

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

% Date of decision: 07th September, 2016

+ W.P.(C) 7714/2016

DR. (Mrs.). ANJANA CHOUDHRY Petitioners
Through: Mr.Srinivasa Rao K., Advocate.

versus

DIRECTOR GENERAL , INDO TIBETAN
BORDER POLICE FORCE & ORS. Respondents
Through: Mr.Ajay Digpaul, Advocate with
Mr.A.K. Rai, Dy. JAG, ITBP.

CORAM:-
HON'BLE MS JUSTICE INDIRA BANERJEE
HON'BLE MR JUSTICE V. KAMESWAR RAO

JUDGMENT

V. KAMESWAR RAO, J. (ORAL)

W.P.(C) 7714/2016

1. The challenge in the writ petition is to the order dated May 23, 2014 issued by the respondents whereby it was decided that under the provisions of Rule 50 of the Indo Tibetan Border Police Force Rules, 1994, Sh. Rama Kant Sharma, Deputy Inspector General at Headquarters (Northern) Frontier, Indo Tibetan Border Police Force was detailed to prepare the records of evidence against the petitioner herein.

2. Some of the relevant facts are that the petitioner who had joined the

Indo Tibetan Border Police Force as a Medical Officer on July 29, 1987, was promoted as Senior Medical Officer on July 29, 1991. She was further promoted as Chief Medical Officer on July 29, 1997 and thereafter as Chief Medical Officer (Senior Grade) on April, 4, 2002. In the month of September, 2012, respondent no.4 made a specific complaint against the petitioner alleging therein that petitioner had demanded Rs.10,000/- from him as illegal gratification and further accepted Rs.5,000/- as part payment from him to declare him medically fit. It is averred in the Writ petition that the respondents have conducted two Court of Enquiries in 2013 and also a record of enquiry in the month of June, 2014. It is also averred that a Writ Petition being W.P.(C) 4364/2016 was filed by the petitioner challenging the impugned charge memo issued to the petitioner dated May 23, 2014. The said Writ Petition was disposed of by the Division Bench of this Court vide order dated July 26, 2016 with the following observations:

“2. There are averments concerning application of the rule of double jeopardy. There are averments suggestive of the fact that the complaint by Ct./S.K.(Recruit) Ajeet Singh had no concern with the earlier inquiry. There is copious reference to the philosophy of the law concerning Austin view on legal theories.

3. Faced as aforesaid counsel seeks leave to withdraw the writ petition with right reserved to file a fresh petition on the same cause but projecting the cause clearly. The cause would relate

to the challenging to the chargesheet issued after a preliminary inquiry was held concerning complaint made by Ajeet Singh.”

3. The only submission made by the learned counsel for the petitioner pointing out the order dated October, 30, 2014 is that out of the two charges framed against the petitioner, the second charge has not been proved and the first charge which is under Section 44 (e) of the Indo Tibetan Border Police Force Act, 1992 being an offence under the Prevention of Corruption Act, 1988 needs to be tried by the Special Judge and not by the respondents. In this regard, he would draw our attention to Section 4 of the Prevention of Corruption Act, 1988. He also relied upon the judgment of the Supreme Court in *Crl. A. 943/2008* titled as *State Through: CBI v. Jitender Kr. Singh* decided on February 5, 2014 to contend that the Supreme Court in the said case has upheld the view taken by the Special Judge, CBI by holding that he had the jurisdiction under Sub-Section 3 of Section 4 of the Prevention of Corruption Act, 1988. Since the only issue raised by the learned counsel for the petitioner is with regard to the charge, as noted above, we had put a specific query to the learned counsel for the respondents, whether the petitioner is being prosecuted under the Prevention of Corruption Act, 1988, to which the answer was in the negative. If that be so, the issue raised by the counsel for the petitioner needs to be decided keeping in view Section 44 (e) of

the Indo Tibetan Border Police Force Act, 1992 (for short, Act of 1992).

The said Section 44 reads as under:

“44. Miscellaneous offences.-Any person subject to this Act who commits any of the following offences, that is to say,---

(a) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed an person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or

(b) by defiling any place of worship, or otherwise, intentionally insults the religion, or wounds the religious feelings of any person; or

(c) attempts to commit suicide, and in such attempt does any act towards the commission of such offence; or

(d) being below the rank of subordinate officer, when off duty, appears without proper authority, in or about camp, or in or about, or when going to, or returning from any town or bazaar, carrying a rifle, sword or other offensive weapon; or

(e) directly or indirectly accepts or obtains, or agrees to accept, or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or

(f) commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving,

shall, on conviction by a Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.”

4. On a perusal of Section 44 of the Act of 1992, it is clear that an

Officer, who has committed an offence which is as depicted in first charge, i.e., *“Directly agreeing to accept for herself any gratification as a motive or any other advantage”* can be tried for such an offence under the said provision. The said provision also stipulates, on conviction, the Officer is liable for imprisonment. If that be so, from the intent of the said Section under which the petitioner has been proceeded it is clear that the authorities have the power and they are competent to proceed against an Officer under such provision, the outcome of which would necessarily depend upon, whether the offence is proved or not. We restraint from saying anything on the merit of the charge / offence. Hence, the plea of the learned counsel for the petitioner, that she should be proceeded under the provisions of Prevention of Corruption Act, 1988 and be tried by a Special Judge is rejected.

5. We agree with the submissions made by the learned counsel for the respondents that before initiating an action under the Prevention of Corruption Act, 1988, certain procedures needs to be carried out and such procedure has not been carried out in the case in hand. In any case, the charge / offence against which the petitioner is being proceeded is under the provisions of Section 44 (e) of Act of 1992 and it is the process laid down under the said Act, which needs to be followed and not the

provisions of Prevention of Corruption Act, 1998 as contended by the learned counsel for the petitioner. The Judgment of the Supreme Court in the case of *State Thr: CBI v. Jitender Kumar Singh* has no applicability in the facts of this case.

6. Having held that the petitioner can be proceeded under the provisions of Section 44 (e) of the Act, 1992, we do not see any merit in the only submission made by the learned counsel for the petitioner.

7. The writ petition is dismissed.

CM No.31835/2016 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

INDIRA BANERJEE, J

SEPTEMBER 07, 2016/jg