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

+ **W.P.(C) 11718/2018**

JAVED KHAN

..... Petitioner

Through: Mr. Tamim Qadri with Mr. Saeed
Qadri, Advocates.

versus

SECRETARY MINISTRY OF DEFENCE AND ANR.

..... Respondents

Through: Mr. Rakesh Kumar, CGSC with
Mr. Raghav Nagar, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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29.01.2020

1. The only relief being sought in the present petition is for the Petitioner to have access to the record of the General Court Martial in which he was convicted.

2. Rule 147A of the Army Rules, 1954 reads as under:

“147A. Copy of proceedings not to be given in certain cases. - Notwithstanding anything contained in rule 147, if the Central Government certifies that it is against the interests of the security of the State or friendly relations with foreign States to supply a copy of the proceedings or any part thereof under the said rule, he shall not be furnished with such copy:

Provided that if the Central Government is satisfied that the person demanding the copy is desirous of submitting a petition in accordance with the Act or instituting any action in a court of law in relation to the finding or sentence, it shall

permit inspection of the proceedings to such person or his legal adviser, if any, on the following conditions, namely: —

(a) the inspection shall be made at such times and such places as the Central Government or any authority authorized by it, may direct; and

(b) the person allowed to inspect the proceedings shall, before such inspection, furnish—

(i) an undertaking, in writing, that he shall not make copies of the proceedings or any part thereof and that the information or documents contained in such proceedings shall not be used by him, 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 finding or sentence; and

(ii) a certificate that he is aware that he may render himself liable to prosecution under sections 3 and 5 of the Indian Official Secrets Act, 1923 (19 of 1923), if he commits any act specified in the said sections in relation to the documents or information contained in the said proceedings.”

3. It is directed that the records of the General Court Martial be made available to counsel for the Respondent within two weeks. Thereafter on a date and time to be intimated by the counsel for the Respondents to counsel for the Petitioner, inspection of the record, barring those documents marked ‘Secret’ which need not be shown to the Petitioner, be allowed to the Petitioner accompanied by his counsel subject to the Petitioner complying with the conditions set out in Rule 147A(b)(i) and (ii) of the Army Rules, 1954. This exercise be completed within a period of 2 months from today. It is clarified that the Petitioner can make notes of inspection.

4. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 29, 2020

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