order Annexure P-8 and auction that has taken place during the pendency of this case. As mentioned above, the parties through their counsel have been directed to appear before the concerned Magistrate on 20th August, 1998. Disposed of accordingly.

J.S.T.

Before Jawahar Lal Gupta & N.C. Khichi, JJ

N. K. DHANRAJ,—*Petitioner*

versus

UNION OF INDIA & ANOTHER,—*Respondents*

CWP 5579 of 1998

The 30th September, 1998

Army Act, 1950—Ss. 40 (a) & 63—Punishment of 'severe reprimand' awarded under section 40 (a) on 1st February, 1992—Later the Commanding Officer ordering that the punishment be deemed to have been awarded under section 63 and an entry accordingly made in the service book—This order cancelled and original order under section 40 (a) restored—Petitioner making statutory complaint for mitigation of punishment to the Chief of the Army Staff—The Commanding Officer recommending complaint (keeping in view the good conduct, hard work and future career) which however, rejected on 7th December, 1995—Copy of the order not supplied despite representation—Petitioner approaching Madhya Pradesh High Court in 1997 in a writ petition—Petition dismissed on 12th February, 1998 for lack of territoral jurisdiction—Delay & laches—Present petition filed in 1998 cannot be said to suffer from delay & laches—Section 40 laying down that whenever a soldier uses criminal force to assault his superior officer, punishment can be awarded "on conviction by Court Martial"—No Court Martial proceedings held, therefore, no punishment could have been imposed—Award of penalty of 'severe reprimand' set aside and direction issued to consider the petitioner for promotion from the date juniors stand promoted.

Held that, the sequence of events shows that the petitioner was diligently pursuing his remedy. He was not sitting idle. He cannot be accused of unreasonable delay so as to disentitle him to claim the relief under the law. Consequently, the objection as raised on behalf of the respondents is rejected.

(Para 7)

Further held, that the provisions of Section 40 are clear. Whenever any person subject to the Army Act "uses criminal force to or assaults his superior officer", he shall "on conviction by Court Martial" be awarded the prescribed punishment. It is the admitted position that the petitioner was accused of having used criminal force against his superior officer. However, no Court Martial proceedings were held against him. Thus, the basic requirement for the award of penalty under Section 40 was not fulfilled.

(Para 8)

Further held, that the penalty of 'severe reprimand' awarded to the petitioner was not in conformity with the prescribed procedure. There was denial of reasonable opportunity. Thus, the grievance made by the petitioner is well merited. The writ petition is accordingly allowed. The penalty awarded to the petitioner is set aside. The respondents shall now consider his claim for further promotion with effect from the date a person junior to him was promoted by ignoring the order of penalty which had been passed against him and on the basis of the relevant record.

(Para 13)

Anand Chhibbar, Advocate, *for the Petitioner.*

Kamal Sehgal, Advocate, *for the Respondent.*

JUDGMENT

Jawahar Lal Gupta, J.

(1) The petitioner, a Soldier in the Indian Army, was awarded the punishment of 'severe reprimand' under section 40 (a) of the Army Act, 1950. The order was passed on 1st February, 1992. A few months later, the Commands Officer ordered that 'severe reprimand' shall be deemed to have been awarded under section 63. An entry was accordingly made in the petitioner's service book. However, the order passed by the Commanding Officer was directed to be cancelled and on 14th July, 1993, the original order of 1st February, 1992 was restored. The petitioner filed a statutory complaint "for mitigation of punishment" to the Chief of the Army Staff. This complaint was recommended by the Commanding Officer "keeping in view the good conduct, hard work and future career..... of the petitioner". However, the Chief of the Army staff rejected the statutory complaint on 7th December, 1995. The petitioner submitted various representations thereafter. Having got no reply, the petitioner approached the High Court of Madhya Pradesh

through a petition under Article 226 of the Constitution, viz. Civil Writ Petition No. 587 of 1997. The respondents did not file any reply on merits. However, a preliminary objection regarding the maintainability of the petition on the ground of 'territorial jurisdiction' was raised. *Vide* order dated 12th February, 1997 the High Court of Madhya Pradesh held that "as no cause of action ever accrued within the territorial jurisdiction of this Court, the petition has to be dismissed on this short ground". Hence this petition.

