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

+ W.P.(C) 664/2020

HAV. SHAM DASS D (NO. 4576674M) Petitioner

Through: Mr. Shree Prakash Sinha &
Mrs. Marina Wheeler, Advocates

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Ravi Prakash, CGSC with
Mr. Farman Ali, Mr. T V S Khehar,
Advocates with Major A S Katoch.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **17.01.2020**

1. The petitioner has laid a challenge to the vires of Rule 147 A of the Army Rules, 1954 claiming that the same is inconsistent with the provisions of the Army Act, 1950 and is also violative of Articles 14 & 21 of the Constitution of India.
2. Rule 147A of the Army Rules prescribes that in certain cases, if the Central Government certifies that it is against the interest of the security of the State or friendly relations with the foreign States, to supply a copy of the said proceedings or any part thereof, a copy of the proceedings relating to the General Court Martial (GCM) will not be given. In those circumstances, the said Rule contemplates that an aggrieved party shall not be furnished with a copy of the proceedings and instead, if the person desiring a copy, submits a petition in accordance with the Act, or proposes to take any action

in the Court of law in relation to the findings or the sentence, inspection shall be permitted of the said proceedings to the person or a legal advisor on specific conditions including a condition that an undertaking in writing shall be given, that copies of the proceedings or any part thereof shall not be made public and the information or the documents contained in such proceedings, shall not be used by the person concerned or the lawyer for any purpose whatsoever other than for the purpose of submitting a petition in accordance with the Act or instituting an action in a court of law in relation to the said findings or sentence. The said Rule also prescribes that in those circumstances, a certificate shall be issued by the concerned person stating *inter alia* that he is aware that in the event he violates the conditions prescribed for permission to inspect the proceedings, he would render himself liable for prosecution under Sections 3 and 5 of the Indian Official Secrets Act, 1923.

3. First a reference to the brief facts of the case is considered necessary. The petitioner, who was inducted as a Hawaldar in the Indian Army, was subjected to General Court Martial Proceedings (GCM) and in the said proceedings he was proven guilty on 09.05.2015 and was awarded a sentence of 10 years rigorous imprisonment besides being dismissed from service. The petitioner is stated to be in custody of the Army since 15.05.2012. He was formally arrested on 08.06.2012. The sentence imposed on the petitioner was confirmed by the GOC, Head Quarters, Delhi area whereafter he was shifted to Tihar Jail on 03.08.2015.

4. In the year 2015, the petitioner filed an Original Application [OA (Appeal) 685/2015] before the Armed Forces Tribunal, Principal Bench,

New Delhi praying *inter alia* for issuing directions to the respondent to supply him a copy of the GCM proceedings, including the findings on the sentence, except for the CD and other documents that were considered to be against the interest of the security of the State. The petitioner also sought quashing of a certificate dated 10.06.2015, issued by the Ministry of Defence, Govt of India under Section 147A of the Army Rules permitting inspection to him on the conditions stipulated therein. Vide order dated 14.12.2017, the Tribunal disposed of the Original Application filed by the petitioner holding *inter alia* that he had already approached the Central Government under Rule 147A and the Central Government was required to act as per that Rule in relation to the record of the GCM proceedings.

5. Aggrieved by the aforesaid order, the petitioner approached the Supreme Court and vide order dated 11.07.2018, the Supreme Court observed as follows:-

“In the absence of any challenge to Rule 147(A) of the Army rules, 1954, we may only clarify that every single relevant document pertaining to the appellant’s termination will be allowed to be inspected as per the Rule.

We make it clear that no document shall be allowed to be denied to the appellant on the so-called ground of national security.

We also make it clear that, equally, the appellant has to follow the drill of Rule 147 and execute the necessary undertaking.

The appeal is disposed of in above terms.”

