

**A.F.R.**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

**Reserved Judgment**  
**Court No. 1**

**Original Application No. 47 of 2011**

Monday the 10<sup>th</sup> day of February, 2014

“Hon’ble Mr. Justice S.C. Chaurasia, Member (J)  
Hon’ble Lt. Gen. R.K. Chhabra, Member (A)”

Lt. Col. P. Bohra (IC-45725M), S/o Late P.S. Bohra, 6 PARS,  
Jabalpur, District Jabalpur (M.P.).

Applicant

By Legal Practitioner Shri K.C. Ghildiyal, Advocate.

Versus

1. Union of India, Through The Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief of the Army Staff, Integrated HQ of MoD (Army), South Block, New Delhi.
3. The General Officer Commanding Bengal Area AJC Bose Road, Kolkata (West Bengal).

Respondents

By Legal Practitioner Shri Alok Mathur, Advocate, Senior Central Government Counsel.

**ORDER**

**Hon’ble Mr. Justice S.C. Chaurasia**

1. The instant Original Application, under Section 14 of the Armed Forces Tribunal Act, 2007, has been filed on behalf of the applicant and he has claimed the reliefs as under :-

- “(i) Issue directions to call for records and set aside award of “reproof” given by respondent No 3 on 19.08.2005.*
- (ii) Issue directions to call for records and set aside Government of India, Ministry of Defence Orders No 48545/STAT/EC/1087/AG/DV-4/3011/D (AG) dated 25.08.2008 and Army HQ orders dated 08.09.2010 rejecting the statutory complaint and appeal respectively against award of unjust and illegal award of “reproof”.*
- (iii) Issue such other order/direction as may be deemed appropriate in the facts and circumstances of the case.”*

2. The applicant's case, in brief, is that he was commissioned in the Army Ordnance Corps (AOC) on 23.08.1986 and his seniority reckons with effect from 21.04.1987. The applicant has held various appointments in Central Ordnance Depots, Chheoki, Kanpur, Delhi Cantt., 14, 18 & 28 Division Ordnance Units (DOU) and in Ammunition Depot, Bathinda, Panagarh and 26 Ammunition Company. The applicant has a brilliant and excellent service record and was also awarded GOC-in-C, Western Command CC on 30.11.2009. The applicant was posted with Ammunition Depot, Panagarh, from July, 2002 to 2004. While serving there, vacancies were released by Army HQ for recruitment of civilians in Ammunition Depot, Panagarh, vide letter No.15251/OS/MP-

4(CIV)(b) dated 14.05.2003. The Commandant of the Depot, vide order dated 15.07.2003, made the Administrative Officer of the Depot responsible and accountable for the recruitment of civilian employees, the copy of order is enclosed as Annexure-A/4. The SOP (Standard Operating Procedure) dated 26.07.2003 was formulated by Col. K.C. Mahajan, based on general policies of DOP & T and Army HQ, the copy of SOP is enclosed as Annexure - A/5. The role and Charter of duties of each functionary were spelled out in the SOP. The Convening Order dated 01.08.2003 was issued for recruitment of Class – IV post in the Depot and the applicant was made Presiding Officer of the one of the Boards, the copy of Convening Order is enclosed as Annexure - A/6. There was apparent inconsistency between the SOP and Convening Order issued under the orders of the Commandant. The SOP warranted selection based on comparative merit, whereas, the Convening Order directed the Board to verify the documents with regard to caste, age, driving license/experience certificate and education certificate. The call letters issued to civilian candidates under the signature of the Administrative Officer to appear before the Board did not direct the candidates to get the certificates, which in fact, was the responsibility of the Administrative Officer of the Depot and not of the Board of Officers. It was also the responsibility of the

Administrative Officer to send the details of the candidates shortlisted for selection for verification to the District Civil Authorities. Specimen call letters dated 12.07.2003 and 21.07.2003, issued to the candidates, indicating inconsistency, are enclosed as Annexure-A/7. The discrepancies in the Convening Order and the SOP were pointed out by the applicant to the Commandant before carrying out the selection, who although agreed with the applicant, but, did not appreciate the view point in correct perspective. Consequent upon detailing a Board of Officers on 01.08.2003 for testing of candidates and drawing a comparative merit list, 24 hours prior to actual conduct of the Board, Col. K.C. Mahajan deviated from his SOP and additionally tasked above Boards to verify documents with regard to age and caste etc., which as per SOP was tasked to a different Board and was to be carried out for only selected candidates, as per the procedure. The order in its form was unimplementable by the Board of Officers, of which the applicant was the Presiding Officer, because the concerned documents are sent to the originator for checking of authenticity and it is a time consuming process and can be carried out for selected candidates only; that the admit cards issued to the candidates, on the basis of provisional scrutiny of their documents by a pre-scrutiny Board, did not ask the candidates to

present themselves with any document except a photo admit card for tests; that the same organization issued admit cards to ex-servicemen and they were specifically asked to get related authenticated documents for checking; that it cannot be ascertained at this point of time or ever as to what documents, if any, were produced by candidates before taking the test and whether they were photocopies or originals; that there was no way to contact the candidates, 18 hours prior to the actual test, for presenting themselves with authenticated originals, for verification as per order of the Commandant. The endorsement was made in the Result Sheets to the effect that the said order was not implementable and it was approved by the Administrative Officer and Commandant himself on 07.08.2003 in the Board proceedings. The approval implies that the view point of the Board was accepted by the Commandant. Later on, this recruitment became subject matter of investigation by a Court of Inquiry.

3. After the statement of the applicant in the Court of Inquiry, Col. K.C. Mahajan submitted an additional supplementary statement, which was accepted by the Court of Inquiry, in the absence of the applicant. After conclusion of the Court of Inquiry, the applicant was shown the additional statement of Col. K.C. Mahajan and was asked to sign the

certificate in compliance with Rule 180 of the Army Rules, 1954, stating that the applicant does not wish to cross examine Col. K.C. Mahajan. The applicant did not sign such certificate, as he was not given opportunity to cross examine Col. K.C. Mahajan. In case the mandatory endorsement exists in manuscript copy of the Court of Inquiry, then, it is a case of forgery and fabrication of record. On conclusion of the Court of Inquiry, Col. K.C. Mahajan was awarded "Reproof" along with the applicant by respondent No. 3, more than a year after the applicant had been posted out from the Depot.

4. The applicant submitted a Statutory Complaint dated 11.08.2006, copy of which is enclosed as Annexure A/8, but, the same was rejected, vide Order No. 48545/STAT/EC/1087/AG/DV-4/3011/D (AG) dated 25.08.2008, copy of the Order enclosed as Annexure A/2, after unexplained delay of more than two years. The applicant filed an application dated 07.11.2008 for review of Order dated 25.08.2008, copy of which is enclosed as Annexure A/9, but, the same was rejected vide Order dated 08.09.2010, copy of Order is enclosed as Annexure A/3.

5. The applicant has challenged the impugned Orders dated 19.08.2005, 25.08.2008 and 08.09.2010 (Annexures A/1 to A/3) on the grounds that the order awarding "Reproof" suffers from patent illegality, non-application of mind and is violative of

principles of natural justice and fair play; that the applicant was censured for an act not committed by him in as much as Mazdoor Partha Dutta Choudhury and Mazdoor Bankim Mondal did not even appear before the Board presided over by the applicant, but the respondent No. 3 without application of mind stated in the “Reproof” Order that the applicant had recruited them; that the compliance of Rule 180 of the Army Rules, 1954 is mandatory for the Court of Inquiry, but, it has not been complied with; that no show cause notice was served on the applicant before award of “Reproof”; that the applicant’s statutory complaint and application for review of said order have been rejected in a mechanical manner without application of mind.

