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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 12th September, 2005

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W.P.(C) 5498/2003

SH. GAURAV KUMAR Petitioner
! Through Maj. Siya Ram, Advocate

versus

\$ UNION OF INDIA & ORS. Respondents
^ Through Ms. Raman Oberoi, Advocate.

CORAM:

* HON'BLE MR. JUSTICE MUKUL MUDGAL
HON'BLE MR. JUSTICE H.R. MALHOTRA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

MUKUL MUDGAL J. (ORAL).

1. Rule DB. With the consent of the learned counsel for the parties, the writ petition is taken up for final hearing.

2. The petitioner's case as averred in the writ petition is as follows:-

The petitioner who is a Sepoy in the Army was charge-sheeted under Section 69 of the Army Act for commission of civil offence punishable under Section 354 IPC. The charge dated 12th April, 2003 reads as under:

"That he - on 13th November, 2002 at Gwalior, he used criminal force against

WRC) No.5498/03

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Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

Smt. Bishnu Thapa W/o Lt. Raj Kumar Thapa in which he stopped his way and moving towards her forced her to go to her bed room and thereafter when she tried to run out of bed room, you with the intent to outrage her modesty grabbed her by holding her hand.

Place: Gwalior

Sd/-

Date: 12th April, 2003

(Chaudhary Ashok Kumar)
Col.
Common Officers
154, Medium Regiment(Auto.)"

After summary of evidence was recorded the petitioner was awarded punishment of dismissal from service. This led the petitioner to file a representation dated 2nd May, 2003 as provided under Section 164 of the Army Act. The petitioner pleaded in the representation that he was not given due opportunity in preparing his defence as necessary copies of pre-trial documents was not provided to him thus causing serious prejudice and injustice to him. The petitioner requested for supply of copy of Court of Inquiry, copy of compliance of Army Rule 22, copy of summary evidence and few other documents as detailed in the representation which is annexed as Annexure 'B'. The petitioner also sought reinstatement in the Army. The appeal preferred by the petitioner was disposed of on 13th August, 2003.

3. The present writ petition has been filed for setting aside the impugned order dated 13th August, 2003 as also proceedings of the Court Martial dated 28th and 29th April, 2003 resultantly seeking reinstatement.

4. It is noticed that by an appeal dated 2nd May, 2003 the petitioner had raised two

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grievances. One that he was not given the documents detailed in paragraphs 3 and in paragraph 4 he has prayed for setting aside the impugned summary court martial and sought reinstatement. The representation made by the petitioner under Section 164 has been disposed of partly by the order dated 13th August, 2003 by referring to the claim made by the petitioner/appellant for documents. However, the prayer made in paragraph 4 has not been dealt with. Accordingly the respondents are directed to dispose of the appeal preferred by the petitioner not later than 15th December, 2005 by taking into account all the pleas raised by him by a reasoned order. It will be open to the petitioner to challenge the order of the disposal of the appeal in case it is unfavourable to him in appropriate legal proceedings.

5. The writ petition stands disposed of.

6. A copy of this order be given dasti to the counsel for the parties


Mukul Mudgal, J.

12th September, 2005
ps/SCS


H.R. Malhotra, J.