**AFR**
**Reserved**
**Court No.3**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**TRANSFERRED APPLICATION No. 39 of 2012**

**Wednesday, this the 2nd day of Mar 2016**

**Hon'ble Mr. Justice D.P. Singh, Member (J)**
**Hon'ble Air Marshal Anil Chopra, Member (A)**

Ex Lt (Mrs) Selina John, (NR 18466-L) wife of Maj. Vinod Raghwan R/O 3/379, Vishwas Khand, Gomti Nagar, Lucknow.

Petitioner

Ld. Counsel for the Petitioner : **Maj (Retd) R.D. Singh, Advocate**

Versus

1. Union of India, through its Secretary, Ministry of Defence, DHQ, PO, New Delhi.
2. Chief of the Army Staff, Army Headquarters, DHQ PO, New Delhi.
3. DGAFMS, Army Headquarters, DHQ, PO, New Delhi.
4. DG (MNS) (AG Branch) Army Headquarters, DHQ PO, New Delhi.
5. Commanding Officer, Military Hospital, Danapore.
6. GOC-in-C through DDMS, Central Command, Lucknow Cantt.

Respondents

Ld. Counsel for the Respondents : **Shri D.K. Pandey, Advocate assisted by Lt Col Subodh Verma, OIC Legal Cell.**

**(Per. Justice Devi Prasad Singh, J.)**

1. Petitioner being aggrieved with the order of release from service had preferred a Writ Petition No 967 (S/B) of 1999 in the High Court of Judicature at Allahabad which has been transferred to this Tribunal in pursuance to powers conferred by Section 34 of the Armed Forces Tribunal Act, 2007 and has been re-numbered as T.A. No 39 of 2012.

2. We have heard Ld. Counsel for the parties and perused the records.

3. Substantial question of law involved in the present T.A. is whether a Permanent Commissioned Officer of the Army may be released/discharged from service without any show cause notice or inquiry? In the present case petitioner was alleged to be released from Military Nursing Services (MNS) without any show cause notice, hearing or opportunity to defend her case.

4. Petitioner was selected in accordance with rules in the MNS on 25.12.1982 and joined as a trainee at Army Hospital, Delhi. She was granted commission on 27.12.1985 to the rank of Lieutenant in the MNS and posted at Military Hospital, Secunderabad. Petitioner entered into wedlock with an Army officer, namely, Maj Vinod Raghwan on 12.04.1988 and thereafter began to live a happy matrimonial life.

5. By the impugned order dated 27.08.1988, as contained in Annexure 1 to petition, the petitioner was released from the Army while serving in the rank of Lieutenant (Lt). From the perusal of release order as well as in view of pleadings contained in paras Nos. 7 and 8 to the petition, the petitioner's services were dispensed with by the impugned order without serving any show cause notice or opportunity of hearing or opportunity to defend her cause.

6. The order dated 27.08.1988 shows that the petitioner was released on marriage ground and for her low ACR profile in pursuance to criterion (b) of appendix 'A' to DGMS letter dated 06.03.1987. She was directed to be released from nursing duty on or before 27.08.1988. Relevant portion of the impugned order dated 27.08.1988 is reproduced as under :-

"Tele Mil : 3019239

Raksha Mantralaya
Karyalaya Maha Chikitsa Sewa
Sashastra Sena Chikitsa Sewa
New Delhi-110001

18466/DGAFMS/MNS
HQ (Med Dte)

27 Aug 88

RELEASE FROM SERVICE ON MARRIAGE GROUNDS : OFFRS OF MNS

Rank-Lieut
Name—Mrs Selina John NR-18466
Unit—MH Danapur.

1. Maha Nideshak Sashastra Sena Chikitsa Sewa has not approved the further retention of the above named nursing officer on marriage grounds of her low ACR profile

prescribed vide criterion (b) of appendix ‘A’ to letter No. 30371/DGMS-4 dated 06 Mar 87.

