

Before A. P. Chowdhri, J.

SURAT SINGH AND OTHERS,—Petitioners.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Criminal Writ Petition No. 2466 of 1989

18th May, 1990.

Punjab Borstal Act, 1926—Ss. 5, 8, 10(2), 20, 32-A and 35—Punjab Borstal Rules,—Rl. 11—Inmate of Borstal Institution—Case not falling under the ambit of Section 20—Such inmate—Whether can be transferred to ordinary jail.

Held, that once an offender is directed to be detained in a Borstal institution, he can be sent to an ordinary jail only if his case is covered under one or more of the categories mentioned in Section 20 and on a reference in this behalf, the State Government commutes the remaining period of detention to a term of imprisonment. (Para 4)

Writ Petition Under Articles 226/227 of the Constitution of India praying that the detenu convicts may kindly be granted.

(i) *The benefit of the Better Class facilities to which they are entitled under the provisions of the Punjab Jail Manual.*

(ii) *During the pendency of the writ petition the convicts be granted the benefit of the B Class facilities forthwith under the relevant provisions of Jail Manual;*

(iii) *The impugned action of the authorities concerned by way of the threats infringes the right guaranteed to the convicts under the Constitution of India;*

(iv) *The respondents be restrained from transferring the convicts to other jails because of the present writ petition as the authorities concerned are threatening the convicts time and again to face the dire consequences for this reasonable demand of the convicts;*

(v) *Any other appropriate writ order or direction which this Hon'ble High Court may deem fit and proper be issued in favour of the convict petitioners;*

(vi) *Filing of affidavit may kindly be dispensed with;*

(vii) *suitable compensation for the inhuman treatment and the atrocities during prison may kindly be awarded in the terms of money and the respondents may kindly be ordered to be treated in the dignified and human manner.*

J. S. Bhatti Advocate, for the Petitioner.

M. P. Gupta, Advocate, for the Respondents.

ORDER

(1) This criminal writ petition has been filed by 22 persons who were convicted for different offences by different Courts of the State. They are inmates of Borstal Institution, Ludhiana. They filed the present petition for issuing of an appropriate writ or direction to the jail authorities, firstly that the petitioners be given Better Class facilities and secondly, they may not be transferred to an ordinary jail from the aforesaid Borstal Institution.

(2) A detailed reply has been filed on behalf of the respondents. It has been stated that on account of the training imparted and the education given to the petitioners, they had become entitled to B Class facilities and all those facilities were being given to them. It was further stated that the age group of persons who are supposed to be kept in Borstal Institution was 16 to 21. Except petitioner at Serial No. 20, the remaining petitioners had crossed the age of 21 and were required to be transferred to other jails in accordance with the decision of the Government Annexure R1. It was further stated that petitioner No. 13 had already been released on bail on 24th May, 1989 and *qua* him, the petition should be disposed of as infructuous.

(3) The main relief sought by the petitioners, namely, the granting of B Class facilities stands extended to them. The learned counsel for the petitioners has no grievance on this court.

(4) The sole question surviving for consideration is whether the Superintendent Jail or any other authority has the power to transfer an inmate of the Borstal Institution to an ordinary jail. In order to answer this question, I have examined the scheme and various provisions of the Punjab Borstal Act, 1926 and the rules framed thereunder. Various provisions of the Act unmistakably show that the Borstal Institutions were established for persons less than 21 years of age. A reference in this connection may be made to

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sections 5, 8 and 10(2) of the said Act. The study further shows that there is a clear distinction between the Borstal Institution, on the one hand and the ordinary jail, on the other. The Legislature took care to use different words in the context of Borstal Institutions, for instance, Section 32 of the said Act, while making Chapter XI of the Prisons Act, 1894 applicable to Borstal Institutions, took care that all references to prisoners, imprisonment or confinement in the said Chapter shall be construed as referring to inmates, Borstal Institutions and detentions, Section 20 is very significant and may be reproduced in extenso as under :—

“Incorrigibles.—Where an inmate is reported to the State Government by the visiting committee to be incorrigible or to be exercising a bad influence on the other inmates of the institution or is convicted under section 19 of this Act or is reported by the Superintendent to have committed an offence which has been declared to be major Borstal Institution offence by rules made by the State Government in pursuance of the provisions of subsection (14) of section 34 of this Act the State Government may commute the residue of the term of detention to such term of imprisonment of either description not exceeding such residue as the State Government may direct, and may order the transfer of the inmate to any jail in Punjab in order to complete the said term of imprisonment.”