(2) Notice of this petition was issued to the respondents. They put in appearance on 15th July, 1998. Inspite of grant of two opportunities, no reply has been filed. The facts as averred in the petition have not been controverted.

(3) We have heard the learned counsel for the parties.

(4) Mr. Anand Chhibbar, learned counsel for the petitioner has contended that the punishment of 'severe reprimand' under section 40 (a) cannot be sustained as no proceedings as contemplated under the provision had ever been conducted against the petitioner. The claim made on behalf of the petitioner has been controverted by Mr. Sehgal. A two fold submission has been made. Firstly, it is claimed that the petition is highly belated. Secondly, it has been contended that the petitioner could have been punished summarily.

(5) Before proceeding to consider the case on merits, the objection of delay deserves to be noticed.

(6) The sequence of events is that the order of punishment was passed in February, 1992. However, the Commanding Officer had himself considered it appropriate to modify the order and the punishment of 'severe reprimand' which had been initially awarded under section 40 (a) was treated to have been awarded under section 63. As a result, there was a mitigation of punishment. It is conceded that while under section 40 (a) the petitioner could have been ineligible for promotion for a period of three years, the bar could have been created for a period of only one year under Section 63. This factual position has not been disputed on behalf of the respondents. Still further, it appears that the correspondence with regard to the punishment awarded to the petitioner had continued and,—*vide* letter dated 15th May, 1993, the Commanding Officer had requested the Record Office "to look into the matter favourably and consider the NCO (petitioner) for promotion to the rank of Havaldar on due date as per new case...... "A copy of this communication has been produced as Annexure P/2. It also deserves mention that in this letter, it has been specifically

mentioned that "the individual (petitioner) was awarded 'severe reprimand' on 1st February, 1992 under Section 40 (a) of the Army Act at the spur of moment. Otherwise the NCO is very honest, energetic and hard worker........" Since "the offence committed by the NCO was of a routine military nature, it did not merit for trial by CM (court martial). As such the same was disposed of under summary powers of OC (Officer Commanding). However, the consequence of section 40 (a) which debars him from further promotion for three years, could not be visualised at the time of framing the charge inadvertently...." Thus, a recommendation for consideration of petitioner's case was made. However, the request was rejected. In fact,—*vide* letter dated 14th July, 1993, the Commanding Officer was directed to strictly comply with the instructions regarding the restoration of the order passed in February, 1992. It was after coming to know of this order that the petitioner had submitted a statutory complaint on 2nd December, 1993. This compliment was rejected on 7th December, 1995. The petitioner was, however, conveyed this order on 16th April, 1996. Thereafter he had submitted representation for the supply of the copy of the proceedings held against him. He had submitted another representation on 18th November, 1996. When he failed to get a reply, he had approached the High Court of Madhya Pradesh. This writ petition remained pending before the High Court till 12th February, 1998. Even while dismissing the petition, it had been observed "that the Court before whom now the petition would be filed, would certainly take care of the fact that this petition was filed in this Court and remained pending for all these days." Thereafter, the petitioner had presented this petition to this Court in April, 1998.

(7) The sequence of events shows that the petitioner was diligently pusuing his remedy. He was not sitting idle. He cannot be accused of unreasonable delay so as to disentitle him to claim the relief under the law. Consequently, the objection as raised on behalf of the respondents is rejected.

(8) As for the controversy on merits, the provisions of Section 40 are clear. Whenever any person subject to the Army Act "uses criminal force to or assaults his superior officer", he shall, "on conviction by Court Martial" be awarded the prescribed punishment. In the present case, it is the admitted position that the petitoners was accused of having used criminal force against his superior officer. However, no Court Martial proceedings were held against him. Thus, the basic requirement for the award of penalty under Section 40 was not fulfilled.

