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

+ W.P.(CRL) 1862/2017

VINAY KUMAR

..... Petitioner

Through: Mr. Abhishek Choudhary, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Ajay Digpaul, CGSC with
Ms.Mohita and Ms. Meenakshi Joshi, Advocates
with Col. Neeraj Kumar, Legal Officer.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

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10.07.2017

1. The petitioner has approached this Court in this writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 for a writ of mandamus to the respondent No.1 to protect his life.
2. The petitioner, who is working as Soldier in India Army and posted somewhere in the State of Assam, was assigned duty to smash and boil the potatoes for food and he found the quality of potatoes very bad as the same were found rotten and full of insects. He sent a Whatsapp complaint to the respondents on the web-portal floated by the respondents. He uploaded photographs of the infested potatoes on 6th June, 2017. Since then the respondents have been treating the petitioner as a dreaded criminal and he has apprehension that he could be killed or dismissed from the service for ringing the bell against corruption. He has all apprehensions to his life and

safety from the respondents. Presently the petitioner is on leave and has been residing in Delhi. The respondents have been pressurising and threatening the petitioner to recall his complaint failing which his services would be terminated.

3. Mr. Ajay Digpaul, learned CGSC, through Col. Neeraj Kumar has placed on record brief of the case and parawise comments. Copy has been supplied to the counsel for the petitioner.

4. It is submitted that the petition has been filed with ulterior and malafide motive. The petitioner has been awarded following five punishments for serious offences during the period of almost five years:

“(a) ‘28 Days Rigorous Imprisonment and 14 Days Detention’ in Military Custody awarded on 23 January 2012 under Army Act Section 39 (b) of Manual of Military Law for 62 days Overstay of Leave with effect from 20 November 2011 to 20 January 2012 while serving with 62 RASHTRIYA RIFLES. The individual was declared a deserter during the period.

(b) ‘08 Days Rigorous Imprisonment’ awarded on 23 August 2014 under Army Act Section 39 (a) of Manual of Military Law for 08 days absent without Leave with effect from 27th June 2014 to 04 July, 2014 while serving with 17 DOGRA.

(c) ‘04 days Rigorous Imprisonment’ awarded on 18 December 2015 under Army Act Section 39 (b) of Manual of Military Law for 04 days Overstay of Leave with effect from 09 December 2015 to 12 December 2015 while serving with 17 DOGRA.

(d) ‘28 Days Rigorous Imprisonment’ awarded on 02 March 2017 under Army Act Section 63 of Manual of Military Law for bypassing authorised channels of communication on 18 November 2015 while serving with 17 DOGRA. The individual had sent an email directly to the Honourable Defence Minister of India.

(e) ‘14 days Rigorous Imprisonment’ awarded on 21 June 2017 under Army Act Section 39(b) of Manual of Military

Law for 72 days Overstay of Leave with effect from 10 February 2016 to 21 April 2016 while serving with 17 DOGRA. The individual was again declared a deserter during the period.”

5. It is submitted that the petitioner proceeded on 10 days’ casual leaves w.e.f. 28.06.2017 to 07.07.2017 citing ill health of his pregnant wife. He got his leave extended by 05 days till 12.07.2017. It is also pointed out that the petitioner is a temporary low medical category for inflammatory granuloma (Right) frontal lobe with localisation epilepsy with effect from 26 May 2016 and for primary hypertension with effect from 21 April 2017. The petitioner is therefore, kept in battalion headquarters, not placed on any duty involving handling of arms and only employed for light administrative duties.

6. It is submitted that the complaint by the petitioner is completely false and malicious. He has failed to avail the efficacious remedy available to him through multiple redressal mechanisms within the organization viz. (i) Section Commander, (ii) Platoon Havildar, (iii) Platoon Commander, (iv) Company second-in command, (v) Company Commander, (vi) Subedar Major, (vii) Commanding Officers and Senior Commanders. He never reported any matter concerning the quality of food to his immediate chain of command. It is further submitted that the individuals are detailed for assisting the cooking staff including vegetable chopping/peeling duty in groups and never alone. The respondents have questioned the veracity of the pictures uploaded by the petitioner. It is pleaded that the pictures appear to have been arranged and maliciously attributed to the unit. The petitioner has filed a false complaint regarding poor quality of food to the Chief of the Army Staff Secretariat, Grievance Cell on 06.06.2017 and comments have been sought on the complaint and forwarded to the unit vide Headquarter

letter dated 02.07.2017. Learned CGSC submits that enquiry could not be completed as the petitioner has not resumed his duties. It is submitted that all the troops are provided with sufficient and hygienic food of extremely good quality and taste. It is highlighted that the same food is served to the officers, Junior Commissioned Officers and other Ranks at all Company Operated Bases deployed in Counter Insurgency operations. At the Battalion headquarters, checking of goods is carried out daily by Duty Non Commissioned Officer (NCO), Duty Junior Commissioned Officer (JCO) and the Duty Officer. The assertion of the petitioner being threatened to withdraw the complaint is denied.

7. I have heard the learned counsel for the petitioner and learned standing counsel for the respondents.

8. Admittedly, the respondents have floated web-portal of receiving complaints. When the respondents have themselves floated the web-portal of receiving complaints from the members of the force, it is highly improbable that just for uploading a complaint on the portal, the respondents shall feel offended or annoyed with the petitioner. If the submission of the petitioner is correct, he should have brought the matter to the immediate notice of his immediate seniors at his place of posting for the spot verification. The food prepared in the unit is admittedly shared by all the staff including officers and in these circumstances, it is highly improbable that the officers or any of the member of the army shall allow such nasty things to proceed in the unit.

9. Furthermore, the petitioner has not specified in the complaint as to the person, who has actually pressurized him to withdraw the complaint or extended threat to kill him or remove him from service. Though the

contents of the petition appears to be highly improbable, yet since the petitioner has raised an apprehension of threat to his life, the respondents shall ensure that no physical harm is caused to him.

10. This direction of providing safety to the petitioner is given so that the petitioner does not have any sort of fear in his mind.

11. Legal Officer for the respondent submits that the allegations levelled by the petitioner are being inquired into by the superior officers and assures to take proper steps so that no physical harm is caused to the petitioner.

12. The writ petition is disposed of.

VINOD GOEL, J.

JULY 10, 2017/jitender/“sk”