2. The nursing officer will be relieved from military duties as early as possible but not later than 27 Sep 88 and the exact date on which she is struck off strength of MNS will be notified to al concerned. The officer may granted annual leave or part thereof due to her for the year and SOS accordingly. The pay and allces for the period of leave so granted will, however, be admitted later by CDA (O) Pune only on production of certificate by the officer that she was not employed during the period of leave granted”.

7. Being aggrieved with the impugned order dated 27.08.1988 petitioner preferred statutory complaint on 29.09.1988, a copy of which has been filed as Annexure 3 to the petition. In para 4 of the statutory complaint it has been categorically pleaded that petitioner was never given any warning or counseling with respect to performance of duty and according to her there was no low grading of ACR and whatever is there it may be outcome of personal bias for the reason that because of love by the core of heart she was determined to marry with Maj Vinod Raghwan. It has further been stated that the petitioner was threatened several times by the Principal Matron for dire consequences in case she married with Maj Vinod Raghwan. With intention to break the marriage petitioner was posted out and Maj Vinod Raghwan was posted to field area. It appears that in spite of all these odds, because

of natural love and affection with each other, the petitioner got married with Maj Vinod Raghwan.

8. When in spite of representation dated 29.09.1988 nothing happened, the petitioner submitted another representation dated 28.04.1999 through registered post, a copy of which has been filed as Annexure 4 to the petition. In this representation also petitioner stated that she as well as Maj Vinod Raghwan, fell in love with each other which annoyed the Principal Matron of the Hospital and with intention to break union of two persons, the petitioner was shifted to Military Hospital, Danapore but even then the two of them got married on 12.04.1988 at Danapore, in consequence to which the petitioner was released from service on 27.09.1988. Petitioner stated in her representation that it is a case of gender bias and order of release was passed without any reasonable opportunity. Paras 5 and 6 of the representation dated 28.04.1999 are reproduced as under :-

> *"5. To stop the rumors, we got married on 12th day of April 1988 at Danapore. I was anguished to learn that immediately after my superiors; I was released from Army Service on 27 Sept. 88 on the ground of my getting married and low ACR grading. It is relevant to mention that I had no knowledge of any reason for low grading in ACR as I have never been counseled or found lacking in my performance of my duty by any of my superiors and apparently low grading in the ACR may be due to my*

*having affair with my then would be husband then Maj Vinod Raghwan at the previous location. Otherwise also alleged low grading in ACR is no substantiated with record of my service.*

*6. It is a great injustice to me. It is gender bias. The decision to release me from Army service for the reason of getting married is absolutely arbitrary and wholly unconstitutional. It is a big blow to a women's dignity and honour. I have undergone great anguish and several times thoughts came to me that is it a curse to be a women? Is it illegal to get married? My husband is now major in the Army in medical Corps and I have forcibly been released from army service. Even I have been given no opportunity to show cause for release from service. Words fail me to express the sense of injury which I have been made to undergo. I am getting a feeling that I, as a women, have no right to the identity and dignity of being a women. How long shall I be made to suffer? Shall I get no justice from the authorities concerned? I do not know whom to approach for, justice. I had, since then have made several representations to the authorities concerned but till date there is no response from any of them to rectify the wrongs and to reinstate me with all consequential benefits. A considerable time has lapsed in the waiting for justice".*

9. It appears that petitioner's grievance was not redressed within reasonable period and after great efforts the representation was rejected by impugned order dated 18.05.1999. The anomaly and shabby treatment given to the petitioner is reflected from the impugned order dated

18.05.1999, copy of which is annexed as Annexure 5 to the petition. Order dated 18.05.1999 in its entirety is reproduced as under:

"*Tele : 3019239* *Regd*
*Dte Gen of Med Services (Army)*
*Adjutant General's Branch*
*AG's Branch*
*Army Headquarters*
*'L' Block, New Delhi-110001*

*NR-18466/DGMS-4* *18 May 99*

*Ex Lt (Mrs) Selina John*
*C/O Maj V Raghwan*
*Medical Specialist*
*Military Hospital*
*Palampur (HP)*