6. The respondents have not disputed the applicant’s dates of commission and seniority and overall career profile. Their version is that there is no inconsistency between the SOP and the Convening Order. There is no record pertaining to alleged observations made by the applicant and as such it appears to be afterthought. It is denied that the endorsement to the effect in the Result Sheets that the Convening Order is not implementable was approved by the Administrative Officer and Commandant in the Board proceedings. All the Rules and Regulations were followed during the conduct of the Court of Inquiry proceedings

and there was no violation of Rule 180 of the Army Rules, 1954. The applicant was awarded “Reproof” looking into the gravity of lapses committed by him. The applicant’s statutory complaint was duly considered and was rejected. The applicant’s review petition was also rejected rightly, because, there is no provision for review of the decision taken on the Statutory Complaint. The applicant’s Original Application is liable to be dismissed.

7. The applicant has asserted his previous version and has denied the respondents’ version in the Rejoinder Affidavit and has further stated that the respondents have filed a very cryptic and evasive reply in the form of Counter Affidavit.

8. The Counter Affidavit, Rejoinder Affidavit and Supplementary Counter Affidavit have been exchanged between the parties.

9. Heard Shri K.C. Ghildiyal, Learned Counsel for the applicant, Shri Alok Mathur, Learned Counsel for the respondents and perused the record.

10. Learned Counsel for the respondents has drawn our attention towards Sections 3(o) and 14(2) of the Armed Forces Tribunal Act, 2007 and has submitted that the applicant is not aggrieved by an order pertaining to any service matter and hence, he has no locus standi to file the instant Original



Application. He has further submitted that “Reproof” awarded to the applicant is not a form of punishment and at the most, the applicant is annoyed by the said order and he cannot be said to be aggrieved by it, because, he is not affected adversely. In support of his contentions, he has placed reliance on the decision of the Hon’ble Allahabad High Court – Lucknow Bench, reported in 2010 (2) AWC 1878 (LB), Dharam Raj Versus State of U.P. and Others.

11. Learned Counsel for the applicant has contended that the applicant is aggrieved by the findings of the Court of Inquiry itself and a person is punished only when he is held guilty. He has further submitted that the applicant is aggrieved by the impugned order awarding “Reproof” and hence, his locus standi to challenge the said order by way of filing the instant Original Application cannot be challenged.

12. On the basis of the findings recorded by the Court of Inquiry, the applicant has been awarded “Reproof”. The applicant has challenged the findings itself, recorded against the applicant by the Court of Inquiry, on the ground that it has not considered the matter in correct perspective and has submitted that there was no sufficient material on record to award “Reproof” to the applicant. It is not disputed by the Learned Counsel for the applicant that the “Reproof” is not a form of

punishment provided under the provisions of the Army Act, 1950, but, has submitted that it definitely affects the service career of the individual, indirectly. The applicant is in active service and the written order of "Reproof" has been communicated to him and hence, he is definitely aggrieved by it, although, it may not be a form of punishment provided under the provisions of the Army Act, 1950.

13. We have gone through the reported case of Dharam Raj (Supra), as relied upon by the respondents. In the said case, the petitioner along with other villagers made a complaint against the Licensee of fair price shop dealer in respect of the irregularities committed by him in running the fair price shop. The petitioner filed the Writ Petition in the Hon'ble High Court. The Writ Petition was dismissed with the observation that it is a legal obligation of the District Supply Officer/S.D.M. and the District Magistrate to see that the fair price shop dealers under their jurisdiction function properly in accordance with law. Pursuant to the said order of the Hon'ble High Court, the Licence of the fair price shop in question was suspended by the Sub-Divisional Magistrate and the enquiry was instituted. After obtaining explanation of the fair price shop licensee, the Sub-Divisional Magistrate imposed fine on him and restored the licence of fair price shop in question. The said order was

challenged by the petitioner through another Writ Petition in the Hon'ble High Court. In that background, it was held that he is not an "aggrieved person" rather he is a "person annoyed". The Writ Petition was dismissed on the ground that the petitioner is not an "aggrieved person" as the Writ Petition can be filed by only an "aggrieved person". The said case is distinguishable on facts and is of no help to the respondents. Besides it, the Original Application is equated to Original Suit and in view of Section 14(5) of the Armed Forces Tribunal Act, 2007, the Tribunal shall decide both questions of law and facts that may be raised before it.

14. The applicant has been awarded "Reproof" in accordance with Regulation 327 of the Regulations for the Army, 1987. It may be reproduced as under :-

**"327. *Reproof.*** – (a) *Reproof may be verbal or in writing or both.*

(b) *In no circumstances should reproof take the form of insult or abuse. It may be strong but should be directed to the actual fault committed and the language used should not be intemperate or offensive. A reproof should not be administered in the presence of subordinates unless, for the purpose of making an example, it is necessary that the reproof be public.*

(c) *Warning, a minor censure, may take the form of reproof and be administered verbally or in writing to service personnel by the officer commanding or by an*

*authority superior in command to the officer commanding. A warning will not be recorded in the service documents of the person concerned.*

*(d) it should be ensured that before administering reproof by way of a warning or otherwise the competent authority applies its mind to the case and comes to a conclusion that ends of justice would be met by closing the case with reproof. Once a decision has been arrived at and the case closed by administration of a reproof by a competent authority, no superior authority can reopen the case.”*

15. Learned Counsel for the respondents has submitted that the Regulations for the Army, 1987 are “non-statutory” and the same have no binding effect. Learned Counsel for the applicant has not disputed the respondents’ version to the effect that these Regulations are “non-statutory”, but, has submitted that these Regulations have binding effect. In support of his contention, he has placed reliance on the decision of the Hon’ble Supreme Court, reported in (2011) 11 Supreme Court Cases 702, Pepsu Road Transport Corporation, Patiala Versus Mangal Singh and Others. The para 32 of the decision of the Hon’ble Supreme Court may be reproduced as under :-

*“32. Even in the case of non-statutory regulations, specifically providing for the grant of pensionary benefits to the employee qua his employer shall be governed by the terms and conditions encapsulated in such non-statutory regulations. In Union of India v. P.K. Dutta*

*[1995 Supp (2) SCC 29], this Court held : (SCC p. 32, para 7)*

*“7. It is true that the Pension Regulations are non-statutory in character. But as held by this Court in Hari Chand Pahwa v. Union of India [1995 Supp (1) SCC 221], the pensionary benefits are provided for and are payable only under those Regulations and can, therefore, be withheld or forfeited under and as provided by those very Regulations. The following [observations] from the said judgment makes the position clear:*

*‘We do not agree even with the second contention advanced by the learned counsel. The provisions of Regulation 16(a) are clear. Even if it is assumed that the Pension Regulations have no statutory force, we fail to understand how the provisions of the said Regulations are contrary to the statutory provisions under the Act or the Rules. The pension has been provided under these Regulations. It is not disputed by the learned counsel that the pension was granted to the [Corporation] under the said Regulations. The Regulations which provided for the grant of pension can also provide for taking it away on justifiable grounds’.*” *(emphasis supplied)*

16. Hon’ble Delhi High Court has placed reliance on the decision of the Hon’ble Apex Court, reported in Union of India and others Versus Brig. J.S. Sivia, MLJ 1996 SC 3, in para 32 of its Judgment dated 02.06.2008, delivered in Writ Petition (C) No.3831 of 2007 and Writ Petition (C) No. 3904 of 2007, Major

General Rakesh Kumar Loomba Versus Union of India and Others and it may be quoted as under :-

*“32. The next point, which must be borne in mind is that even, if the proceedings of the respondents are presumed to be valid and legal, the punishment of recordable censure should not have come in the way of the promotion of the petitioner. In Union of India and others Vs. Brig. J.S. Sivia, MLJ 1996 SC 3, it was held :*

*“7. The latest Army Order on the subject or Award of censure to Officers is dated January 5, 1989. The relevant paragraphs 2, 5, 6, 8, 9, 10, 13 and 21 are reproduced hereunder:*

*“2. The award of censure to an officer or a JCO is an administrative action, in accordance with the custom of the service. It takes the form of ‘Severe Displeasure’ (either recordable or otherwise) or ‘Displeasure’ of the officer award the censure, as specified in succeeding paragraphs.*

