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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3099/2012

AM MAHTO

..... Petitioner

Through: Mr. Krishan Kumar Sharma and
Mr. Kailash Pandey, Advs.

versus

UOI & ORS

..... Respondents

Through: Mr. Ravinder Aggarwal, CGSC

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

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15.10.2012

1. The instant petition has been filed by the petitioner assailing the judgment dated 27.04.2011 passed by the Armed Forces Tribunal dismissing his appeal against the order dated 28.11.2008.
2. The facts giving rise to the instant petition are in a narrow campus. The petitioner was enrolled in the Indian Armed Force on 02.09.1993 and was assigned the trade of Mess Waiter and w.e.f. 13.09.2004 was posted on the strength of SU-30 (SCC). While on duty in the cook house of officer's mess of 2nd Wing, Air Force for afternoon shift on 18.05.2008, four children visited the officer's mess to have cold drinking water. It is alleged that the petitioner took an eight year girl child into the cook house and behaved inappropriately with her. It is further alleged that the child was extremely agitated by the petitioner's inappropriate behaviour and had intimidated her

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brothers who had accompanied her with regard to misconduct of the petitioner.

3. A Court of Inquiry was directed by the Air Officer Commanding in Chief into the said incident. The petitioner was given an opportunity to make a statement in which he largely admitted the incident. In his statement recorded as witness No.1 before the Court of Inquiry, the petitioner only disputed the nature of his misconduct. In fact, the petitioner has categorically stated that he had apologized to the child's mother as well as to the officer who confronted him regarding his misconduct.

4. As reputation of the petitioner was involved, the respondent took action in accordance with Regulation 790 of the Air Force Regulations whereunder he was granted opportunity to participate in the Court of Inquiry proceedings and cross examine the witnesses. Mr. Ravinder Aggarwal, learned standing counsel has submitted that the petitioner had sought to cross examine witness Nos.2,4,7,9,11 and 14, out of the fourteen witnesses who were examined in the Court of Inquiry. Our attention has been drawn to the cross examination of the child witness by the petitioner which was also inappropriately conducted in the given circumstances, especially keeping in view the age of the child.

5. Before us it has been contended that the admission attributed to the petitioner is a result of violence inflicted on him after the incident. The same has been discussed by the Court of Inquiry which in this regard has recorded as follows:-

"Responsibility

After hearing all witnesses, examining their statements

and considering the circumstances under which the incident took place, the court holds NC (E) Mahto responsible for indulging in child abuse. Although prima-facie it appears to be a minor offence, there is a need to address the issue of child sexual abuse as harshly as possible. The witness no. 01 in his statement has mentioned that he was hit by witness no.07. The witness no. 09 in his statement has mentioned that he found witness no. 07 sitting in the Guard room away from witness no. 01, hence it is considered baseless.

Blame Worthiness

NC(E) Mahato is held blameworthy for "Outraging a girl child's modesty by kissing her on her lips knowing fully well that there is no one to protect her and nobody to stop him at that point in time."

The court has gone through certain literature on the subject of child abuse by various authors which suggest that keeping the channels of communication open between child and parents is the best method of preventing occurrence of such incidents. The mere fact that the child has felt wronged needs to be recognized and we need to accept the child's information as the truth."

The petitioner was thereafter found blameworthy.

6. Our attention has been drawn to the request of the petitioner to the officer conducting the Court of Inquiry. He had made further admissions relating to the incident.

7. The respondents appear to have considered the matter and based on the record of the court of Inquiry, issued a notice to show cause dated 15.10.2008 under Section 20(3) of the Air Force Act, 1950 read with Rule 18 of the Air Force Rules, 1969. The petitioner was thereby informed of the allegations and misconduct attributed to him and that the Air Force Commanding in Chief was of the opinion that in view of these

circumstances, the petitioner's retention in the Air Force was undesirable. The petitioner was required to show cause why he should not be dismissed from services under Section 20(3) of the Air Force Act, 1950 read with Rule 18 of the Air Force Rules, 1969 for his above-noted act of misconduct. He was given 10 days time to submit his reply.

8. It is important to note that the notice further specifically informed the petitioner that in case, for the purpose of preparation of his reply to show cause notice, he may peruse the proceedings of the Court of Inquiry which were held with Adjutant 2 Wing, Air Force during station working hours.

