

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No.604 of 2017 (O&M)

Date of Decision: April 21, 2017

Ex.Nb. Sub (SKT) Dinesh Singh

.....Appellant

versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDIP AHLUWALIA.

Present: Mr.R.S.Panghal, Advocate, for the appellant.

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Surya Kant, J. (Oral)

The instant letters patent appeal assails the order dated 27.03.2017 whereby learned Single Judge has relegated the appellant to approach the appropriate forum for determination of his claim for the compensation to the tune of Rs.50.00 lacs on account of violation of fundamental rights guaranteed under Article 21 of the Constitution.

[2] Though learned Single Judge has relegated the appellant to the alternative remedy, we have heard him on the preliminary issue, namely, regarding the findings of “illegal detention” of the appellant. In this regard, learned counsel for the appellant relies upon the contents of letter dated 05.10.2009 of Government of India, Ministry of Defence, written in the context of implementation of earlier order dated 08.09.2008 of this Court passed in the case of the appellant. The contents of the letter relied upon by the appellant are to the following effect:-

“....(b) Your contention is that you were illegally placed in military custody from 31 January 05 to 03 March 06. In this regard, there is a categorical assertion of 1 Advance Base Workshop, Electronics and Mechanical Engineers and Headquarters 101 Area that you were never placed under any type of arrest during the processing of discipline case against you. Considering that 313 Coy ASC (Sup) Type 'F'

is located in Field Area on active service, there is no requirement under the law to seek sanction of the Chief of Army Staff or the Central Government for continued retention under the Army Act. The provision of Army Rule 27 is not applicable in case of persons subject to the Army Act, who are posted in Field Area on active service. All actions, that is, holding of Court of inquiry, invoking of Army Act Section 123, initiation of disciplinary proceedings, convening of General Court Martial etc., were taken by the authorities in accordance with the provisions of Army Act and Army Rules, based on prima-facie evidence against the accused persons, including you. There was no malafide on the part of any authority. You, as the complainant, have not been denied or deprived of any thing to which you have a military right. There was sufficient prima facie evidence against you and that is why the General Court Martial was convened to try you under the Army Act. Your contention that you were maliciously prosecuted is, therefore, not correct.....”

[3] From the contents of above-reproduced letter, it stands established that the respondents have denied any type of arrest of the appellant. There is no categorical finding by any judicial forum that the appellant was illegally detained. The very claim put-forth by the appellant, in our considered view, is thus pre-mature.

[4] No case to interfere with the order under appeal is made out.

[5] Dismissed.

[SURYA KANT]
JUDGE

April 21, 2017
mohinder

[SUDIP AHLUWALIA]
JUDGE