***REPRESENTATION AGAINST RERLEASE FROM SERVICE***

*1. Reference representation against release from service, addressed to DGAFMS.*

*2. Your case has been examined in detail. As per the records available at this HQ you were released from service as per existing rules at that time. As there are no provisions for reinstatement of released Nursing Officer it is regretted that you cannot be reinstated in service.*

*sd/- x x x x x xx x*
*(S Padminiamma)*
*Maj Gen*
*Addl DGMNS*
*For DGAFMS"*

10. At the face of the record, impugned order dated 18.05.1999 seems to be cryptic and unreasoned without considering the grounds pleaded by the petitioner in her

representations (supra) mechanically saying that she was released in accordance with rules of the relevant time and there is no provision for reinstatement of nursing officer.

11. It is not understandable as to why the respondents were not competent to reinstate the petitioner in service in case impugned order of release suffers from vice of arbitrariness or is based on unfounded grounds, and is in contravention of relevant rules and Regulations?

12. Needless to say that in case the authority would have applied its mind to the contents of the letter and even brief inquiry would have been done, and after material would have come forward with regard to incorrectness of decision, then the respondents/competent authority were competent enough to set aside the impugned order directing restoration of petitioner in service with consequential benefits. The respondents have not applied their mind as to how a Permanent Commissioned Officer, as obvious from Certificate (Anneuxre-2 to the petition), could have been released from service without serving a show cause notice, that too by the subordinate authority though the Permanent Commissioned Officers are appointed through the President of India, and the appointment/post is notified.

**PROCEDURAL DEFECT:**

13. Chapter III of the Army Act, 1950 (in short, the Act) contains the procedure with regard to Commission, appointment and enrolment of Army personnel. Section 10 of the Act deals with the Commission and appointment of Army personnel according to which the President of India may grant Commission to Army personnel. Section 13 of the Act provides for procedure before enrolling officer which requires interview on different issues. Section 14 of the Act deals with the mode of enrolment. For convenience sake Sections 10, 13 and 14 of the Act are reproduced below:

> *"10.* ***Commission and appointment.—****The President may grant, to such person as he thinks fit, a commission as an officer, or as a junior commissioned officer or appoint any person as a warrant officer of the regular Army."*

> *"13.* ***Procedure before enrolling officer. –*** *Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled; and shall put to him the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be*

*liable to punishment under this Act, record or cause to be recorded his answer to each such question."*

*"14. **Mode of enrolment.**—If, after complying with the provisions of section 13, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if such officer perceives no impediment, he shall sign and shall also cause such person to sign the enrolment paper, and such person shall thereupon be deemed to be enrolled."*

14. The tenure of service of Commissioned Officer is contained in Chapter IV of the Act. Section 18 of the Act provides that tenure of service under the Act shall be subject to pleasure of the President. Under Section 19 of the Act, the Central Government has been conferred power to remove or dismiss from service any person in accordance with provisions contained in the Act. For convenience sake, Sections 18 and 19 of the Act are reproduced as under:

*"18. **Tenure of service under the Act**. – Every person subject to this Act shall hold office during the pleasure of the President".*

*"19. **Termination of service by Central Government**.—Subject to the provisions of this Act and the rules and regulations made thereunder the Central Government may dismiss, or remove from service, any person subject to this Act".*

15. Section 20 of the Act further empowers the Chief of the Army Staff to dismiss/remove or reduce rank of certain officers of the Army. Section 20 of the Act is reproduced as under:-

> *"20.* ***Dismissal, removal or reduction by the Chief of the Army Staff and by other officers*** *(1) The Chief of the Army Staff may dismiss or remove from the service any person subject to this Act, other than an officer.*
>
> *(2) The Chief of the Army Staff may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer.*
>
> *(3) An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his commander other than an officer or junior commissioned officer.*
>
> *(4) Any such officer as is mentioned in sub-section (3) may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer under his command.*
>
> *(5) A warrant officer reduced to the ranks under this section shall not, however, be required to serve in the ranks as a sepoy.*
>
> *(6) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the ranks, to the ranks.*