9. The petitioner submitted a reply on 03.11.2008 wherein in para 2 he stated as follows:

“On 18th May, 2008, I had been on duty in afternoon shift at officer's mess No.2 Wg. A.F. Stn. Lohegaon, Pune-32 from 1500hrs to 2300hrs. it is also admitted fact that on this material and relevant date, four to five children came to officer's mess and asked for drinking water at about between from 1700 hrs. to 1730 hrs. It is admitted fact that I kissed on cheek of little cute baby girl namely Dhriti Bhattacharjee aged about seven years D/o Wg. Cdr. S.Bhattacharjee witness no.2 without any ill will as I have too got children of like age. I honestly submit that I had no intention to commit any wrong but I kissed due to affection of her cuteness.”

10. The petitioner assails that the findings and conclusion of the Court of Inquiry on the ground that the same have been based on conjectures and surmises. He also sought to challenge the testimony of witness Nos.5 and 6 by disputing their presence at the spot.

11. No other challenge to the Court of Inquiry has been laid by the petitioner. The respondents considered this reply and thereafter proceeded to

pass an order dated 28.11.2008 ordering the petitioner's dismissal from service under Section 20(3) of the Air Force Act, 1950 read with Rule 18 of the Air Force Rules, 1969.

12. The petitioner's Statutory cum Mercy Appeal dated 23.01.2009 was rejected by the respondents by an order dated 22.07.2009.

13. The petitioner assailed these orders by way of an appeal under Section 14 of the Armed Forces Tribunal Act, 2007 before the Armed Forces Tribunal, Principal Bench, New Delhi. After a detailed consideration of the challenge by the petitioner, the Armed Forces Tribunal rejected the same by its order dated 27.04.2011.

14. Before this Court, the petitioner has assailed the notice dated 20.11.2008 of the respondents and the order dated 27.04.2011 of the Armed Forces Tribunal on the ground that the same have failed to consider the petitioner's grievance that principles of natural justice were not complied with at the stage of conducting the Court of Inquiry. In this regard, learned counsel has placed reliance on the provisions of Rule 156(7) of the Air Force Rule, 1969 which according to the learned counsel for the petitioner mandates that the petitioner ought to have been given the complete record of Court of Inquiry and that he was entitled to a copy of statements which were being recorded.

15. It is well settled that the rules and procedures are hand maiden to the ends of justice. It is equally well settled that while conducting a Court of Inquiry or any other proceedings under the Air Force Act, the parties would be strictly bound by the statutory requirements.

16. Mr. Ravinder Aggarwal, learned standing counsel for the Union of India has drawn our attention to Rule 156(8) which mandates as follows:-

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“Any person subject to the Act who is tried by a court-martial in respect of any matter or thing which has been reported on by a court of inquiry shall be entitled to a copy of the proceedings of such court, including any report made by the Court”

Provided that if the Chief of the Air Staff considers that it is against the interests or the security of the State or friendly relations with a foreign State to supply a copy of the proceedings or any part thereof, such person shall not be furnished with such copy, but in such cases he shall, subject to suitable precautions as to security, be permitted inspection of such portions of the proceedings of the court of inquiry, on the basis of which the charges, on which he is arraigned before the court-martial, have been framed.”

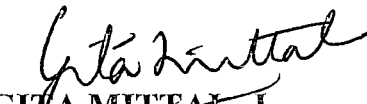
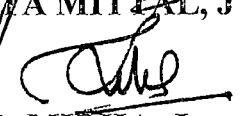
17. It needs no elaboration that as per the statutory provisions, in order to obtain the record of the Court of Inquiry, the petitioner was required to make a request of the same from the authority concerned and to make deposit of the charges for the same.

18. It is an admitted position that no such request was ever made. No charges were also deposited. The challenge by the petitioner is without merit and misconceived.

19. The petitioner has annexed with the petition a copy of the statements recorded in the Court of Inquiry. It is submitted that the petitioner obtained the same by making an application under the Right to Information Act.

20. We may also note that the petitioner has made a statutory appeal dated 23.01.2009. This appeal refers to contradictions in the statement of witnesses. This appeal suggests that the petitioner had copies of the statements of witnesses. The petitioner made the statutory appeal under legal advice.

21. No such ground of challenge was urged even before the Armed Forces. Even in the present writ petition this ground of challenge has been only orally urged. It has not been taken in the writ petition. In these circumstances, we find no merit in this petition and the same is dismissed.


GITA MITTAL, J

J.R. MIDHA, J

OCTOBER 15, 2012
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