*5. Censure is awardable where the act, conduct or omission is of a minor nature, both in nature and gravity. An offences of serious nature under the Army Act will not be disposed of by an award of censure but will be dealt with by initiating a disciplinary action. Attention, in particular, is invited to Para 432 of the Regulations for the Army, 1962, which stipulates that “persons committing offences involving moral turpitude, fraud, theft, dishonesty and culpable negligence involving financial loss to public or regimental property must be tried by a court martial or prosecuted in a civil*

*court. Such cases will not be disposed of summarily or by administrative action.” In view of the foregoing, there should be no occasion for offences involving moral turpitude, misappropriation, financial or other offences of serious nature being dealt with by award of censure when disciplinary action is possible/feasible. If for some reason, a case of this nature does come across, where trial is inexpedient or impractical, administrative action for termination of service of the delinquent persons should be initiated.*

*6. Cases which are not of minor nature and which do not involve moral turpitude, fraud, theft, and dishonesty and where trial of GCM is either not practicable being time barred or is not expedient due to other reasons, may in appropriate cases be discretion of the GOC-in-C be forwarded to Army Headquarters (D&V Dte) for consideration to award of censure by the COAS, so as to avoid resorting to the extreme step of action under the provisions of Army Act Sec 19 read with Army Rule 14.*

*8. Censure in the form of ‘Severe Displeasure’ or ‘displeasure’ awarded by the Central government will remain permanently with the dossier of the officer or the JCO so censured.*

*9. ‘Severe Displeasure’ of the Chief of Army Staff will remain with the dossier of the officer or the JCO concerned permanently.*

*10. Award of a ‘Severe Displeasure’, by a General Officer Commanding in Chief, or a General*

*Officer Commanding a Corps (not below the rank of Lt Gen) of Director General Assam Rifles (not below the rank of Lt Gen) will be recorded with the dossier of an officer or a JCO only where a specific direction that the censure be so recorded (recordable censure) is endorsed.*

*13. The award of a censure does not debar an officer from being considered for promotion and may not be itself affect his promotion. However, while it is operative, it is taken cognizance of as part of the officer's overall record of service in assessing his performance for such promotion. The effect of a recordable censure on promotion would be considered in its totality on the overall performance. A censure ceases to have any effect on promotion once it is inoperative as given in paras 21 to 22 below.*

*21. Recordable Censure on Severe Displeasure other than those Awarded by the Authorities at Paras 8 to 9 above. A censure of 'Severe Displeasure' (to be recorded) awarded by General Officer Commanding in Chief or a General Officer Commanding Corps (not below the rank of Lt Gen) or Director General Assam Rifles (not below the rank of Lt Gen) will remain operative for three years from the date of award after which it will automatically lapse and the record expunged from the dossier of the officer or the JCO concerned under intimation to the individual."*

*8. It is obvious from various documents mentioned above that the award of censure is being*



*regulated by “Customs of the service”. The Army Order dated January 24, 1942 takes us to August 26, 1927 and as such there is reasonable basis to assume that the award of censure is being governed by the “Customs of the service” right from the inception of the Indian Army. That being the position the award of censure is the binding rule of the army service. Section 3(v) of the Act and Regulations 9 of the Regulations recognize the existence of “customs of the service”. The definition of “Commanding Officer” clearly says that in the discharge of his duties as a Commanding Officer, he has to abide by the “customs of the service”. Similarly Regulation 9 which lays down the duties of the Commanding Officer, specifically says that the Commanding Officer has to discharge his functions keeping in view the regulations and the ‘customs of the service’. From the scheme of the Act, Rules, Regulations and the various Army orders issued from time to time, it is clear beyond doubt that the award of censure is part of the custom of the Army and has the binding force.”*

17. Learned Counsel for the respondents has not been able to show that the Regulation 327 of the Regulations for the Army, 1987 is contrary to any provision of the Army Act, 1950 or the Army Rules, 1954. Under these circumstances, we are of the view that the said Regulation 327 of the Army Regulations, 1987, although, non-statutory, has binding effect. The Regulation 327(c) of the Regulations for the Army, 1987

indicates that the warning, a minor censure may take the form of “Reproof”. In view of latest Army Order dated January 5, 1989 on the subject of award of censure to officers, as referred to above, in the said Judgment (Supra), it is clear that the award of a censure (Reproof) may not itself affect the promotion of the individual, but, it is taken cognizance of as part of the officers’ overall record of service in assessing his performance for such promotion. It shows that the applicant is definitely aggrieved by the impugned order. We, therefore, hold that the applicant has locus standi to file the instant Original Application under Section 14(2) of the Armed Forces Tribunal Act, 2007.

18. Learned Counsel for the respondents has submitted that the competent authority, after considering the findings of the Court of Inquiry has administered “Reproof” to the applicant and the impugned order is not subject to judicial review. He has further submitted that the Tribunal has no jurisdiction to re-appreciate the evidence recorded during the Court of Inquiry and substitute its own findings. In support of his contentions, he has placed reliance on the following decisions of the Hon’ble Supreme Court :-

- (i) (2003) 3 Supreme Court Cases 583, Lalit Popli Versus Canara Bank and Others.

- (ii) (2010) 11 Supreme Court Cases 314, Charanjit Lamba Versus Commanding Officer, Army Southern Command and Others.

19. In the case of Lalit Popli (Supra), the Hon'ble Supreme Court has held in paragraphs 17, 18 and 19 of its Judgment as under :-

*“17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.*

*18. In B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749], the scope of judicial review was indicated by stating that review by the court is of decision-making process and where the findings of the disciplinary authority are based on some evidence, the court or the tribunal cannot reappreciate the evidence and substitute its own finding.*

*19. As observed in R.S. Saini v. State of Punjab [(1999) 8 SCC 90] in paras 16 and 17, the scope of interference is rather limited and has to be exercised within the circumscribed limits. It was noted as follows: (SCC p. 96)*

*“16. Before advertng to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while*

*exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.*

*17. A narration of the charges and the reasons of the inquiring authority for accepting the charges, as seen from the records, shows that the inquiring authority has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion, have been taken in a reasonable manner and objectively. The conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the inquiring authority. Likewise, the High Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard.”*

20. In the case of Charanjit Lamba (Supra), the Hon'ble Supreme Court has held in paragraphs 10, 11 and 12 of its Judgment as under :-

*“10. In Coimbatore District Central Coop. Bank v. Employees Assn. [(2007) 4 SCC 669] this Court declared that the doctrine of proportionality has not only arrived in our legal system but has come to stay. With the rapid growth of the administrative law and the need to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by reference to which the action of such authorities can be judged. If any action taken by an authority is contrary to law, improper, irrational or otherwise, unreasonable, a court competent to do so can interfere with the same while exercising its power of judicial review.*

*11. This Court referred with approval to the decision of the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service (1985 AC 374) where Lord Diplock summed up the grounds on which administrative action was open to judicial review by a writ court. Lord Diplock's oft quoted passage dealing with the scope of judicial review of an administrative action may be gainfully extract at this stage: (AC p. 410 D-E)*

*“.... Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the*

*grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' ...."*

*12. The doctrine of proportionality which Lord Diplock saw as a future possibility is now a well-recognised ground on which a writ court can interfere with the order of punishment imposed upon an employee if the same is so outrageously disproportionate to the nature of misconduct that it shocks the conscience of the court. We may at this stage briefly refer to the decisions of this Court which have over the year applied the doctrine of proportionality to specific fact situations."*

21. Learned Counsel for the applicant has submitted that if any order passed by the executive authority is arbitrary, improper, irrational or otherwise unreasonable, the same is always subject to judicial review. In support of his contentions, he has placed reliance on the decision of the Hon'ble Supreme Court, reported in (1984) 3 SCC 316, A.L. Kalra Versus Project and Equipment Corporation of India Ltd. The paragraph 19 of the Judgment of the Hon'ble Supreme Court may be reproduced as under :-

*“19. The scope and ambit of Article 14 have been the subject matter of a catena of decisions. One facet of Article 14 which has been noticed in E.P. Royappa v. State of Tamil Nadu [(1974) 4 SCC 3] deserves special mention because that effectively answers the contention of Mr. Sinha. The Constitution Bench speaking through Bhagwati, J. in concurring judgment in Royappa’s case [(1974) 4 SCC 3] observed as under: [SCC para 85, p. 38:SCC (L&S) p. 200]*

