


**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Criminal Writ Petition No. 573/2022

Sobha Lal @ Sobhag

----Petitioner

Versus

1. State Of Rajasthan, Through Secretary Home Deptt.
Govt. Of Raj. Jaipur
2. The Dist. Collector, Cum Magistrate Udaipur
3. The Superintendent Central Jail, Udaipur

----Respondents

For Petitioner(s) : Ms. Laxmi Devi.
For Respondent(s) : Mr. Anil Joshi, GA-cum-AAG with
Mr. Rajat Chhapparwal.

HON'BLE MR. JUSTICE ARUN BHANSALI
HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI
Order

28/03/2023

This petition has been filed by the petitioner seeking a direction to the respondents to send the petitioner to Open Air Camp pursuant to the decision taken by the committee on 25.4.2022 (Annex.1).

Submissions have been made that the committee in its meeting dated 25.4.2022 (Annex.1) decided to send the petitioner to Open Air Camp, however, the said order was not implemented and, therefore, a prayer has been made to direct the respondents to send the petitioner to Open Air Camp.

A reply to the petition has been filed *inter alia* indicating that though the order dated 25.4.2022 was passed for sending the petitioner to Open Air Camp, in view of the fact that on the same day an order was issued by the Director General, Prisons that

those who have been punished with jail punishment within two years, shall not be released for Open Air Camp and as the petitioner was visited with such penalty on 24.8.2020, 18.5.2022 & 4.12.2022, he has not been sent to Open Air Camp.

Learned counsel for the petitioner made submissions that action of the respondents in denying the benefit to the petitioner is not justified, inasmuch as, on the date of passing of the order dated 25.4.2022 (Annex.1), the petitioner had not been visited with any jail punishment within two years and as such, taking into consideration of the jail punishment imposed on 18.5.2022 and 4.12.2022 are not justified.

Learned AAG made submissions with reference to orders passed that as the petitioner has been visited with penalty of jail punishment on 24.8.2020, 18.5.2022 & 4.12.2022, he has not been sent to Open Air Camp, which action looking to the provisions of Section 3(g) of the Rajasthan Prisoners Open Air Camp Rules, 1972 ('the Rules of 1972'), is justified.

We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

It is not disputed that the committee in its meeting dated 25.4.2022 had ordered for sending the petitioner to Open Air Camp. Provisions of Rule 3(g), which *inter alia* provides for classes of prisoners who shall ordinarily be not eligible for being sent to Open Air Camp, reads as under:-

"3. Ineligibility for admission to Open Air Camp: the following classes of prisoners shall ordinarily be not eligible for being sent to Open Camp:-

(a)

- (b)
- (c)
- (d)
- (e)
- (f)
- (g) Prisoners whose conduct in the jail is not good provided that a prisoner who would have not received any jail punishment for two years preceding the date of the recommendations of his name for admission to the Open Camp may be considered eligible."

The provision is specific, which requires that the prisoners who have not received any 'jail punishments' for 2 years preceding the date of the recommendations of his name for admission to the Open Air Camp may be considered eligible.

In the present case, as per the material produced by the respondents, the following three punishments have been imposed on the petitioner, which reads as under:-

तारीख	दण्ड दिया गया	लघु हस्ताक्षर
24.08.20	बंदी पेश। आरोप प्रमाणित। राज० कारा० नियम 1951 के भाग 2 के नियम 05(1) (i) के तहत औपचारिक चेतावनी के दण्ड से दण्डित किया जाता है।	
18.5.22	बंदी पेश। आरोप प्रमाणित। राज. कारा. नियम 1951 के भाग 2 के नियम 05(1) (3) के तहत उद्योगशाला से अनुपस्थित रहने तक परिहार से वंचित किये जाने के जेल दण्ड से दण्डित किया जाता है।	
4.12.22	बंदी पेश। आरोप प्रमाणित। राज. कारा. नियम 1951 के भाग-2 के नियम 5(1) (3) के तहत 4 दिवस परिहार के समपहरण के जेल दण्ड से दण्डित किया जाता है।	

A perusal of the punishment dated 24.8.2020 would reveal that the petitioner was only given a formal warning and subsequently on 18.5.2022 & on 4.12.2022, he was accorded jail punishment. The provisions of the Rule 3(g), quoted hereinbefore,

are clear which provides that, in case, jail punishment has been received, the prisoner would not be eligible. The giving of a formal warning cannot be equated with jail punishment and, therefore, the formal warning given to the petitioner on 24.8.2020 cannot come in his way of being sent to Open Air Camp.

Insofar as, the jail punishment dated 18.5.2022 and 4.12.2022 are concerned, the same are subsequent to the order dated 25.4.2022 passed by the committee and as the provision provides for punishment preceding the date of recommendation of the committee, the said punishment imposed, cannot be taken into consideration.

Even otherwise, in case, the petitioner was sent to Open Air Camp pursuant to the order dated 25.4.2022, the punishment dated 18.5.2022 and 4.12.2022 would not have happened.

In that view of the matter, not sending the petitioner to the Open Air Camp for the reasons indicated, cannot be sustained.

In view of the above discussion, the petition is allowed. The respondents are directed to send the petitioner to Open Air Camp pursuant to the committee recommendation dated 25.4.2022, in case, his turn in terms of the recommendation made has already come and/or as and when his turn comes.

(RAJENDRA PRAKASH SONI),J

(ARUN BHANSALI),J