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

+ **W.P.(C) 3253/2022 & CM APPLs.9427-9428/2022**

HANSA DUTT LOHANI

..... Petitioner

Through: Petitioner in-person.

versus

DG BSF AND ORS

..... Respondents

Through: Ms.Nidhi Banga, Advocate.
Mr.Hemendra Singh, Law Officer,
BSF.

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Date of Decision: 25th February, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed seeking directions to Respondent No.1 and 2 to stay the Staff Court of Inquiry ['SCOI'] proceedings by quashing the convening order dated 16th November 2021. In the alternative, the Petitioner seeks a stay on the SCOI till the finalisation of the criminal proceedings in the Trial Court.
2. Petitioner, who appears in-person states that the complainant sent an email dated 11th October 2021 to the Respondents alleging outraging of her modesty, sexual harassment, rape and voluntarily causing hurt by the Petitioner. He points out that subsequently, a departmental inquiry by way of



an SCOI, has been initiated and the petitioner has been summoned by the Inquiry Officer.

3. He states that on 05th December 2021, the Petitioner was informed that an FIR dated 02nd December 2021 has also been lodged against him under Section 354 IPC.

4. He states that the petitioner herein is prejudiced due to an ongoing departmental inquiry against him on the ground of sexual molestation and assault, while a police investigation on identical allegations and facts is going on. He emphasises that the complainant is a private citizen who is not governed by the BSF Act and Rules, 1968 and has already availed of her legal remedies by filing an FIR against the Petitioner.

5. He states that the Petitioner preferred a representation dated 06th December, 2021 to the IO in the BSF, stating that since the Petitioner's defence would be revealed in the SCOI, he would be in a disadvantageous position before the criminal Court. He points out that this representation was rejected vide letter dated 10th December 2021.

6. He states that the Petitioner has duly joined the SCOI proceedings and was also participating in the police investigations at the same time causing him severe hardship and stress.

7. He submits that the action of the respondents is in breach of Section 47 of the BSF Act, which states as under:-

“47. Civil offences not triable by a Security Force Court.—A person subject to this Act who commits an offence of murder or of culpable homicide not amounting to murder against, or of rape in relation to, a person not subject to this Act shall not be deemed to be guilty of an offence against this Act and shall not be tried by a Security Force Court, unless he commits any of the said offences, –



*(a) while on active duty; or
(b) at any place outside India; or
(c) at any place specified by the Central Government by notification in this behalf.”*

8. Having perused the paper book, this Court finds that the respondents have only appointed a Court of Inquiry under Rule 173 of the Border Security Force Rules, 1969. The Court of Inquiry is nothing more than a fact finding body. Its findings shall be in the nature of a preliminary report which shall facilitate the BSF in deciding its future course of action.

9. In fact, no departmental proceeding has been initiated against the petitioner at this stage. Further, the petitioner at this stage is not an accused and in the event, he is of the view that he is likely to be arrayed as an accused, it shall be open to him to exercise his right of silence.

10. In the opinion of this Court, by appointing a Court of Inquiry, no prejudice has been caused to the petitioner and Section 47 of the BSF Act has not been violated. Accordingly, the present writ petition and pending applications stand dismissed at this stage.

मान्यमेव जयते

MANMOHAN, J

NAVIN CHAWLA, J

FEBRUARY 25, 2022
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