*(7) The exercise of any power under this section shall be subject to the said provisions contained in this Act and the rules and regulations made thereunder.*

16. The fundamental right of Armed Force personnel may be modified or cut short in pursuance of provision contained in Article 33 of the Constitution of India. Section 21 of the Act in tune with Article 33 of the Constitution confers powers to curtail certain fundamental rights. Section 21 of the Act is reproduced as under:-

**"21. Power to modify certain fundamental rights in their application to persons subject to this Act.—** Subject to the provisions of any law of the time being in force relating to the regular Army or to any branch thereof, the Central Government may, by notification, make rules restricting to such extent and in such manner as may be necessary the right of any person subject to this Act—

*(a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour unions, or any society, institution or association or any class of institution or associations;*

*(b) to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes;*

*(c) to communicate with the press or to publish or cause to be published any book, letter or other document."*

Thus, fundamental right may be curtailed on the aforesaid grounds.

17. A combined reading of the aforesaid provisions show that on behalf of DHAFMS, Lt Colonel had passed impugned order dated 17.08.1088. Nothing has been brought on record to meet out the requirement of Sections 10 and 18 of the Act, seeking final approval from the President, being a matter related to Commissioned Officer. No provision has been brought on record by the respondents to apprise the Tribunal that in any manner power of the President of India has been delegated to a subordinate officer, subject to discussion hereinafter. Nothing has been brought on record to the effect that release has been notified.

**GOVERNMENT OF INDIA ORDER:**

18. The service conditions of MNS Branch is governed by Army Instruction No 6 of 1977 titled “Terms and conditions of service for the grant of permanent commissions in the Military Nursing Service” (for short Service Conditions). Instruction No 6 of 1977 was circulated by Government of India, Ministry of Defence on 14.06.1979 providing that it shall remain in force till further order.

19. Paras 7 and 8 of the Service Conditions provide for the tenure of service and date of commission. For convenience sake paras 7 and 8 of Service Conditions are re-produced as under :-

"*7. Tenure of Service.-- A candidate selected for appointment will be required to sign an agreement for service as at Annexure 'D' to this Instruction and will serve according to the term of that agreement.*

*8. Date of Commission.—The date of commission in the case of serving MNS (T) officers will be the date of issue of orders granting her a permanent commission by the Director General, Armed Forces Medical Services and in the case of Civilians it will be the date on which she reports for duty to and Armed Forces Hospital unit.*

*Appointments, confirmation, substantive promotion and relinquishment of commission will be notified in the Gazette of India.*

*In the case of acting promotions where admissible MPRS (O) will allot Part II Order on the relevant Casualty Returns".*

20. Annexure A to Service Conditions deals with the Terms and Conditions of the permanent commissioned officers of Military Nursing Services and provides that Nursing Officers when seconded to the Navy or the Air Force will be equivalent to rank in those services. The highest rank in para (ii) seems to be the post of Major General. Para 5 of the service conditions provides that in case, Nursing Officers are released on account of invalidation or death before completion of two and a half years of service, they shall be liable to refund certain amounts. For convenience sake para 5 is reproduced as under:-

*"5.* ***Refund of Initial Outfit Allowance/Renewal Outfit****.*

*Nursing Officers who leave the service on grounds of invalidment /death before completion of 2 ½ years service is required to refund the initial outfit allowance/renewal outfit allowance as the following rates:-*

…..

…."