(9) Mr. Sehgal submits that the petitioner was summarily tried. The action was in conformity with the provisions of the Act. However,

the learned counsel has not been able to refer to anything on the file of this case to support his submission. In fact, the record of this file clearly belies his contention. A perusal of the communication dated 15th May, 1993, sent by the Commanding Officer of the petitioner is at Annexure P2 of the paper book. It has been clearly stated in this communication that "the individual was awarded" 'severe reprimand' on 1st February, 1992 under Section 40 (a) of the Army Act at the spur of moment. It has also been noticed that "the offences under Section 40 (a) are normally to be tried by the Court Martial". Still further the authority noticed that "Since the offence committed by the NCO was of a routine military nature, it did not merit for trial by the CM (Court Martial)." Thus, it is obvious that the punishment was awarded at the "spur of the moment". There was no fair opportunity to the petitioner.

(10) Mr. Sehgal contends that charge-sheet etc. were given to the petitioner and he was summarily tried. In this connection, it deserves mention that the petitioner had,—*vide* his representation dated 15th November, 1996, a copy of which has been produced as annexure P-9 with the writ petition, requested the authorities to supply him a certified copy of the charge-sheet, Court of Inquiry and summary of evidence as per Army rule 184. He had even offered to pay. These were, however, not supplied. The request was repeated by another communication addressed to the record office. But, with no success. In this situation, it appears that there was denial of reasonable opportunity to the petitioner.

(11) Even during the pendency of this petition while the respondents had taken time to file the reply it was pointed out by Mr. Chhibbar that the petitioner was being pressurised to withdraw the Writ Petition. It was further said that even his confidential report had been spoiled on account of his refusal to withdraw the case. These allegations were made in the Court. We would not like to go into this controversy except observing that every citizen has a right to seek his remedy in accordance with law and no one can be punished for approaching the Court. It would be unfortunate if any authority pressurises a subordinate to withdraw a case or gives him adverse report on account of his having refused to do so. At this stage, we shall say no more.

(12) No other point has been raised.

(13) In view of the above, we hold that the penalty of 'severe reprimand' awarded to the petitioner was not in conformity with the

prescribed procedure. There was denial of reasonable opportunity. Thus, the grievance made by the petitioner is well merited. The Writ Petition is accordingly allowed. The penalty awarded to the petitioner is set aside. The respondents shall now consider his claim for further promotion with effect from the date a person junior to him was promoted by ignoring the order of penalty which had been passed against him and on the basis of the relevant record. The needful shall be done within three months on receipt of a copy of this order. The consequential benefits shall follow. The petitioner shall also be entitled to his costs which are assessed at Rs. 5000.

R.N.R.

Before R. S. Mongia & V. S. Aggarwal, JJ

NAVINDER JEET,—*Petitioner*

versus

CHANDIGARH ADMINISTRATION & OTHERS,—*Respondents*

CWP 14127 of 1998

The 12th October, 1998

Constitution of India, 1950—Art. 226—Motor Vehicles Act, 1988—S. 129—Protective headgear—Petitioner challaned for not wearing helmet—Challenge thereto on grounds that writ petition which had issued directions pertaining to wearing of helmets was subjudice in the Supreme Court and that the Supreme Court had granted ad-interim stay—All challans thereafter were bad—Writ Petition dismissed holding that S. 129 of the Act provides for wearing of helmets and that stay by the Supreme Court would not put an end to rigours of the Act.

Held that, it is apparent from the perusal of S. 129 of the Motor Vehicles Act, 1988 that every person even when he is riding on a motor cycle has to wear the 'protective headgear' Even if the operation of the judgment passed by this Court has been stayed by the Supreme Court, that will not put an end to the rigour of S. 129 of the Act. That being so, indeed, the respondents can challan the persons in accordance with the provisions of S. 129 of the Act. The interim order of the Supreme Court, therefore, does not come to the rescue of the petitioner in this