A perusal of the above provision leaves no room for doubt that in the specified categories of inmates mentioned in the section and on a report made in this behalf, the State Government is empowered to commute the residue of the term of detention to a term of imprisonment of either description and it is only on such commutation being ordered that the inmate can be transferred to any jail in the State to complete the said term of imprisonment. There is no provision in the Act or the rules framed thereunder that on attaining an age exceeding 21, the inmate shall be liable to be transferred to an ordinary prison. Section 32-A inserted by amendment of 1982 shows that an inmate can be transferred from one Borstal Institution to another Borstal Institution either in the same State or in any other State. This also confirms the conclusion that an inmate of the Borstal Institution cannot be transferred to an ordinary jail. Rule 11 of the Punjab Borstal Rules lays down that where an

adolescent offender has been directed by a competent Court to be detailed in a Borstal Institution, but for whom accommodation is not immediately available in any of the Borstal Institutions in the State, he may be sent for detention to the adolescent jail or if the same is full to the nearest Central or District Jail where he shall be detained in the ward reserved for adolescents and treated as far as possible as an inmate of a Borstal Institution till accommodation becomes available in any such institution. This provision shows that care has been taken to segregate adolescent offenders under the age of 21 from other criminals and the scheme and purpose of the Act is to train, educate and reform the young offenders so as to make them useful members of the society rather than give them up as permanently lost to society. There are provisions made regarding training and education of the inmates of the Borstal Institutions. Rule 20 of the Rules provides for education and industrial training of the inmates. Rule 21 makes a provision for physical drill and gymnastics. These features are very different from the usual prison. The result of the above discussion is that once an offender is directed to be detailed in a Borstal institution, he can be sent to an ordinary jail only if his case is covered under one or more of the categories mentioned in section 20 and on a reference in this behalf, the State Government commutes the remaining period of detention to a term of imprisonment. It is only on such a commutation that the inmate can be transferred to an ordinary jail. It may also be mentioned that section 35 of the Act empowers the State Government to vary the upper age limit of the inmates of the Borstal Institution from 21 to 23 for purpose of sections 5, 6 and 8 thereof.

(5) The learned State counsel relied upon order dated 6th July, 1982 Annexure R1 in order to contend that the State Government had directed that after the age of 21, the inmate of a Borstal Institution could be transferred to any ordinary jail. A perusal of the order Annexure R1 shows that it was not a general direction. It related to a direction in a particular case of a youthful offender, named Bhoop Singh son of Bachan Singh. The validity of this order is not shown to have been examined by the Court. For the reasons already discussed in detailed, I am of the view that the validity of the order Annexure R1 is open to serious doubt. It is, therefore, directed that unless action envisaged u/s 20 of the Act is taken, it is not open to any authority to transfer the inmates to an ordinary jail. The writ petition is accordingly allowed and it is directed that

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except action being taken u/s 20 of the Act, as explained above, none of the petitioners shall be transferred to an ordinary jail.

P.C.G.

Before J. V. Gupta, C.J. & R. S. Mongia, J.

THE POST GRADUATE INSTITUTE OF MEDICAL EDUCATION
AND RESEARCH, CHANDIGARH,— *Appellants.*

versus

J. C. MEHTA,—*Respondent.*

Letters Patent Appeal No. 1150 of 1988

7th September, 1990.

Constitution of India, 1950—Article 311(2)—Central Civil Services (Classification, Control and Appeal) Rules, 1965—Rls. 14.(23), 15(4) and 17—The Post Graduate Institute of Medical Education and Research, Chandigarh, Regulations, 1967—Regl. 38(2)—Central Government Service (Conduct) Rules, 1964—Rl. 3(1) (i) & (ii)—Compulsory retirement—Enquiry report need not be supplied earlier than the communication of order imposing punishment—No violation of principles of natural justice by non-supply of the enquiry report before imposition of punishment—However, case remanded to Appellate Authority for fresh decision after affording opportunity of hearing.

Held, that if the idea of amending Article 311(2) of the Constitution of India was to deprive the delinquent officer of the opportunity to show cause against the punishment, which, according to the Supreme Court also included the opportunity to show that the findings of the Enquiry Officer were wrong, the very idea of amendment would become otiose if again the delinquent officer was to be supplied with a copy of the enquiry report to enable him to show to the disciplinary authority that the findings of the Enquiry Officer were wrong. The same reasoning would apply to Rule 15(4) of the C.C.A. Rules. (Para 13)

Held, that the C.C.A. Rules specifically provide the stage at which the enquiry report is to be supplied. That being the position, we hold that there is no necessity to supply a copy of the enquiry report at any time earlier than the communication of the order imposing punishment. (Para 14)