*“The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle ? It is a founding faith, to use the words of Bose, J., “a way of life”, and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be “cribbed, cabined and confine” within traditional and doctrinaire limits. From a positivistic point of view equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to*

*public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.”*

*This view was approved by the Constitution Bench in Ajay Hasia case [(1981) 1 SCC 722]. It thus appears well-settled that Article 14 strikes at arbitrariness in executive/administrative action because any action that is arbitrary must necessarily involve the negation of equality. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action per se arbitrary itself denies equal of (sic) protection by law. The Constitution Bench pertinently observed in Ajay Hasia’s case [(1981) 1 SCC 722] and put the matter beyond controversy when it said “wherever therefore, there is arbitrariness in State action whether it be of the legislature or of the executive or of an “authority” under Article 12, Article 14 immediately springs into action and strikes down such State action.” This view was further elaborated and affirmed in D.S. Nakara v. Union of India [(1983) 1 SCC 305]. In Maneka Gandhi v. Union of India [(1978) 1 SCC 248] it was observed that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It is thus too late in the day to contend that an executive action shown to be arbitrary is not either judicially reviewable or within the reach of Article 14. The contention as formulated by Mr. Sinha must accordingly be negated.”*

22. In view of the principles of law laid down by the Hon’ble Supreme Court, it is clear that the order passed by the executive



authority is subject to judicial review, if the said order is illegal, irrational, arbitrary, unreasonable, suffers from procedural impropriety or the punishment imposed is disproportionate to the charges levelled against the concerned person. In the instant case, the applicant has challenged the findings recorded by the Court of Inquiry, on the basis of material available on record, on the ground that the findings have been recorded against the applicant without application of mind and are unjust, unreasonable and arbitrary and hence, the order of “Reproof” passed against the applicant deserves to be quashed. In fact, the order of “Reproof” has not been challenged on the ground that it is disproportionate to the charges levelled against the applicant. We will enter into factual aspects of the case later on and if it is found that the order passed against the applicant is arbitrary, unjust, unreasonable or irrational, the same is definitely subject to judicial review.

23. Learned Counsel for the applicant has submitted that neither the copy of the report of the Court of Inquiry was provided to the applicant nor any opportunity of hearing was provided to the applicant before passing of the impugned order (Annexure A/1) and thus, there has been violation of the principles of natural justice and the impugned order is liable to be quashed on this very ground. He has further submitted that

pre-decision hearing is important and it cannot be substituted by post decision hearing. In support of his contentions, he has placed reliance on the decision of the Hon'ble Supreme Court, reported in AIR 1994 SC 1074, Managing Director, ECIL, Hyderabad, etc. etc. Versus B. Karunakar, etc. etc.. The Head Note (A) and (D) of the Judgment of the Hon'ble Supreme Court may be quoted as under :-

*“(A) Constitution of India, Arts. 311, 14 – Inquiry report – Delinquent is entitled to copy thereof before disciplinary authority takes decision regarding guilt or innocence – Refusal to furnish copy – Amounts to denial of reasonable opportunity.*

*Departmental inquiry – Report of Inquiry Officer – Delinquent is entitled to copy thereof.*

*Natural Justice – Reasonable opportunity – Refusal to furnish copy of Inquiry Officer's report to delinquent – Amounts to denial of reasonable opportunity.”*

*“(D) Constitution of India, Art. 311 – Inquiry report – Copy is to be furnished to delinquent irrespective of whether he asks for it or not.*

*Inquiry report – Copy has to be furnished to delinquent irrespective of whether he asks for it.”*

24. The Article 311 of the Constitution of India may be reproduced as under :-

*“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. – (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.*

*(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.*

*Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:*

*Provided further that this clause shall not apply –*

*(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;*

*or*

*(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or*

*(c) where the President or the Governor, as the case may be, is satisfied that in the interest of*

*the security of the State it is not expedient to hold such inquiry.*

*(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”*

25. From the bare perusal of Article 311 of the Constitution of India, it is clear that the protection of the said Article is available to the civil servants under the Union or a State and it is not available to military personnel. In view of Rule 184 of the Army Rules, 1954, the concerned person is entitled to copies of relevant statements and documents, but, there is no provision for supplying a copy of the report of Court of Inquiry. In this reference, paragraphs 23 and 29 of the decision dated 02.06.2008 of the Hon'ble High Court of Delhi at New Delhi, delivered in Writ Petition (C) No. 3831 of 2007 and Writ Petition (C) No. 3904 of 2007, Major General Rakesh Kumar Loomba Versus Union of India and Others, may be quoted as under :-

*“23. The last authority cited in this context is reported in Major General Inder Jit Kumar Vs. Union of India and others, 1997 (9) SCC 1, wherein, it was held :*

*“7. Under Rule 177 of Army Rules, 1954, a Court of Inquiry can be set up to collect evidence and to report, if so required, with regard to any matter*

*which may be referred to it. The Court of Inquiry is in the nature of a fact-finding inquiry committee. Army Rule 180 provides, inter alia, that whenever any inquiry affects the character or military reputation of a person subject to the Army Act, full opportunity must be afforded to such a person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. The presiding officer of the Court of Inquiry is required to take such steps as may be necessary to ensure that any such person so affected receives notice of and fully understands his rights under this rule. The appellant was accordingly present before the Court of Inquiry. Witnesses were examined by the Court of Inquiry in the presence of the appellant and were offered to the appellant for cross-examination. He, however, declined to cross-examine the witnesses. Instead, the appellant moved an application for an adjournment for preparing his defence. He also applied that the evidence adduced before the Court of Inquiry should be reduced to writing. The Court of Inquiry noticed that sufficient time had been granted to the appellant for preparation of his defence after receipt of the Court of Inquiry proceedings by him. Hence his application for adjournment was*

*refused. The hearing on charges took place in the presence of the appellant. At the conclusion of the hearing on charges, an order was passed that evidence be reduced to writing and a recommendation was made to convene a General Court Martial for trial along with recommendations on charges to be framed. Thereafter the charges were finalised, charge-sheet was issued and General Court Martial was convened.*

*8. The appellant has also contended that a copy of the report of the Court of Inquiry was not given to him and this has vitiated the entire Court Martial. The appellant has relied upon Rule 184 of the Army Rules, 1954 in this connection. Rule 184, however, provides that the person who is tried by a Court Martial shall be entitled to copies of such statements and documents contained in the proceedings of a Court of Inquiry as are relevant to his prosecution or defence at his trial. There is no provision for supplying the accused with a copy of the report of the Court of Inquiry. The procedure relating to a Court of Inquiry and the framing of charges was examined by this Court in the case of Major G.S. Sodhi v. Union of India (1991) 2 SCC 382. This Court said that the Court of Inquiry and participation in the Court of Inquiry is at a stage prior to the trial by Court Martial. It is the order of the Court Martial which results in deprivation of liberty and not any order directing that a charge be heard or that a summary of evidence be recorded*

*or that a Court Martial be convened. Principles of natural justice are not attracted to such a preliminary inquiry. Army Rule 180, however, which is set out earlier gives adequate protection to the person affected even at the stage of the Court of Inquiry. In the present case, the appellant was given that protection. He was present at the Court of Inquiry and evidence was recorded in his presence. He was given an opportunity to cross-examine witnesses, make a statement or examine defence witnesses. The order of the Court of Inquiry directing that a Court Martial be convened and framing of charges, therefore, cannot be faulted on this ground since it was conducted in accordance with the relevant Rules”*

29. *In Lt. Gen S.K. Sahni Vs. COAS, in WP(C) No.11839/2006, decided on 11th January, 2007 by DB of this court cited by counsel for the petitioner, it was held :*

*“19. While spelling out in unambiguous terms, the different protections available to a person under Rule 180, a Division Bench of this court in the case of Col.A.K. Bansal v. UOI and others, CWP 1990/88, decided on 18.1.1991 while quashing the proceedings of the court of inquiry and their findings and the penalty of severe displeasure imposed upon the petitioner in that case, held as under:-*

