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

+ **W.P.(C) No. 9673/2018**

ARVIND GHILDIYAL

..... Petitioner

Through: Mr. Ankur Chhibber with Mr. Bhanu
Gupta, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mrs. Bharathi Raju, CGSC for R1 to
R3.

CORAM:

**JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH**

ORDER

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03.09.2019

Dr. S. Muralidhar, J.:

1. This petition questions the validity of the impugned order dated 11th July, 2016 passed by the Deputy Inspector General (Confid.) on behalf of the DG, Border Security Force ('BSF') conveying the DG's displeasure to the Petitioner, who is a Commandant with the BSF, and the subsequent order dated 15th November, 2016 rejecting his representation against it.

2. For the purposes of the present petition, it requires to be noticed that there was an incident involving the Petitioner while he was posted at the Sector Headquarters, Dubri in Assam as Commandant in April 2015 pursuant to which an FIR was registered by the Petitioner's wife on 13th April, 2015 at Gauripur Police Station. A Staff Court of Inquiry ('SCOI') was initiated on

the order of the IG against whom the wife of the Petitioner had registered the above FIR.

3. On 10th November, 2015, a Show Cause Notice ('SCN') was issued to the Petitioner requiring him to show cause as to why the DG's displeasure should not be conveyed to him. The Petitioner then wrote to the Respondents on 18th January, 2016 seeking a copy of the report of the SCOI, which was supplied to him. However, according to the Petitioner, what was not supplied to him were the findings and opinion of the SCOI and the recommendation of the competent authority on such findings. The Petitioner nonetheless replied to the SCN on 29th January, 2016.

4. The Petitioner's reply dated 29th January, 2016 has been perused by this Court. It appears that the Petitioner did not specifically ask for the above documents while filing that reply. Nevertheless, Mr. Ankur Chibber, learned counsel for the Petitioner, refers to the judgment of this Court in ***Major R. K. Sareen v. Union of India ILR (2011) 2 Del 684*** to urge that it was mandatory for the Respondents to supply not only the report of the SCOI but also the findings and directions along with the recommendations of the competent authority on such findings in order to enable the Petitioner to make an effective representation in terms of Rule 173 (8) of the BSF Rules against the proposed punishment of the conveying of the DG's displeasure.

5. In the counter-affidavit filed on behalf of the Respondents, it is asserted that the requirements of Rule 173 (8) of the BSF Rules were complied with in letter and spirit and that the Petitioner did have a copy of the SCOI

proceedings.

6. In ***Major R. K. Sareen v. Union of India*** (*supra*) this Court explained the requirement of the law as under:

“35. In the instant case, in view of the fact that the award of punishment is an administrative action it was incumbent upon the GOC to observe the rules of natural justice while awarding said punishment to the appellant. A bare reading of the show cause notice dated 28.04.1995 and the order dated 25.08.1995, extracted in foregoing paras, shows that the findings, directions and recommendation of the Court of Inquiry weighed heavily with the GOC in awarding punishment of censure to the appellant. In such circumstances, the rules of natural justice require that the GOC ought to have supplied the findings, directions and recommendations of the Court of Inquiry to the appellant along with the show cause notice dated 28.04.1995. The non-supply of the said documents to the appellant implies that the appellant has not been granted a reasonable opportunity of being heard and has resulted in violation of rules of natural justice.

36. Before proceeding further, let us analyse 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.

38. The sum and substance of the above discussion is that the order dated 25.08.1995 passed by the GOC awarding punishment of censure by way of severe displeasure to the appellant is liable to be quashed as the same is violative of rules of natural justice. Ordered accordingly."

7. The Court finds that in the present case also the failure by the Respondents to supply to the Petitioner along with the SCN the opinion and findings of the SCOI along with the directions and recommendations of the competent authority has vitiated the impugned order dated 11th July, 2016 conveying the DG's displeasure.

8. Accordingly, the Court hereby quashes the impugned order dated 11th July, 2016 conveying the DG's displeasure and the subsequent order dated 15th November, 2016 rejecting the Petitioner's representation.

9. As directed in *Major R. K. Sareen v. Union of India* (*supra*), the Court now directs the Respondents to supply the opinion and findings of the SCOI along with the recommendations and directions of the competent authority including the evidence recorded by the SCOI to the Petitioner within a period of 4 weeks from today. The Petitioner is permitted to file a response to the said SCN within a further period of 4 weeks thereafter. A fresh order would be thereafter passed in accordance with law within a further period of four weeks and communicated to the Petitioner within 2 weeks thereafter. If the said order is adverse to the Petitioner, then it will be open to the Petitioner to seek appropriate remedies as are available to him in accordance with law.

10. The petition is disposed of in the above terms with no order as to costs.

11. A copy of the order be given '*dasti*' under the signatures of the Court Master.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 3, 2019

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