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

+ **W.P.(C) 385/2013**

M S MANJU NATHA NAIK

..... Petitioner

Through: Mr. S.S. Pandey, Advocate with
Mr. H.S. Tiwari, Advocate

versus

UNION OF INDIA THROUGH THE SECRETARY AND ORS

..... Respondents

Through: Ms. Monika Arora, CGSC with
Mr. Kushal Kumar, Advocate and Mr. M.I.
Agrawal, JD, Legal, BRO in person.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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22.11.2017

1. The present petition has been filed by the petitioner praying *inter alia* for issuance of a writ of certiorari, for quashing the investigation conducted against him by the respondents, including the Court of Inquiry proceedings that have resulted in initiation of disciplinary action against him and issuance of the attachment order dated 08.01.2013.
2. The grievance of the petitioner is that the Court of Inquiry, wherein material was gathered and the statements of witnesses recorded, did not comply with the provisions of Rule 180 of the Army Rules inasmuch as the presence of the petitioner was not ensured at several stages. It is also contended by the counsel for the petitioner that the petitioner was only

afforded an opportunity to cross-examine 5 witnesses out of 22 witnesses cited by the respondents, who had previously deposed during the proceedings and their depositions were also not furnished to the petitioner. It is thus stated that the rights vested in the petitioner under Rule 180 of the Army Rules have been infringed by the respondents and the said Rule being mandatory in nature, the entire proceedings conducted by the respondent, stand vitiated.

3. We may note that vide order dated 29.01.2013, passed in the present petition, the respondents were directed not to record any further proceedings, comply with the provisions of Rule 184 of the Army Rules and furnish a copy of the Court of Inquiry proceedings including the statements recorded, to the petitioner.

4. Ms. Arora, learned counsel for the respondents states on instructions that copies of the Court of Inquiry proceedings including the statements recorded, have already been furnished to the counsel for the petitioner, which position is duly confirmed by Mr. Pandey, learned counsel for the petitioner. Learned counsel for the respondents further clarifies on instructions that the respondents propose to initiate proceedings against the petitioner under the CCS(CCA) Rules and not under the Army Rules, by recording summary of evidence, general court martial etc. She submits that steps shall be taken expeditiously to issue a charge-sheet against the petitioner for misconduct and when that happens, the petitioner shall be entitled to take all the pleas that may be available to him in law. In support of this submission, learned counsel places reliance on the decision of the Division Bench of this Court dated 04.11.2016, in **W.P.(C) 7123/2016** entitled “Padam Kumar vs. UOI and Ors.”

5. Mr. Pandey, learned counsel for the petitioner states that in that event, the respondents cannot be permitted to rely on the evidence recorded during the Court of Inquiry and if they do so, the petitioner reserves his right to question the same, in accordance with law.

6. While recording the statement of the learned counsel for the respondents that the respondents propose to issue a charge-sheet against the petitioner for misconduct under the CCS(CCA) Rules and no further steps shall be taken against him under the Army Rules, the present petition is disposed of with liberty granted to the respondents to initiate appropriate action against the petitioner under the CCS(CCA) Rules. In those proceedings, the petitioner shall be entitled to take all the pleas in his defence as may be available to him, both on facts and in law.

7. The petition is disposed of. No orders as to costs.

HIMA KOHLI, J

REKHA PALLI, J

NOVEMBER 22, 2017

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