



\$~50

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

% Judgment delivered on: 21st November, 2023

+ W.P.(C) 15039/2023

DY CMDT KUNDAN KUMAR (10797518) Petitioner

versus

UNION OF INDIA AND ORS. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Ajit Kakkar, Advocate.

For the Respondent: Mr. D S Vohra, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks a direction to the respondent to supply copy of the Staff Court of Inquiry and the Record of Evidence in respect to the petitioner.

2. Learned counsel for respondents under instructions submits that as far as the copies of Staff Court of Inquiry is concerned, same shall be supplied to the petitioner within one week. With regard to supply of the Record of Evidence, it is submitted that the same has to be provided to the petitioner not less than four days before the



commencement of trial in terms of Rule 63(4) of the Border Security Force Rules 1969 (hereinafter referred to as the Rules).

3. Learned counsel for the petitioner submits that the four days period is not sufficient for preparation of defence and the respondents are normally delaying the supply of the Record of Evidence to the last minute so that only four days time is available and even during that four days period the accused is attached to a Unit and is not able to take proper legal assistance.

4. Rule 62 of the Rules reads as under:

“62. Duties of convening officers when convening courts.- When an officer convenes a Court he shall;

(a) issue a convening order in the appropriate form set out in Appendix VII;

(b) direct upon what charges the accused is to be tried and ensure that the accused has been remanded for trial by a Court upon these charges, by his Commandant;

(c) if he is of the opinion that charges shall be put in separate charge sheets, so direct and shall also direct the order in which they are to be tried;

(d) direct, if there is more than one accused whether the accused are to be tried jointly or separately;

(e) appoint members of the Court and any waiting members;

(f) if convening:-

(i) a General Security Force Court; or

(ii) a Petty Security Force Court which he considers should be attended by a law officer, take the necessary steps to procure the appointment of Law Officer by or on behalf of the Chief Law Officer;

(g) appoint an officer, subject to the Act or a counsel assisted by such an officer to prosecute or detail a Commandant to appoint an officer subject to the Act, to prosecute: Provided that the convening officer may appoint more than one such officer to prosecute if he thinks fit;

(h) appoint an interpreter wherever necessary;



- (i) send to the senior member the charge sheet, the convening order and a copy of the record or abstract of evidence from which any evidence which in his opinion would be inadmissible at the trial has been expurgated;*
- (j) forward to each member of the Court and to each waiting member a copy of the charge sheet;*
- (k) forward to the prosecutor copies of the charge sheet and convening order and the original record or abstract of evidence together with an unexpurgated copy there of showing the passages (if any) which have been expurgated in the copy sent to the senior member;*
- (l) forward to the Law Officer (if any) copies of the charge sheet and convening order and an unexpurgated copy of the record or abstract of evidence showing the passages (if any) which have been expurgated in the copy sent to the senior member;*
- (m) ensure that the Commandant has summoned all the prosecution witnesses and such defence witnesses as the accused may have requested to be summoned under rule 64."*

(underlining supplied)

5. Rule 63 of the Rules reads as under:

"63. Preparation of defence by the accused.- (1) An accused, who has been remanded for trial, shall be afforded proper opportunity for preparing his defence and shall be allowed proper communication with his defending officer or counsel and with his witnesses.

(2) A defending officer shall be appointed to defend an accused who has been remanded for trial unless the accused states in writing that he does not wish such an appointment to be made.

(3) if the prosecution is to be undertaken by a legally qualified officer or by a counsel the accused shall be notified of this fact in sufficient time to enable him, if he so desires to make arrangement for a legally qualified officer or counsel to defend him.

(4) As soon as practicable after a decision has been taken to place the accused on trial and in any case not less than four days before his trial he shall be given:

(a) a copy of the charge-sheet;

(b) an unexpurgated copy of the record or abstract of evidence showing the passages (if any), which have been expurgated in the copy sent to the senior member;

(c) notice of any additional evidence which the prosecution intends to adduce; and



(d) if the accused so requires, a list of the ranks names and units of the members who are to form the Court and of any waiting members.”

(5) when an accused is given a copy of the charge-sheet and of the record or abstract of evidence in accordance with this rule, he shall: (a) have the charge explained to him; and (b) be informed that, upon his making a written request to his Commandant not less than twenty four hours before his trial requiring the attendance at his trial of a witness (other than a witness for the prosecution) whom he desires to call in his defence (such witness to be named by him), reasonable steps will be taken in accordance with these rules to procure the attendance of any such witness at his trial.

(6) The provisions of sub-rules (2) and (3) shall not apply in relation to a trial before a Summary Security Force Court and in relation to such a trial the period of four days referred to in sub-rule (4) shall be construed as twenty four hours.”

(underlining supplied)

6. In terms of Rule 62(i) of the Rules, the copy of the Record of Evidence or Abstract of Evidence along with the charge sheet and convening order of the Security Force Court has to be sent to the Senior Member of the Security Force Court and therefrom, the evidence which is inadmissible has to be expurgated.

7. Rule 63(4) stipulates that the copies of Record or Abstract of Evidence have to be provided to the accused not less than four days before his trial. Rule 63(4) (b) stipulates that an unexpurgated copy of the Record or Abstract of Evidence has to be provided along with an indication as to the passages which have been expurgated in the copy sent to the Senior Member.



8. The fact that in terms of Rule 63(4) (b) of the Rules, the accused has to be indicated the passages that have been expurgated from the copies sent to the Senior Member shows that the record would be supplied only after the procedure under Rule 62(i) of the Rules has been complied with i.e. issuance of a convening order, appointment of members of the Court and supply of the Record or Abstract of Evidence to the Senior Member of the Security Force Court after expurgation if any.

9. Accordingly, the contention of the learned counsel for the petitioner that copies of the Record of Evidence can be supplied even prior to the issuance of the convening order and thereafter the expurgated record can be indicated has no merits.

10. However, the contention of the learned counsel for the petitioner does have merit that in case the record is furnished to the accused at the last minute i.e. just before the commencement of the four days prior to the trial, the same may prejudice the defence.

11. No doubt law stipulates a period of “not less than four days”, which means that the moment the convening order is passed and the expurgated record is provided to the Senior Member, copy of the same should be provided to the accused with promptitude to enable the accused ample time to prepare the defence.

12. In view of the above, this petition is disposed of directing the respondents to provide a copy of the record of the Staff Court of Inquiry within one week and with promptitude the Record of Evidence



as soon as the convening order is passed and the expurgated record is provided to the Senior Member of the Security Force Court.

13. Order *dasti* under the signatures of Court Master.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

NOVEMBER 21, 2023/*sw*