*“The rule incorporates salutary principles of natural justice for a fair trial and full right of being heard, to a person whose character or military reputation is likely to be affected in a*

*court of enquiry. Four rights are expressly recognized-(1)The officer has a right to be present throughout the enquiry meaning thereby that the entire evidence is to be recorded in his presence; (2) of making statement in defence (3) cross-examination of the witnesses whose evidence is likely to affect his character or military reputation. It is the judgment of the person whose reputation is in danger to testify as to whether an evidence of a particular witness is likely to affect his character or military reputation, and (4) such a person has a right to produce evidence in defence of his character or military reputation. It is the mandatory duty of the presiding officer not only to make all these opportunities available to the person whose character and military reputation is at stake but no that such person is fully made to understand all the various rights mentioned in that said rule.*

*It has been held by this Court in Maj Harbhajan Singh Vs. Ministry of Defence and Ors., 1982 (Vol.21) LLT 262, and by Supreme Court in Lt. Col. Prithi Pal Singh Bedi Vs. UOI and Ors., Capt. Dharam Pal Kukrety and Ors. Vs. UOI and Ors., and Capt. Chander Kumar Chopra Vs. UOI and Ors., AIR 1982 SC Page 1413 that the requirements of Rule 180 are mandatory. The reason for making Rule 180 as mandatory is that it incorporation the principles of natural justice which alone can ensure a fair trial to a person whose character or military reputation is in*



*danger. It is now well settled law that even in administrative action the principles of natural justice must be observed because the administration is obliged to follow fair play in action when it is dealing with the character and reputation of a person. The rule is eminently in public interest. There is one other reason why the requirements of Rule 180 are to be strictly interpreted, the normal protection of fundamental rights of an the provisions of Article 311, available to the civil servants under the Union or a State are not available to military personnel. The army personnel must maintain high degree of efficiency and preparedness at all the times and the same cannot be maintained effectively unless every member of the armed forces is able to see fair play in action. It is admitted by the respondents that the requirements of Rule 180 were not complied with and the petitioner was denied opportunity of cross-examining the witnesses.....”*

26. In view of the principles of law laid down by the Hon’ble Supreme Court and Hon’ble Delhi High Court, it is clear that the applicant was not entitled to copy of the report of the Court of Inquiry and the protection available to the civil servants under Article 311 of the Constitution of India is not available to the military personnel. In such matters, there is no scope for providing pre-decision hearing to the concerned person. Under these circumstances, it cannot be said that there has been

violation of principles of natural justice. The decision of the Hon'ble Supreme Court in the case of Managing Director, ECIL, Hyderabad, etc. etc. (Supra) is distinguishable on facts and is of no help to the applicant. It is really surprising that the Learned Counsel for the applicant has placed reliance on the said decision of the Hon'ble Supreme Court in support of his contentions, which is not applicable to the facts of the instant case by any stretch of imagination.

27. Learned Counsel for the applicant has submitted that the compliance of Rule 180 of the Army Rules, 1954, during the course of Court of Inquiry, is mandatory. He has further submitted that no opportunity was provided to the applicant to cross examine Col. K.C. Mahajan, the then Commandant, on his Supplementary Statement and thus there has been violation of Rule 180 of the Army Rules, 1954. In support of his contentions, he has placed reliance on the following decisions of the Hon'ble Delhi High Court :-

- (i) Decision dated 02.06.2008 of the Hon'ble Delhi High Court in Writ Petition (C) No. 3831 of 2007 and Writ Petition (C) No. 3904 of 2007, Major General Rakesh Kumar Loomba Versus Union of India and Others.

- (ii) Decision dated 11.01.2007 of the Hon'ble Delhi High Court in Writ Petition (C) No. 11839 of 2006, Lt. Gen. Surendra Kumar Sahni Versus Chief of Army Staff and Others.

28. In view of the principles of law laid down by the Hon'ble Delhi High Court and the Hon'ble Supreme Court, it is clear that compliance of Rule 180 of the Army Rules, 1954, during course of the Court of Inquiry, is mandatory. Now the point for determination is as to whether in the instant case, there has been compliance of Rule 180 of the Army Rules, 1954, during course of the Court of Inquiry ?

29. The Rule 180 of the Army Rules, 1954 may be quoted as under:-

*“180. Procedure when character of a person subject to the Act is involved. - Save in the case of a prisoner of war who is still absent whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. The presiding officer of the court shall take such steps as may be necessary to ensure that any such person so affected and not*

*previously notified receives notice of and fully understands his rights, under this rule.*

30. The copy of proceedings of the Court of Inquiry has been enclosed as Annexure No. P-1 to the Supplementary Affidavit, filed on behalf of the respondents. During course of the Court of Inquiry, the statements of Col. K.C. Mahajan, witness No. 1, Lt. Col. Prit Pal Singh, witness No. 2, Major R. Anil Kumar, witness No. 3, Capt. Santosh Kumar, witness No. 4, Col. M.K. Dasgupta, witness No. 5, Lt. Col. P. Bohra, witness No. 6 and Lt. Col. Baldev Raj, witness No. 7 have been recorded. It appears from the record that all the statements of the witnesses including the statement of the applicant, were recorded on 16.05.2005 and the applicant had participated in the Court of Inquiry. The applicant and other concerned witnesses were provided opportunity to cross examine Col. K.C. Mahajan, witness No. 1, but, they all declined willfully. The applicant has also not denied that he was provided opportunity to cross examine Col. K.C. Mahajan on his main statement, but, he declined. It appears that after recording of the statement of the applicant, the supplementary statement of Col. K.C. Mahajan was recorded on the same day. His supplementary statement may be reproduced as under :-

*“Statement of IC 37751Y Col KC Mahajan under AR-180 is as follows: - In answer to questions 1 – 3 above, it is*

*referred that the board proceedings, which had been submitted by the board of offrs bear observation as regards checking of documents. Para 7 of the board proceedings for CMD may please be referred, which deals with this aspect and reads “All caste/Age/education certificate along with driving license and experience certificates as produced by the candidates have been perused”. I see no room for any observations in the statement of the board proceedings. The word “All” at the beginning of the sentence at Para 7 of the Proceedings is self explanatory, the aspect of age/education certificate, driving license and experience certificate has been stated to have been perused by the board of officers as produced by all 10 (ten) candidates who had appeared for the tests and are recorded as such in the board proceedings. It was therefore considered that all the documents were appropriately perused by the board of offrs as also stated in the subject board proceedings at para 7.*

*Sd/-  
IC45725N  
Lt col P Bohra  
16 May 05*

*Sd/-  
IC 37751Y  
Col KC Mahajan  
16 May 05”*

31. The copy of board proceedings submitted by the applicant, has been filed as Annexure No. A-7 to the Original Application. In it's Para No. 7, it has been mentioned that “*All Caste/Age/Edn Certificates alongwith driving license and experience certificates as produced by the candidates has been perused*”. The reference of para 7 of the said board proceedings has been made in Supplementary Statement of Col. K.C.

Mahajan with reference to answers given by the applicant to questions 1 to 3 during his statement in the Court of Inquiry. The grievance of the applicant is that he was not provided opportunity to cross-examine Col. K.C. Mahajan on his said supplementary statement. The said supplementary statement of Col. K.C. Mahajan bears his signature as well as signature of the applicant. The applicant has admitted his signature on the supplementary statement of Col. K.C. Mahajan, but, has submitted that the date below his signature has not been mentioned by him. Since the supplementary statement of Col. K.C. Mahajan was recorded, on the same day, just after the statement of the applicant and it bears his signature also, it cannot be accepted that the supplementary statement of Col. K.C. Mahajan was recorded behind his back. It is not disputed that he had declined to cross examine Col. K.C. Mahajan on his main statement. He was fully aware of that he had right to cross examine him on his supplementary statement also, but, he did not cross-examine him. During the course of Court of Inquiry, he never raised any objection to the effect that he was denied opportunity to cross examine Col. K.C. Mahajan on his supplementary statement. Likewise, supplementary statement of Lt. Col. Prit Pal Singh, witness No. 2, was also recorded on the same day, after supplementary statement of Col. K.C. Mahajan

and it also bears his signature as well as the signature of the applicant. He has also not been cross examined on his supplementary statement by the applicant, before affixing his signature.

