filed against the confirmation of an order of punishment. Such petition, according to the writ petitioner, was filed before the Director-



General of BSF, but the response to the petition was issued by the Chief Law Officer of the Force.

3. Section 117(2) of the said Act mandates that any person, who considers himself aggrieved by a finding or sentence of any Security Force Court which has been confirmed, may present a petition to the Central Government, the Director-General or any prescribed officer superior in command to the one who confirmed such finding or sentence. It may also be noticed that the reminder of the provision requires the authority in receipt of the petition to “pass such order thereon as it or he thinks fit.”

4. On any plausible interpretation of the provision, it is evident that Section 117(2) of the said Act affords a remedy to a person aggrieved by any finding or sentence passed by the Security Force Court that has been confirmed. A corresponding obligation affixes to the authority that is petitioned, be it the Central Government, the Director-General or any prescribed officer. In other words, the authority which is petitioned has to apply its mind to the matters in issue and, upon due consideration thereof, communicate a reasoned order to the petitioner within a reasonable time. Any other interpretation as to the obligation of the



relevant authority would render the remedy to be illusory and not meaningful or effective.

5. In this case, it was the Chief Law Officer of the Force who communicated the writ petitioner herein that his petition to the Director-General of the Force had been rejected.

6. When a remedy in the nature of an appeal or revision or review is provided for by a statute, the appellant, or the petitioner seeking revision or review, has a right that his grievance be appropriately assessed. Such grievance may be seen to be appropriately dealt with only when it appears that the authority before whom the matter was carried applied its mind to the matters in issue and dealt with the grievance in accordance with law by passing a speaking order. Of course, a statute which gives may also take, and it is perfectly permissible for the statute to require even a non-speaking order to be passed. However, a non-speaking order would be an exception and not the rule. Thus, unless the statute which grants a remedy expressly provides for a non-speaking order to be passed, the matter has to be dealt with by a speaking order.

7. Since the writ petitioner's petition under Section 117(2) of the said Act in this case does not appear to have been appropriately dealt with in accordance with law, the writ petition succeeds and the order



communicated to the petitioner by the letter dated June 22, 2015 is set aside. The petition will be considered by the present Director-General in accordance with law by keeping in mind the observations above.

8. It is made clear that the merits of the matter have not been gone into. W.P. (Crl.) No.3 of 2021 succeeds to the limited extent indicated above. It is hoped that the speaking order of the Director-General on the petition under Section 117(2) filed by the petitioner is reached to the petitioner within six weeks from date.

9. There will be no order as to costs.

(W. Diengdoh)
Judge



(Sanjib Banerjee)
Chief Justice

Meghalaya
02.11.2022
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