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

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Date of Decision: 24.09.2019

+ W.P.(C) 7835/2011

UNION OF INDIA

..... Petitioner

Through Mr.Mahender Kumar Bharwaj and
Mr.K.C.Dubey, Advs.

versus

HARI RAM

..... Respondent

Through Mr.Manoj Salim and Ms.Anita
Saraswat, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. This Writ Petition is filed by the petitioner Union of India seeking to impugn the order of Central Information Commission dated 24.6.2010 and 1.12.2010.
2. The respondent herein retired as a Subedar from the Indian Army in the year 1994. He moved an RTI application on 12.07.2009 where he requested for a certified copy of the report from staff court of enquiry including its report conducted in the aforesaid unit in the year 1991-1992. Correspondence was exchanged between various functionaries. However, on 14.09.2009 copies of staff court of inquiry having 91 pages was sent to the respondent.
3. The respondent was not satisfied and hence sought some of the

missing pages and documents. The respondent also sought the findings of the Presiding Officer and order of the commanding officer/Competent Authority which had not been provided to him.

4. A perusal of the impugned order show that the impugned order noted that these documents are not exempt from disclosure under section 8(1) of the RTI Act and held that the appellant is entitled to certified copies of the above documents, namely, the findings of the Presiding Officer and the order of the commanding officer/competent authority.

5. Thereafter the petitioners filed a review before CIC. The review petition was dismissed on 1.12.2010. It was noted by the said impugned order dated 1.12.2010 that the petitioner relied upon Rule 184 of the Army Rules, 1954 to contend that these two documents sought for by the respondent cannot be provided to him. This contention of the petitioner was rejected.

6. I have heard learned counsel for the parties.

7. Learned counsel for the petitioner has reiterated that under Rule 184 of the Army Rules, the aforesaid two documents, namely, the findings of the Presiding Officer and the order of the commanding officer/competent authority cannot be provided.

8. Learned counsel for the respondent has pointed out that Rule 184 of the Army Rule is only applicable to a court martial and does not apply to a court of enquiry. He has also relied upon judgment of the Division Bench of this court in Major R.K.Sareen vs. UOI & Ors., ILR(2011) 2 Del 684.

9. Rule 184 of the Army Rules reads as follows:-

“184. Right of certain person to copies of proceedings- The following persons shall be entitled to a copy of the proceeding

of a court of inquiry including any report made by the court on payment for the same of a sum not exceeding eight annas for every two hundred words:-

(a) Any person subject to the Act, who is tried by a court-martial in respect of any matter or thing which has been reported on by a court of inquiry or

(b) Any person subject to the Act, whose character or military reputation is, in the opinion of the chief of the Army Staff affected by anything in the evidence, before, or in the report of a court of inquiry unless the Chief of the Army Staff sees reason to order otherwise.”

10. The Division Bench of this court in the case of Major R.K.Sareen vs. UOI & Ors.(supra) while interpreting Rule 184 of the Army Rules held as follows:-

“36. Before proceeding further, let us analyze Rule 184 of Army Rules relied upon by the Single Judge to justify non-supply of the findings, recommendations and directions of the Court of Inquiry to the Appellant. Rule 184 of the Army Rules reads as under:

184. Right of certain persons to copies of statements and documents - (1) Any person subject to the Act who is tried by a court-martial shall be entitled to copies of such statements and documents contained in the proceedings of a court of inquiry, as are relevant to his prosecution or defence at his trial.

(2) Any person subject to the Act whose character or military reputation is affected by the evidence before a court of inquiry shall be entitled to copies of such statements and documents as have a bearing on his character or military reputation as aforesaid unless the Chief of Army Staff for reasons recorded by him in writing, orders otherwise. (Emphasis Supplied)

37. As noted in foregoing paras, Clause (1) of Rule 184 was read by the Single Judge to mean that a person is not entitled to receive the findings/recommendations of the Court of Inquiry. In this regards, suffice would it be to state that the learned Single Judge failed to note that Rule 184 is applicable in cases where a person is tried by the Court Martial, which was not the position in the instant case.”

11. Hence, as per the aforesaid judgment Rule 184 is only applicable where a person is tried by Court Martial and not in other cases. It has been reiterated by the learned counsel for the respondent that the present proceedings are not Court Martial proceedings. This proposition has not been denied by the learned counsel for the petitioner. Hence, the reliance of the petitioner on Rule 184 of the Army Rules to deny the aforementioned two documents to the respondent is misplaced.

12. Even otherwise in my opinion the argument of the petitioner cannot be accepted in view of the overriding provisions of the Right to Information Act, 2005.

13. Reference may be had to section 22 of the Right to Information Act, 2005 which reads as follows:-

“22. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

14. Hence, in view of the above statutory provision the provisions shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act 1923, and any other law for the time being in force or

any instrument having effect by virtue of any law other than this Act.

15. Hence, reliance of learned counsel for the petitioner on Rule 184 of the Army Rule is misplaced and does not help the petitioner.

16. There is no merit in the petition. Same is dismissed.

JAYANT NATH, J

SEPTEMBER 24, 2019

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