32. The violation of Rule 180 of the Army Rules, 1954 has been asserted merely on the ground that the opportunity to cross examine Col. K.C. Mahajan on his supplementary statement was not provided to the applicant and not on any other ground. The applicant had full opportunity to cross-examine Col. K.C. Mahajan on his supplementary statement, before affixing his signature, but, he had not availed of the said opportunity. The omission on the part of the applicant to raise any objection, during the course of Court of Inquiry in this regard, clearly indicates that his version is afterthought and is not worthy of reliance.

33. After considering the record and the attending circumstances, we are of the view that the applicant was not denied the opportunity to cross examine Col. K.C. Mahajan on his supplementary statement and there had been no violation of Rule 180 of the Army Rules, 1954. We hold that the Rule 180 of the Army Rules, 1954 has been fully complied with.

34. Learned Counsel for the applicant has submitted that there were discrepancies in the SOP (Standard Operating

Procedure) and Convening Order issued by Col. K.C. Mahajan and it was not the responsibility of the applicant to verify the documents and antecedents of the candidates and in fact the verification of selected candidates only was required and not of all candidates; that the Admit Cards were issued to the candidates after scrutiny of the documents by another board and the candidates were not directed to bring relevant documents at the time of appearing in the test/interview; that the applicant/Presiding Officer had no mechanism to verify the relevant documents; that the impugned order with regard to verification of documents was unimplementable; that the competent authority has administered "Reproof" without applying its mind properly to the controversy involved; that the applicant's statutory complaint has been rejected in a mechanical manner, without considering the grounds taken therein.

35. Contra to above submissions, Learned Counsel for the respondents has submitted that the "Reproof" has been administered to the applicant, considering the omissions on his part in discharge of duty and his statutory complaint against the said order has been rejected rightly.



36. The relevant clauses of Amn Depot, Panagarh, Recruitment Cell (Annexure A-4), Standard Operating Procedure (SOP) in respect of recruitment of Group ‘C’ and ‘D’ vacancies released by AHQ in Phase II (Annexure A-5) and Convening Order (Annexure A-6) may be reproduced as under:-

“AMN DEPOT PANAGARH  
RECRUITMENT CELL”

1. *Vide AHQ letter No. 15251/OS/MP-4(Civ)(b) dated 14 May 03 vacancies have been released to this unit in Phase-II which are to be filled-up within a stipulated time of six months.*

2. *As recruitment involves voluminous work beginning from initial tests upto processing the final report of selected persons, a “Recruitment Cell” comprising of the following officials has been detailed to be responsible for execution of all work relating to recruitment.*

.....

3. *Duties and responsibilities to be carried out:-*

(a) **Adm Officer :**

(i) *Adm officer will be overall in-charge of the recruitment cell.*

(ii) .....

(b) **Nb Sub BP Swain – JCO I/C Adm Branch**

(i) .....

(ii) *He will ensure that all the documentation is undertaken meticulously.*

- (iii) *He will ensure that all Admit cards/ Call letters are dispatched within stipulated time frame.*
- (iv) .....
- (v) .....
- (vi) .....
- (c) .....
- (d) **Personnel Officer**
  - (i) *Pers Officer will be responsible to countercheck documentation within the laid down time frame.*
  - (ii) *He will send requisitions to the Employment Exchange and Zila Sainik Board in time and also ensure publishing of the vacancies to be filled up in the press/media.*
  - (iii) *He will ensure that the applications received in response to the advertisement are registered in the CR Section and will open a register at his end to endorse entries of the applications date-wise.*
  - (iv) *Pers Offr will submit all rules & orders as and when required to the Commandant, Adm Officer & Board Of Officers.*
  - (v) *He will countercheck and keep a proper record of all documentation.*
  - (vi) *He will assist the Adm Officer in completing the requirement process.*
- (d) .....
- (e) .....

4. ....

001401/Rect/Phase-II/EST  
 Ammunition depot Panagarh  
 PO : Muraripur (West Bengal)  
 15 Jul 2003

Sd/-  
 (KC Mahajan)  
 Col  
 Commandant”

STANDARD OPERATING PROCEDURE IN RESPECT  
 OF RECRUITMENT GROUP ‘C’ & ‘D’ VACANCIES  
 RELEASED BY AHQ IN PHASE – II

1. **General.** .....
2. **Aim.** *The aim of this SOP is to lay down certain guidelines for recruitment so as to ensure complete fairness and transparency in the recruitment process to recruit the best of the candidates in each category.*
3. **Reference.** .....
4. ....
5. **Recruitment Procedure.** *In compliance with the policy letters in vogue and to ensure fairness and transparency, the following sequence of actions be adhered to for recruitment :*

(a) .....

(b) **Action on receipt of applications**

(i) *All applications received shall be registered in the CR section.*

(ii) *Board of Officers to scrutinize the applications:- The OC will constitute a Board of Officers and issue convening order to scrutinize the applications/nominations received by the depot for determining the eligibility of the candidates in accordance with the SRO/AHQ policy letters mentioned*

*at above and other letters on the subject. Board proceedings duly completed will then be put up to the OC for approval.*

(iii) .....

(iv) .....

(v) *Thereafter, interview call letters/Admit cards duly endorsed with details of date of interview/test will be sent to the eligible candidates by post. In completing this drill secrecy has to be maintained. All despatch details be maintained and record thereof will be kept by the CR Section.*

(c) **Action for test/interview & composition of selection board**

(i) .....

(ii) *The Board of Officers for the selection to GP. 'C' & GP. 'D' will be published only a day prior to the date of Test/Interview.*

.....

(iii) .....

(iv) *The Board of Officers, before conducting the test will ensure identity of each candidate appearing in the test through Admit Card having photographs of individuals & Roll Nos.*

(v) to (xv) .....

(xvi) *The selection Board of Offrs will draw two lists of selected candidates i.e., one for General candidates (UR) & another for reserved category. Board of Offrs will also draw a reserved panel of one or two*

*candidates from reserved and unreserved category. Candidates empanelled as reserve will be considered if any one of the Candidates from the selected list fail to turn-up for joining the post when offered. However, candidates empanelled as reserve can not be used as select panel for subsequent recruitment and will become null and void after the current recruitment is completed.*

*(xvii) The selection Board of Offrs (Selection Committee) will put up the Board Proceedings to the Commandant for approval on completion of the test/interview. Board proceedings must include select list of the candidates merit-wise. It will be ensured that the candidates selected will be equal to the number of notified vacancies for recruitment.*

*(xviii) As soon as the Board proceedings of the selection committee is approved by the Commandant, result will be declared/published immediately. Result will also be displayed on the notice Board of the unit. Selected candidates are to be intimated about their selection and confirmation obtained in writing of their willingness to join the post.*

**(a) Action after Board Proceedings are Approved**

(i) **Personnel Offr** will get the attestation forms filled-up by the selected candidates within a week and collect the certificates and testimonials etc in original for verification of age, educational qualifications and caste certificate (wherever applicable).

(ii) .....

(iii) .....

(iv) **Offer of appointment:-** Selected candidates will be offered the appointment only after establishment of identity and on receipt of character & antecedents verification and medical fitness as well.

.....

## 6. **Conclusion**

*Methodology for selection candidate for any post(s) has to be transparent and fair, keeping in mind the organizational requirements. The selection board's concerted effort will be to place the right man in the right job, so as to achieve optimal results in performing a job entrusted to the incumbent. Organizational goals can be achieved only via concerted efforts in unison along with transparency.*

Gola Barud Depot Panagarh  
Ammunition Depot Panagarh  
PO:Muraripur (West Bengal)  
26 Jul 2003”

Sd/-  
(KC Mahajan)  
Col  
Commandant

**CONVENING ORDER**

**Board of Officers**

1. A bd of offrs composed as under will assemble at AD Panagarh on 02 Aug 2003 to select suitable candidates for the post of CMD against the existing vacancies released vide AG's Br. AHQ release order No 15251/OS/MP-4(Civ)(b)/Phase-II dated 14 May 2003 candidates for Adm Depot Panagarh.

