

(1998) 02 DEL CK 0057

In the Delhi High Court

Case No : C.W. No. 1598/97 and C.M. No. 6528/97

B. Kishore

APPELLANT

Vs

Union Government of India and Others

RESPONDENT

Date of Decision : 02-02-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 46 DRJ 53

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : H.B. Mishra and A.K. Mishra, for the Appellant; Rekha Pali, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramamoorthy, J.—The petitioner has prayed for the following relief:

a) A writ of Certiorari or any other writ or proper order quashing the findings dated 1.1.1997 and concurred on 6.1.1997 by respondent No. 2 being mala fide, arbitrary, capricious and being passed having improper motive for extraneous consideration:

b) A writ of mandamus or any other writ or order directing the respondent Nos. 1 and 3 to initiate proceedings in the Criminal Court being offences committed by the respondent No. 5 and 6 and triable by the Criminal Courts or

c) A writ of Mandamus or any other writ or proper order directing the respondent No. 1 and 3 to refer the case for Court Martial Proceedings as provided under the Air Force Act, 1950.

2. According to him, on 27.12.1996, he was attached with respondents 5 and 6 to 8 who are against the action of the petitioner. The matter was brought to the notice of Respondents 1 to 4 and some action was taken against the 5th respondent and the administrative action was taken and that was not sufficient

and the respondents 1 to 4 had not followed the provisions of law and Therefore, justice has been denied to the petitioner. According to the petitioner provisions of Section 4 of Cr.P.C. had not been kept in mind. Section 4 Cr.P.C. reads as under:

4(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

4(2) All offences under any other law, shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

3. Learned counsel for the petitioner refers to Section 475 of the Cr.P.C. which deals with the powers of various officer and the Section has to be extracted and reads as under:

475(1) The Central Government may make rules, consistent with this Code and the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), and the Air Force Act, 1950 (45 of 1950), and any other law, relating to the Armed Forces of the Union, for the time being in force, as to cases in which persons subject to military, naval or air force law, or such other law, shall be tried by a Court to which this Code applies or by a Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable to be tried either by a Court to which this Code applies or by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him together with a statement of the offence of which he is accused, to the commanding officer of the unit to which he belongs, or to the commanding officer of the nearest military, naval or air force station, as the case may be for the purpose of being tried by a Court-martial.

4. Learned counsel for the petitioner refers to Section 124 of the Air Force Act, 1950. Rule 24 and 154 the provisions reads as under:

Choice between criminal court and court-martial.

When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the Chief of the Air Staff, the officer Commanding any group, wing or station in which the accused prisoner is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in air force custody.

5. Learned counsel also refers to the judgment of the Supreme Court reported in Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, for the proposition that the officer working under the defense services are also entitled to the same remedy as other citizens and they cannot be treated differently when the question of enforcement comes. The learned counsel for the

petitioner brought to my notice the statement of the 5th respondent recorded by the respondents in the administrative inquiry held against the 5th respondent wherein, according to the petitioner, the 5th respondent had admitted the guilt instead of establishing the facts. According to him, the authorities concerned had not taken into consideration of the mandatory provisions of law and had failed to take appropriate action and Therefore, petitioner had approached to this court for the relief adumbrated above.

The respondents have disputed the facts mentioned by the petitioner and as a matter of fact, the learned counsel for the respondents pointed out that the petitioner himself was found in drunk position on the particular day and other facts referred to are irrelevant. The question raised by the petitioner regarding the statement of facts which could be investigated only in a proper manner by the competent authority. In spite of what has been done by the respondents, the petitioner has got his remedy available against the grievance who had the petitioner, according to him that when the petitioner has gone under law the petitioner cannot have a right of mandamus as prayed for by him and for quashing the administrative proceedings taken by the respondents 1 to 3 against the 5th respondent reserving the right of the petitioner to have recourse his remedy under law.

6. I do not want to go into the question of fact and in law this court is not expected to decide the disputed question of fact.

Accordingly, the writ petition is dismissed.