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

% ***Date of decision: 10th May, 2023***

+ **W.P.(C) 6091/2023 & CM APPL.23903/2023**

COLONEL NC DWIVEDI Petitioner

Through: **Mr. T. Parshad, Advocate**

versus

UNION OF INDIA & ORS. Respondents

Through: **Mr. Neeraj, Senior Panel Counsel
with Mr. Rudra Paliwal, GP, Mr.
Sahaj Garg, and Mr. Vedansh Anand,
Advocate**

CORAM:

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE MINI PUSHKARNA**

J U D G M E N T (oral)

1. Vide the present petition, petitioner prays as under:

(A) Issue a Writ of Celiorari or any other appropriate Writ / Directions / Order, modifying or quashing the Armed Forces Tribunal Principal Bench (the AFT) order dated 27 April 2023 in the OA No. 1111 of 2023, wherein the learned AFT declined to grant the interim directions as prayed for, and for directing that, pending disposal of the said OA, the investigations by the Court of Inquiry illegally convened by Deputy C-in-C, HQ SFC, vide the impugned convening orders dated 31 January 2023 read with dated 27 February 2023, to investigate into anonymous complaint, shall remain stayed, being contrary to law.

(B) Issue a Writ of Mandamus or any other appropriate Writ / Directions / Order directing that, pending disposal of the OA No. 1111 of 2023 by the learned AFT, the investigation by the Court of

Inquiry, illegally convened by Deputy C-in-C, HQ SFC, vide the convening orders referred to in Prayer (A) above, shall remain stayed, being illegal and contrary to law.

(C) Issue Writ of Mandamus or any other appropriate Writ / Directions / Order, directing that, pending disposal of the aforesaid OA No. 1111 of 2023, the Court of Inquiry illegally convened vide the convening orders referred to in Prayer (A) above, to not to proceed with its investigations, being illegal and contrary to law.

2. Learned counsel for petitioner has pointed out para 3 of the impugned order dated 27.04.2023 whereby learned AFT has passed order as under:

*“2. Even though, learned counsel for the applicant prays for stay and quashing of the Court of Inquiry convened by the Impugned Order Annexure A-1, on the ground that in view of the stipulation contained in the circular issued by Central Vigilance Organisation, vide Annexure A-8 on 24.09.2020, prohibiting taking cognizance or acting on anonymous complaint, so also the office Memorandum issued by the DoPT on 08.10.2018 and argues that once there is a prohibition in these guidelines in the matter of taking disciplinary action based on pseudonymous and anonymous complaint, the act of the respondents amounts to violation of the directions of the GoI, DoPT which is also applicable to Ministry of Defence, therefore, he prays for staying the impugned action. Further, reliance is placed on the judgment of Hon'ble High Court of Guwahati in the case of **Varshaty Das Vs UOI & Ors.** in support of the aforesaid contention.*

3. Having considered the submission prima facie at the stage, we are not convinced with the submissions of the applicant. The communications by the DoPT and the Central Vigilance Commission are in the nature of guidelines, in matters of taking disciplinary action against a Civil Servants or an Officer of any Ministry or Department, in accordance with the rules of conducting departmental proceedings, based on rules framed under Art. 309 of the Constitution of India, whereas the Court of Inquiry is conducted under the Army Act, 1950 and the Army Rules, 1954 which is nothing but an investigating process to prima facie assess/to find out as to whether a case is made out for proceedings with a trial by Court Martial or any other disciplinary action. That being so, for the present we are not inclined to grant any interim relief. Instead, we call upon the respondents to give their say in the matter within six weeks. The respondents may proceed with the Court of Inquiry, however, the same shall be subject to any final decision that may be taken in these proceedings.”

3. Learned counsel for petitioner has relied upon judgment passed by

this Court in the case of *Surendra Kumar Sahni (Maj. Gen.) vs. Union of India & Ors.: 2003 (71) DRJ 693 (DB) (Short Note)* and judgment passed by the Gauhati High Court in the case of *AIR CDME Mrigendra vs. Union of India: (2014) 1 GAUHATI LAW REPORTS 205* wherein the respondents have accepted that DoPT guidelines are applicable to the Armed Forces. The said judgments were passed before the OM dated 08.10.2018 was issued by DoPT and the Circular dated 24.09.2020 issued by Central Vigilance Organisation prohibiting taking cognizance or acting on anonymous complaint which is the case in hand.

4. Accordingly, we hereby dispose of the present petition by directing the respondents not to continue Court of Inquiry against the petitioner herein till disposal of the OA No.1111/2023 pending before learned AFT.

5. Pending application also stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

(MINI PUSHKARNA)
JUDGE

MAY 10, 2023/rk