

(2017) 10 DEL CK 0058

In the Delhi High Court

Case No : Civil Writ Petition No. 9627 Of 2017, Civil Miscellaneous No. 39204 Of 217

Col Anand Swaroop

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 31-10-2017

Acts Referred:

Citation : (2017) 10 DEL CK 0058

Hon'ble Judges : Hima Kohli, J; Rekha Palli, J

Bench : Division Bench

Advocate : S.S. Pandey, Sanjeev Narula, Maj Charul

Final Decision : Disposed Of

Judgement

1. The petitioner is aggrieved by the orders dated 11.07.2017 and 09.08.2017, passed by the Armed Forces Tribunal (in short 'AFT'), in O.A. No.593/2015 filed by him for several reliefs including quashing of the convening order dated 11.10.2012, convening a Court of Inquiry to investigate into irregularities, if any, in accounting of funds allotted to the petitioner for Indian Army, Ski Training Expedition to Norway and North Pole, sanctioned vide Govt. of India's letter dated 30.12.2011. In his Original Application (OA), the petitioner had also prayed for quashing the directions for initiating disciplinary action against him.

2. On 11.07.2017, during the hearing of the O.A., the AFT had clarified that the respondents may proceed ahead with the processing of the case to enable the competent authority to take a decision on the basis of records as to whether the petitioner ought to be proceeded against departmentally. It was further clarified that the decision arrived at by the respondents shall be subject to the final outcome of the pending O.A. With these directions, the matter was adjourned to 09.08.2017. On 09.08.2017, the petitioner had circulated an adjournment slip on the ground that his arguing counsel was not available. He had also handed over a copy of the order passed by the General Officer Commanding, Delhi Area, which reflected that a decision had been taken to proceed against him by constituting a

General Court Martial (in short 'GCM'). In view of the aforesaid decision, the AFT had directed that the respondent may proceed as per law and try to complete the proceedings before the next date of hearing i.e. by 06.12.2017.

3. Mr. Pandey, learned counsel for the petitioner states that in the meantime, on 20.10.2017 the petitioner was placed under close arrest for purposes of a GCM that was to be held on 21.10.2017, which was then adjourned to 26.10.2017. The GCM has thereafter been adjourned to 07.11.2017. In the meantime, due to his close arrest, the petitioner could not engage a counsel or take steps to be adequately represented before the GCM.

4. When the matter was taken up on the first call, Mr. Narula, CGSC for the respondent/UOI had handed over a copy of the order dated 31.10.2017 passed by the General Officer Commanding, Delhi Area releasing the petitioner from close arrest in view of the undertaking furnished by him. The said document is taken on record.

5. Learned counsel for the petitioner had sought a pass over to enable him to obtain instructions as to whether the petitioner had actually been released from close arrest. On pass over, the petitioner is present along with his counsel and submits that he was released from close arrest today, at 11.25 AM.

6. Learned counsel for the respondents states on instructions that no further orders of close arrest will be issued against the petitioner. He states that the respondents may be permitted to proceed further with the GCM proceedings which are now scheduled on 07.11.2017, with an assurance that during the pendency of the O.A. before the AFT, the findings returned by the Court Martial, would not be sent for confirmation.

7. While binding the respondents to the aforesaid undertaking, the learned AFT is requested to hear the arguments in the pending O.A. filed by the petitioner on the next date of hearing and pass appropriate orders. It is made clear that neither party shall be accommodated for any adjournment on the next date of hearing before the AFT. During the pendency of the O.A., the respondents shall remain bound by the undertaking recorded hereinabove. While the proceeding of the GCM may be completed, the findings will not be sent for confirmation or promulgation.

8. The present petition is disposed of along with pending application at the stage of admission while clarifying that the order above has been passed in the peculiar facts and circumstances of the present case, especially keeping in view the exigency of the matter having regard to the close arrest of the petitioner, and it shall not be treated as a precedent in any other case to invoke the jurisdiction of this court to entertain a petition against the orders passed by the AFT.