Presiding Officer : Maj P Bohra

Members : 1. Maj Baldev Raj (Station Rep)  
2. Lt Santosh Kumar (Depot Rep)  
3. OOC(S) Shri Vincent Minz  
(Minority Community Rep)  
4. OCC (A) Shri KS Bankira  
(SC/ST/OBC Rep)

2. ....

3. ....

4. The bd will ascertain the following for selected and reserve candidates :-

(a) **Documentation**

- (i) Verification of caste certificate
- (ii) Verification of educational certificate
- (iii) Verification of Driving license & experience certificate

(b) **Age**

- (i) Prescribed age limit as given in CSR vis-à-vis rule be carefully verified for each category.
- (ii) Verification of the certificate for age.

5. ....

6. The board proceedings will be put up in duplicate to the Commandant by 04 Aug 2003.

Sd/-  
(KC Mahajan)  
Col  
Commandant

C/004114/A/Rects-civ/Phase-II/HQ  
Ammunition Depot Panagarh  
PO : Muraripur (West Bengal  
1 Aug 2003”

37. The photocopy of the Admit Card/Call Letter issued to Shri Suman Chatterjee for the post of Civilian Motor Driver is enclosed as Exhibit No. XXIV to the proceedings of the Court of Inquiry and it may be reproduced as under :-

“PART-II

ADMIT CARD/CALL LETTER

(Should be in A-4 Size Paper)

FOR THE POST OF CIVILIAN MOTOR DRIVER

To

SUMAN CHATTERJEE

S/O Sunirmal Chatterjee

SUKDAL ROAD P.O. BUDBUD

DIST – BURDWAN PIN 713403

(Complete Postal Address with Pin code filled up by Individual)

Photo

UNDERTAKING

*Certified that I am giving all Test at my own risk and shall not claim any compensation for any kind of the injury/death sustained during physical/practical tests.*

Date : 7th July 2003

Sd/-

Suman Chatterjee

Signature of the Candidate

FOR OFFICE USE ONLY

Roll No. \_\_\_\_\_ 502



*Date of Interview/Test 02 Aug 2003*

*Time 7 AM*

*Sd/-*

*Venue AD Panagarh*

*Maj/Capt*

*Date 17 Jul 2003*

*Administrative Officer*

*Ammunition Depot Panagarh*

*Signature of Officer*

*Note : The candidate should bring pen, Pencil, Eraser & Clip Board.”*

38. From the conjoint reading of the orders relating to Recruitment Cell, SOP and Convening Order, as referred to above, it is clear that Major Pritpal Singh, Administrative Officer was made overall Incharge of the Recruitment Cell. It was the responsibility of the Recruitment Cell to ensure that the applications received in response to the advertisement, were registered and the documents were checked. If the application was found in order, it was also the responsibility of the Recruitment Cell to send Admit Card/Call Letters to the candidates, within stipulated time frame. In the SOP, the recruitment procedure was mentioned. As per para 5(b) of the SOP, all applications were required to be registered in the CR Section and the Board of Officers was required to scrutinize the applications and thereafter, the interview Call Letter/Admit Cards duly endorsed with details of interview/test were required to be sent to the eligible candidates by post. The para 5(c) of the

SOP required that the Board of Officers for the selection of Group 'C' and 'D' will be published only a day prior to the date of test/interview. It was directed that the Board of Officers, before conducting the test, will ensure identity of each candidate appearing in the test, through Admit Card, having photographs of the individuals and Roll numbers. The Board Proceedings were required to be submitted to the Commandant and after approval of the Board Proceedings of the Selection Committee, the result was required to be declared/published immediately. After approval of the Board Proceedings, it was the responsibility of the Personnel Officer to get the Attestation Forms filled up by the selected candidates, within a week and collect the certificates and testimonials etc. in original for verification of age, educational qualifications, and caste certificate (wherever applicable) and the offer of appointment was to be made to the selected candidates, only after establishment of identity and on receipt of character and antecedents verification and medical fitness certificate.

39. In view of the direction given in the SOP, a Board of Officers headed by the then Major P. Bohra (applicant) was constituted to select suitable candidates for the post of CMD against the existing vacancies, vide order dated 01.08.2003 and the said Board was required to initiate selection process on

02.08.2003. The said Board of Officers was also given task of verification of caste certificate, educational certificate, driving license, experience certificate and certificate for age. The Board Proceedings were required to be placed before the Commandant by 04.08.2003. After completion of the selection process, the Board Proceedings were countersigned by the Administrative Officer and were submitted to Col. K.C. Mahajan, the then Commandant and the Board Proceedings were approved by the Commandant, vide order dated 07.08.2013.

40. Thereafter, a Court of Inquiry was instituted to investigate any act of omission/commission on the part of any of the Board Members detailed for recruitment carried at Amn Depot, Panagarh for various trades. During the course of the Court of Inquiry, the statements of witnesses, as referred to above, were recorded. On the basis of the material available on record, the Court of Inquiry gave its opinion. The opinion of the Court of Inquiry, so far as it is relevant for the instant case, may be quoted as under :-

*“87. Opinion of the Court :- The Court is of the opinion that :-*

*(a)The two CMDs have been enrolled by producing mismatching birth certificate and driving license. There is failure on part of Scrutiny board which issued Admit Card for these candidates without detecting above mismatch. Selection board while making result*

*Sheet too was not able to appreciate the error. However, the major procedural lapse occurred at recruitment cell, Amn Depot Panagarh and appointing authority AOC Records as they failed to correlate documents before finalizing the Selection process/ issue of appointment letter.*

*(b) The appointment of CMD Shri S Chatterjee and CMD Shri S Paul is on the basis of fraudulent documents as mismatch between date of birth and issue date of driving license can not support the eligibility criteria.*

*(c) .....*

*(d) .....*”

41. The onus of responsibility fixed by the Court of Inquiry, so far as it is relevant for the instant case, may be quoted as under :-

*“88. Onus of Responsibility*

*(a) Amn Depot Panagarh instituted elaborate recruitment organization to deal with recruitment process for the vacancies allotted under Phase-II. There is no evidence of any malpractices or malafide intention in recruiting process. There was no error in notification, publicity, selection process, promulgation of result and appointment of candidates.*

*(b) Amn Depot Panagarh instituted elaborate document verification system at each level from Scrutiny of document, Selection board, verification and final verification by recruitment cell. But verification of document still left lacune for error due to prevailing porous civil environment and irresponsible civil authorities.*

(c) Failure on the Part of Scrutiny Board

*The Scrutiny board consisting of Maj R Anil Kumar and Capt Santosh Kumar failed to Cross match the date of birth and date of issue of license in respect of CMD S Chatterjee and CMD Sanyasi Paul and issued them admit card. The human error seems to be without any malafide intention.*

(d) Failure on the part of CMD Selection Board

*The Selection board consisting of Maj (now Lt Col) P Bohra, Maj (now Lt Col) Baldev Raj, and Capt Santosh Kumar also failed to notice above discrepancy at the time of making result Sheet of Selected candidates for post of CMD.*

(e) Failure on Part of Lt. Col. PP Singh OIC Recruitment Cell

*The recruitment cell under Lt Col PP Singh verified and checked the documents of Selected Candidates with adequate time at their disposal but the Cell failed to check and Cross match documents of CMD S Chatterjee and CMD S Paul systematically and in a planned manner. It is pertinent to point out that even Offr of AOC Records Secunderabad also failed to scrutinized/Cross Checked/co-relate these documents before issuing appt letter which has resulted in fraudulent rect. However, error seems to be due to oversite without any malafide intention.*

(f) ..... ”

