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**COURT NO.3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

T.A. No. 224 OF 2009

(WP(C) No. 2281 OF 1994 of Delhi High Court)

IN THE MATTER OF:

Mohan Lal

.....Applicant

VERSUS

The Union of India and others

.....Respondents

CORAM :

HON'BLE JUSTICE MANAK MOHTA, JUDICIAL MEMBER,

HON'BLE LT GEN Z.U. SHAH, ADMINISTRATIVE MEMBER

PRESENT:

Mr. R.S. Mishra, Counsel for the Applicant

Ms. Jyoti Singh, Counsel for the Respondents.

JUDGMENT

Dated: 24-11-2009

1. It is revealed from the record that initially Applicant filed the present writ petition before the Hon'ble Delhi High Court challenging the correctness and validity of the impugned order of dismissal dated 26-06-1990 by which he had been dismissed from the service and

order dated 14-02-1991 passed in an appeal filed by the Applicant against the order of dismissal with a further prayer to set aside the same and may be reinstated with all consequential benefits. Notice of petition was issued. The Respondents by way of reply denied all the allegations made in the application and submitted that Applicant was dismissed from the service after affording ample opportunities to put forward his defence and after due compliance with the provisions of law under Section 20(i) of the Air Force Act 1950 read with Rule 18 of the Air Force Rules 1969. Applicant also filed rejoinder reiterating the grounds raised earlier in the application.

2. On creation of Armed Forces Tribunal under Armed Forces Tribunal Act 2007, the matter was transferred to this Tribunal along with record. The case was treated as an application under Section 14 of the said Act.

3. The brief relevant facts of the case for a just decision of the present application as are available on record are that Applicant was initially enrolled in the Indian Air Force and was allotted the trade of Clerk General Duties. The Applicant was posted at the Air Force Station, Amritsar and he was attached to Air Force Station, New Delhi.

4. The allegation against the Applicant was of disclosing confidential records after taking bribe. On that issue, the confession statement dated 11-08-1989 of the Applicant was recorded. Thereafter a show cause notice dated 15-01-1990 was issued. After considering the material, the Applicant was dismissed from service vide order of dismissal dated 26-06-1990 under Section 20(1) of Air Force Act, 1950 read with Rule 18 (1) Air Force Rules, 1969.

5. It is further revealed from the record that the Applicant again filed an appeal on 12-07-1990 against the said order of dismissal dated 26-06-1990 but that too was rejected vide impugned order dated 14-02-1991. Against that order, matter was agitated before the court. Arguments were heard and record of the case was seen.

6. During the course of arguments, ld. Counsel appearing on behalf of the Applicant mainly contested that no proper enquiry was held before the dismissal order was passed. He further contended that mere the confession statement, which was allegedly recorded under force or coercion, could not be made basis of any findings. It was further contended that the confession statement was recorded in the presence

of the police, therefore, the same is not admissible. Therefore, the order of dismissal is said to be illegal. It is further contended that against the said dismissal order, Applicant filed an appeal but that too was dismissed without taking into consideration true facts and without applying mind. Prayer was made to set aside the same and reinstate the Applicant with all consequential benefits. It is further contended that Applicant has not committed any serious offence and for that he should not be given the severe punishment.

7. On the contrary, Id. Counsel for the Respondents states that the confession statement was recorded after due notice and caution. The Applicant has voluntarily stated the facts in the confession statement. The said statement was not recorded before the police officer but recorded by an independent authority. On the basis of confession statement and other material, a show cause notice dated 15-01-1990 was issued and ample opportunities were granted to the Applicant to file the reply and to produce defence. Thereafter considering the whole facts and circumstances of the case, dismissal order was passed by a competent authority and that was also upheld in the appeal which was again heard by the independent authority under the Ministry of Defence. He further submits that the Applicant is not entitled for any relief and the application is liable to be rejected.

8. We have considered the rival contentions of the learned counsels for the parties and gone through the record of the case.
9. The main question for consideration is whether the order of dismissal, as well as order passed in the appeal, are illegal, unjust, unconstitutional and violative of any rules and if it is so what relief can be awarded to the Applicant ?
10. The main contentions of the learned counsel for the Applicant is that the confession statement was recorded under threat and coercion. We have perused the confession statement. This allegation of the Applicant is not corroborated with any material available on record. Further it is not found that it was recorded in the presence of police and under due pressure and coercion as alleged. It is revealed from the record that confession statement was recorded on 11-08-1989. It has been recorded after due compliance. It is not suffered from any infirmity. There is no material on record showing that any protest was made against the alleged forcibly recorded confession statement. For the first time, the protest was raised in the reply dated 14-02-1990 to the show cause notice dated 15-01-1990. Thus, the above said contentions of the Applicant are not trustworthy.

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11. During the course of the arguments, learned counsel for the Respondents also drew our attention towards the facts mentioned in the application in which Applicant himself has admitted that one known person met him and requested for disclosing the status of some candidates in the merit list. That also showed that he was involved in such activity. The relevant portion mentioned in the paragraph no. 4 of the main application is quoted hereunder :

“.....During the period of course in the year 1989 he (Applicant) was approached by one of his friend Ariman and he wanted to know the position of some individuals on the merit list. The Petitioner (Applicant) showed his inability but on persistent asking of the friend, the petitioner (Applicant) told him that in case the position of the individuals are known, the same shall be communicated to him by post.....”.

12. The Applicant was dismissed from the service on the allegation that he disclosed the status of some candidates in the merit list after taking bribe. On the basis of material on record, a show cause notice was issued to the Applicant giving chance to the Applicant to explain each and everything but he was not able to substantiate his defence. The said show cause notice was issued by the competent authority. The dismissal order was passed by the Respondents after giving full opportunity to the Applicant.

13. The competent authority was empowered to pass such order under Section 20(1) of the Air Force Act, 1950. The contentions of the learned counsel for the Applicant that without holding separate enquiry, such dismissal order cannot be passed are not sustainable. We have also gone through the second impugned order dated 14-02-1991 passed in an appeal filed by the Applicant against his dismissal order dated 26-06-1990. After re-appreciation of the matter, the dismissal order dated 26-06-1990 has been upheld. We do not find any irregularity or illegality in passing the said order.

14. On the basis of the aforesaid discussions, we do not find any irregularity, illegality and impropriety in the impugned order of dismissal dated 26-06-1990 and appellate order dated 14-02-1991. No interference is needed. Hence, present application is dismissed. No order as to costs.

MANAK MOHTA
(Judicial Member)

Z.U. SHAH
(Administrative Member)

Announced in the open court
Dated : 24-11-2009