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

+ W.P.(C) 7777/2016 & CM 32132/2016 (Exemption)

G S UBAN

..... Petitioner

Through: Mr. Manoj Swarup & Ms. Neha
Kedia, Advocates

versus

THE SECRETARY INTERGRATED HEADQUARTER OF
MINISTRY OF DEFENCE AND ORS

..... Respondents

Through: Mr. Kirtiman Singh, CGSC along
with Mr. Arun Kumar, Government
Pleader and Mr. Karon Jain,
Advocate.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **05.09.2016**

1. In this writ petition, the writ petitioner, a retired Brigadier has sought a writ of certiorari for quashing an impugned communication dated 28.05.2015. The impugned communication is not addressed to the petitioner. It is addressed to Major General P.R. Dhawan (retd.), apparently in response to a complaint made by him against the petitioner.
2. The complaint made by the said Major General P.R. Dhawan (Retd.) is not on record. It, however, appears from the pleadings and other materials annexed to the writ petition that Major General P.R. Dhawan (Retd.) alleged that the writ petitioner had been representing himself as a Major General, though he had, in fact retired as a Brigadier.

2. The first letter dated 15.05.2015 which is written by the Deputy Director/Military Secretary (X) on behalf of the Military to Major General P.R. Dhawan (Retd.) reads as follows:-

“1. Reference your letter dated 20 Apr 2015 addressed to the COAS, on the above subject.

2. The issue raised have been examined on the basis of available records. It is intimated that IC-12094 Brig GS Uban, VSM retired from the Army Service on 31 Jul 1994 in the rank of Brig.”

3. This letter was followed by the impugned communication dated 28.05.2015 from Brigadier A.K. Singh, DDG D&V (Discp.) on behalf of the Adjutant General to Major General P.R. Dhawan (Retd.), which is extracted herein below for convenience.

“1. Pl ref to your representation dt 20 Apr 15 addsd to COAS.

2. We fully share your concerns about the alleged misdemeanour and unbecoming conduct of a retcd Brig. However, you will appre the limitations of existing service provisions for proceeding in respect of superannuated Officers, esp beyond three yrs of retirement.

3. May we therefore request you to register the alleged fraudulent conduct of the retcd Offr with the concerned Police auth for an appropriate inv, if deemed appropriate by you.”

4. The impugned communication has been explained by the respondent authorities, in response to a legal notice given by the petitioner through his

Advocate. It is stated that the communication was a generic communication in reply to the representation of a retired officer of high rank (Major General) as a matter of courtesy. The intention of the impugned communication was to explain the legal position that no disciplinary action could be taken against superannuated officers, even if their conduct were unbecoming of their status.

5. From the language and tenor of the impugned communication, it is patently clear that, that the respondent authorities have not commented on the correctness of the allegations levelled by Major General Dhawan (Retd.) but only noted the seriousness thereof. There can be no doubt that the allegation of a retired Brigadier passing himself off as a retired Major General is serious.

6. The writ petition in our view discloses no cause of action at all. As observed above, the impugned communications are not addressed to the petitioner. No action is contemplated. The communication is merely a reply to a representation made by another retired officer of the high rank of Major General.

7. There is nothing in the impugned communication which can be construed as any aspersion on the writ petitioner. It is not for the writ court to judge the content and quality of communications made in response to representations. The advice as contained in the letter is not binding on its recipient. Nor is the communication an approval, or licence, but for which no police complaint could have been lodged by the complainant. If the communication has given rise to any misconceived posts on the internet or news reports, the remedy of the petitioner lies elsewhere. This writ petition cannot be entertained and the same is dismissed.

8. It is argued that the petitioner is entitled to invoke his public law remedy but there does not appear to be any public law element involved in this writ petition. Basically, the disputes are individual disputes between two retired Military Officers Major General P.R. Dhawan (Retd.) and the writ petitioner, with which the respondent authorities are in no way concerned. A mere reply to a representation made by an officer, does not entitle the petitioner to any remedy in public law

9. Mr. Swarup, Advocate for the petitioner relied on two judgments of the Supreme Court, the first being *D.K. Basu v. State of West Bengal* reported in (1997) 1 Supreme Court Cases 416 and the other being *Mehmood Nayyar Azam v. State of Chhattisgarh & Ors.* reported in (2012) 8 Supreme Court Cases I. D.K. Basu Vs. State of West Bengal (supra) was a case of custodial torture. The judgment has no application whatsoever in the facts and circumstances of this case. In Mehmood Nayyar Azam, a doctor, falsely implicated in multiple criminal cases and subjected to inhuman treatment was held entitled to compensation. The judgment in Mehmood Nayyar Asam (Supra) is also clearly distinguishable on facts. In this case, no action whatsoever has been taken against the petitioner by the respondent authorities.

9. The writ petition is, therefore, dismissed. The pending application is also disposed of.

INDIRA BANERJEE, J

V. KAMESWAR RAO, J

SEPTEMBER 05, 2016 /rs

