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

% *Date of Decision: February 03, 2015*

+ **W.P.(C) 15075/2006**

EX-HAV SATYAVIR Petitioner

Represented by: Mr.M.Kumar, Advocate

versus

UOI & ORS. Respondents

Represented by: Mr.Ankur Chhibber, Advocate with
Ms.Divya Sunderrajan, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. The petitioner was a Naib Subedar in the Indian Army and was due for promotion to the rank of Havildar on July 01, 2003.
2. Sepoy Mithilesh Kumar made a complaint on June 04, 2003 that the petitioner had inappropriately kissed him on the cheek and had touched his private parts for which a tentative charge-sheet was drawn up and served upon the petitioner on June 13, 2003 for having committed an offence punishable under Section 46(a) of the Army Act, 1950 resulting in the Commanding Officer directing Summary of Evidence to be conducted. The Summary of Evidence was conducted on June 15, 2003.
3. The Commanding Officer considered the evidence recorded during the Summary of Evidence proceedings and opined that case actually made out was for a charge under Section 63 of the Army Act which makes it an offence to do an act of commission or omission which is prejudicial to good order and military discipline. The Commanding Officer took the view that the petitioner be tried summarily, the power vested in him under Section 80 of the Army Act, 1950 read with Rule 22 of the Army Rules, 1954.

4. Tried summarily, the penalty of severe reprimand was inflicted upon the petitioner on July 24, 2006 against which the appeal preferred by the petitioner was rejected on September 01, 2003. The petitioner preferred another representation on March 09, 2005 and filed W.P.(C) No.20226/2005 challenging the punishment of severe reprimand which writ petition was disposed of on October 29, 2005 directing the representation to be considered. The Chief of the Army Staff considered and rejected the representation on May 20, 2006.

5. Learned counsel for the petitioner urges that since the petitioner became entitled to be promoted to the rank of Havildar on July 01, 2003, his non-promotion on said date being illegal, it has to be treated that with effect from July 01, 2003, the petitioner would be holding the rank of Havindar; therefrom the counsel would urge that the Competent Authority would be the superior officer having jurisdiction over Havildars with respect to disciplinary matters.

6. The argument is noted and rejected for the reason the incident in which the petitioner became accused of a wrong took place on June 04, 2003. A decision was taken to initiate disciplinary proceedings resulting in a tentative charge-sheet being served upon the petitioner on June 13, 2003. Before he became entitled to be promoted, the petitioner came under a cloud and thus pending disciplinary proceedings he could not be promoted.

7. That apart, till a person is actually promoted, he continues to hold the rank held in the feeder post and the disciplinary authority has to be with reference to the rank held and not the rank one would claim to be entitled to be held.

8. It is then urged that the offence of inappropriately kissing and touching the private parts of a Sepoy would be an offence punishable under

Section 46(a) of the Army Act, 1950 and thus without being tried at a Court Martial the petitioner could not be convicted.

9. Now, the same act may constitute a major as well as a minor offence.

10. If, keeping in view the evidence at the Summary of Evidence the Commanding Officer is of the opinion that there is insufficient evidence to bring home the guilt for the major offence but there is sufficient evidence to bring home the guilt for the minor offence, a decision to try the wrongdoer for the minor offence cannot be faulted with.

11. In the instant case, the Commanding Officer was of the view that the adventurous act of the petitioner with Sepoy Mithilesh Kumar was an act prejudicial to good order and military discipline and thus the petitioner should be tried summarily. It is apparent that the act of the petitioner, though indiscrete, was not of a kind which would make it indecent or unnatural but would make it punishable for being prejudicial to good order and military discipline. This is revealed from the fact that ultimate penalty levied is one of severe reprimand.

12. On going through the record we find that Sepoy Mithilesh Kumar has appeared as PW-1 during Summary of Evidence proceedings. He also appeared at the summary trial. PW-5, PW-6 and PW-8 have corroborated the testimony of Sepoy Mithilesh Kumar.

13. Noting as above, we find no merit in the writ petition which is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 03, 2015/rb