42. After considering the report of the Court of Inquiry, Maj. Gen. Z.U. Shah GOC Bengal Area administered “Reproof” to the applicant, vide order dated 19.08.2005, the copy of which has

been filed as Annexure A/1. The order of “Reproof” may be quoted as under :-

**“REPROOF OF GOC BENGAL AREA TO IC-45725M  
LT COL P BOHRA OC, 26 AMN COY”**

1. *Considering the evidence available on record, it is established that as Presiding Offr of the Selection Board for recruitment of various trades carried out at Amn Depot Panagarh during Jul-Aug 03, you failed to notice discrepancy at the time of making result sheet of selected candidates. This resulted in recruitment of following indls with fake certs/driving licenses :*

- (a) *Mazdoor Partha Dutta Choudhary.*
- (b) *Mazdoor Bankim Mondal.*
- (c) *CMD Shri Suman Chatterjee.*
- (d) *CMD Shri S Paul.*

2. *I, therefore, administer my ‘reproof’ to you for this impropriety on your part.”*

43. From the perusal of record, it transpires that another Board was required to verify the relevant documents before issuing Call Letters/Admit Cards to the candidates. It means that Call Letters/Admit Cards were issued to the candidates, whose relevant certificates were found in order, by the concerned Board of Officers. The Board of Officers headed by the applicant was constituted, one day prior to the test/interview, for selecting suitable candidates and it was required to identify each candidate appearing in the test through Admit Card, having photographs of individuals and Roll number, as per direction

given in the SOP. In the SOP, the task of verification of documents was not entrusted to the said Board of Officers, but, in the Convening Order the task of verification of documents was also entrusted to the said Board. The Admit Card/Call Letter of Suman Chatterjee, one of the selected candidates for the post of CMD, as referred to above, indicate that the candidate was required to bring pen, pencil, eraser and clip board and there is no direction that the candidate should also bring original/Photostat copies of the relevant documents, at the time of appearing in the interview/test. Since the Board of Officers for selecting suitable candidates was constituted one day prior to the interview/test, it was not possible for the said Board to communicate to the candidates to bring the relevant documents also at the time of appearing in the interview/test. In para 7 of the Board Proceedings (Annexure A/7), it is mentioned that *“All Caste/Age/Edn Certificates along with driving license and experience certificates as produced by the candidates has been perused”*. Since the candidates were not required to bring original or Photostat copies of relevant documents, at the time of appearing in the interview/test, it cannot be inferred from the said para 7 of the Board Proceedings, which seems to be in general terms, as to what documents, whether original or Photostat copies, were produced by a particular candidate. In

accordance with the terms of SOP, the Board of Officers conducting selection of the candidates was not expected to verify the relevant documents of candidates and the verification of documents was required in respect of selected candidates only by the Personnel Officer, after approval of the Board Proceedings. The direction given by the then Commandant in the Convening Order for verification of documents of selected and reserved candidates was unimplementable and impracticable, because, the candidates appearing in the interview/test were not required to bring the relevant original documents nor it was possible for the Board of Officers to communicate the candidates about it within a short period of less than 24 hours. Besides it, the authenticity of the documents, if any, produced by the candidates, at the time of test/interview could not be verified, because, it was required to be sent for verification to its originator and that is why, the Personnel officer was entrusted with the task of approaching District Authorities for verification of documents, character and antecedents of the selected candidates.

44. Lt. Col. P. Bohra, witness No. 6, had answered, in reply to question No. 2 put by the Court of Inquiry, that at the point of checking candidates before testing, the documents were checked on “as produced basis” and returned to the candidates, as the



Board was not required to retain the same and the results were not known. It shows that the Board of Officers headed by the applicant had also not retained the documents as produced by the candidates, as there was no such direction in the Convening Order. Besides it, the said Board of Officers had no mechanism to verify the relevant documents, at the time of making result sheets of selected candidates. During the course of the Court of Inquiry, it also revealed that in the Driving License issued in the State of West Bengal, the date of Birth of the concerned person is not mentioned. Under these circumstances, it was also not possible for the applicant to correlate the date of Birth with the date of issue of Driving License.

45. The Court of Inquiry has opined that the Selection Board, while making result sheet too was not able to appreciate the error. It has held that the Selection Board consisting of Major (now Lt. Col.) P. Bohra, Major (now Lt. Col.) Baldev Raj and Capt. Santosh Kumar also failed to notice above discrepancy at the time of making result sheet of selected candidates for the post of CMD. As discussed above, another Board of Officers/ Authorities were entrusted the task of verification of the relevant documents prior to the commencement of selection process and after approval of the proceedings of Selection Board by the Commandant, the Court of Inquiry has fixed responsibility as

such on the concerned Board of Officers/Authority, as referred to above. Since the direction given in the Convening Order to the Board of Officers headed by the applicant with regard to verification of documents was unimplementable and impracticable, the applicant could not be held responsible for any error which occurred in verification of documents, particularly, when it is not clear as to what documents were produced by Shri Suman Chatterjee and Shri S. Paul selected for the post of CMD. It appears that the Court of Inquiry has not considered the overall material available on record in correct perspective and on account of it, it has erred in recording the said findings against the applicant. In our view, the opinion of the Court of Inquiry and the onus of responsibility fixed on the applicant, as referred to above, is not justified and it cannot be sustained.

46. After considering the evidence collected during the course of the Court of Inquiry and its findings, GOC Bengal Area held that the applicant failed to notice discrepancy at the time of making result sheet of selected candidates, namely, Mazdoor Partha Dutta Choudhary, Mazdoor Bankim Mondal, CMD Shri Suman Chatterjee and CMD Shri S. Paul and it resulted in their recruitment with fake certificates/Driving Licenses. For this impropriety, on the part of the applicant, he has administered

“Reproof” to the applicant. During the arguments, it has been conceded by the Learned Counsel for the respondents, that in fact, the Board of Officers headed by the applicant was not involved in selection process of Mazdoor Partha Dutta Choudhary and Mazdoor Bankim Mondal. It has also been admitted in the Order dated 25.08.2008 (Annexure A/2), rejecting the Statutory Complaint of the applicant, that Mazdoor Partha Dutta Choudhary and Mazdoor Bankim Mondal were not recruited by the Board of Officers presided over by the complainant. It indicates that GOC, Bengal Area held the applicant responsible for recruitment of Mazdoor Partha Dutta Choudhary and Mazdoor Bankim Mondal also, with fake certificates, wrongly. If the GOC, Bengal Area had considered the evidence and the report of the Court of Inquiry properly, the said finding in respect of the selection of Mazdoor Partha Dutta Choudhary and Mazdoor Bankim Mondal by the Board of Officers headed by the applicant, could not have been recorded. It clearly shows non-application of mind on the part of GOC, Bengal Area to the material available on record and on account of it, he has recorded such findings against the applicant.

47. Feeling aggrieved by the order of “Reproof”, the applicant filed the Statutory Complaint (Annexure A/8) to the competent authority and the Statutory Complaint was rejected,

vide order dated 25.08.2008 (Annexure A/2). From the perusal of the rejection order, it transpires that the points raised by the applicant in his Statutory Complaint were not considered properly and it seems to be an unreasoned and non-speaking order. It appears that the Statutory Complaint was rejected in a mechanical manner. The appeal filed by the applicant for review of said order was also rejected, which was not maintainable, vide order dated 08.09.2010 (Annexure A/3).

48. The Counter Affidavit, filed on behalf of the respondents, is quite vague and no specific reply has given by them to the averments made by the applicant in the Original Application. In the normal course, it was expected from the respondents to give specific reply to the averments made in the Original Application.

49. For the reasons given above, we are of the definite view that the findings recorded by the Court of Inquiry against the applicant are unreasonable and unjustified and the order of "Reproof" administered to the applicant by the GOC, Bengal Area is also improper, irrational, arbitrary and unreasonable and hence, it cannot be sustained and deserves to be quashed.

50. In view of the aforesaid discussion, the Original Application No. 47 of 2011, Lt. Col. P. Bohra Versus Union of India and Others,

is allowed and the impugned orders dated 19.08.2005, 25.08.2008 and 08.09.2010, contained as Annexures No. A/1 to A/3 to the Original Application, are hereby quashed. Parties shall bear their own costs.

(Lt. Gen. R.K. Chhabra)  
Member (A)

(Justice S.C. Chaurasia)  
Member (J)

Dwivedi