6. We have enquired from learned counsel for the petitioner that after the Supreme Court had issued the directions recorded in the order dated 11.07.2018, were the documents pertaining to the petitioner’s termination of

service inspected as per the Rules. He states that in view of the rigours of the conditions imposed under Rule 147A of the Army Rules, 1954, the petitioner did not take any further steps to approach the Central Government for an inspection of the relevant documents. Instead, he filed W.P. (C) 10830/2018 in the High Court seeking the very same relief as is sought in the present petition.

7. We may note that vide order dated 01.11.2018, the aforesaid petition was disposed of by the Court with liberty granted to the petitioner to approach the AFT, if so advised and contemporaneously, the matter was transferred to the AFT for appropriate orders.

8. After hearing the parties on the Transfer Petition (Transfer Appeal No.3/2018), the AFT concluded that Rule 147A is not ultra vires the Constitution of India or the main Act or is violative of any fundamental rights of the petitioner. As a result, the said Transfer Petition was dismissed vide judgment dated 24.05.2019. In the meantime, the respondent/UOI filed an application (RA 32/2019) before a Coordinate Bench of this Court that had passed the order dated 01.11.2018 in W.P. (C) 10830/2018, seeking to renege from the statement made on its behalf on 01.11.2018 to the effect that the AFT was vested with the jurisdiction to decide the issue raised by the petitioner in the writ petition. Vide order dated 31.07.2019, the said review application was disposed of by the same Bench that had passed the order dated 01.11.2018, observing that there was no reason for passing any orders on the said application in view of the fact that by the said date, the AFT had already decided the issue in TA No.3/2018, vide judgment dated 24.05.2019. On the very same date on i.e., on 31.07.2019, conscious of the fact that the

AFT had rejected the challenge laid by the petitioner to Rule 147A, learned counsel appearing for him had stated that he will take steps to assail the said judgment in accordance with law.

9. We are informed that when the petitioner approached the AFT for permission to assail the judgment dated 24.05.2019, passed in TA No.3/2018 it was observed by the Principal Bench, AFT, New Delhi in its order dated 13.11.2019, that instead of exercising powers under Section 31 of the AFT Act, it was a fit case where the order dated 24.05.2019 ought to be reviewed and accordingly it had reviewed the said judgment wherein certain observations were made with regard to the validity of Rule 147A of the Army Rules. It was observed that once the Bench had taken a view that it was not vested with the jurisdiction to decide the constitutional validity of a statutory provision, it should have left the matter open for the petitioner to seek the remedies as would be available to him in law. Accordingly, while recalling that part of the judgment dated 24.05.2019, the parties were granted liberty to seek legal recourse as may be available to them. Further, noting that the Court Martial proceedings held against the petitioner were pending consideration on merits before a Coordinate Bench of the AFT and the matter was part heard, liberty was granted to proceed further with the matter.

10. Learned counsel for the respondent states that even prior to passing of the order dated 13.11.2019, by the Principal Bench, AFT, arguments on merits were being addressed by the parties in OA (Appeal) 1922/2018 filed by the petitioner and that the petitioner's counsel has already concluded his arguments before the AFT on 16.09.2019 and now arguments are being

addressed by the respondent/UOI. We are informed that arguments were addressed even yesterday and the matter is listed today for further arguments. Learned counsel for the respondent/UOI submits that during the course of addressing arguments, the entire original records relating to the GCM have been produced and placed before the Tribunal for perusal.

11. Given the aforesaid sequence of events and noting the fact that when the appeal filed by the petitioner against the GCM proceedings taken out against him are at the fag end, we are of the opinion that this is not a fit case where this Court ought to entertain the present petition for the relief prayed for as it is rather late in the day. Any intervention at this stage will virtually result in staying the proceedings before the AFT that are at an advance stage. We therefore, decline to entertain the present petition at this belated stage. However, the legal issue raised in this petition is left open for a decision in an appropriate case.

12. The petition is disposed of.

HIMA KOHLI, J

ASHA MENON, J

JANUARY 17, 2020

Sm/s