21. According to Service Conditions, up to the post of Lt Colonel and below has been given 55 years as the age of superannuation which is apparent from para-8 of the Service Conditions and Notes thereunder Termination of appointment in MNS may be done on the opinion of the Medical Board to be unfit for service or getting married or for misconduct. For convenience sake, para-8 of the Service Conditions is reproduced as under:-

"*8.* *Leave:-*

*Leave is a privilege and cannot be claimed as a right and will be granted at the discretion of the competent authority in accordance with the prevailing rules.*

*Deputation on Courses :-*

*Nursing Officers can be detailed on various courses in India and abroad under the conditions prescribed in the Government for such courses from time to time.*

*Retirement :-*

| *Rank* | *Age of Supernnuation* | *Tenure of Service* |
|---|---|---|
| *Lt Colonel and below* | *55 years* | *No tenure* |
| *Colonel* | *57 years* | *4 years' tenure* |

*NOTES:-* *(i) An officer offr the rank of Colonel will continue in that rank up to the age of 55 years if she complete her tenure before attaining that age.*

*(ii) Periods during which the above ranks have been held in an acting capacity will not be reckoned towards the prescribed tenure.*

*(iii) Nursing Officers will serve in their respective ranks for the tenure shown above or till the age of compulsory retirement whichever is earlier. However, Government may, for adequate reasons, terminate the original or extended tenure at any time before its completion or retire a Nursing Officer before she attains the age of compulsory retirement.*

*11. Termination of appointment.-- Appointment in the MNS will be terminated under the following conditions :-*

*(a) On being pronounced by a medical board to be unfit for further service in the Armed Forces.*

*(b) On getting married.*

*(c) For misconduct, breach of contract or if services are found unsatisfactory."*

*22.* The agreement enclosed with Service Condition with Annexure 'D' contains a declaration which provides certain conditions under which services of a member of MNS Branch may be terminated. The agreement/declaration is to be signed by the incumbent. The relevant portion of Annexure 'D' annexed with the Service Conditions is reproduced as under :-

*"Form of Agreement for service of a Regular Nursing Officer in the Military Nursing Services,*

*To:-*

*The President of India*

*I…….(name and home address) a candidate for appointment in the Military Nursing Service (Regular) do hereby declare that the particulars given in my application to join the Military Nursing Service are true to the best of my knowledge and that if appointed to the service I agree :-*

*(a) to observe the regulations thereof in force from time to time and to obey general orders of officers and others under whom I am for the time being serving and in particular to proceed on field service and to any station in or out of India to which I may be ordered;*

*(b) to serve therein from the date of being posted thereto until so long as my services are required <u>provided that Government shall have the right to terminate my service at any time without previous notice if</u> :-*

*(i) I am found unsuitable for the service during the period of probation.*

*(ii) a military medical board certifies that I am medically unfit for continuance in service.*

*(iii) any of the particulars I have given in my application referred to are false.*

*(iv) I am guilty of insubordination, misconduct or any breach or non-observance of the agreement or if any services are found to be unsatisfactory.*

*(v) I get married.*

23. From the aforesaid provision it appears that under the Service Conditions regulating the services of MNS Branch, the Government could have terminated the services without serving any previous notice. Assuming that in the event of marriage a person may be terminated, then that too should be done by the Government and not by any other authority or subordinate officer, as done in the present case.

However, the aforesaid Government order dated 16.06.1968 has been further modified by subsequent Government order dated 16.01.1989 which provides that the Regular Officer may be permitted to remain in service even after marriage at the discretion of DGAFMS for the period of two years at a time, and the case of such retained officer shall be reviewed by DGAFMS periodically after every two years. For convenience sake, Government of India Order dated 16 Jan 1989 is reproduced as under:-

*No. 30371/ DG AFMSD/MHS/88/8/S/D (Med)*
*Government of India*
*Ministry of Defence*
*New Delhi, the 16th January 1968*
*26th Pause1889/SE*

*To,*

*The Director General,*
*Armed Forces Medical Services,*
*NEW DELHI.*

*Subject : Terms and conditions of service of MNS (Regular) Officers.*

*Sir,*

*I am directed to state that, in supersession of the existing orders, the President is pleased to decide as follows in regard to the entry and retiring ages of MNS (Regular) Officers and their retention in service after marriage :-*

*(i) The upper age limit for entry in Permanent Commission will be 35 years.*

*(ii) The age limit for compulsory retirement for MNS (Regular) officers of the rank of Colonel will be 57 years.*

*(iii) The MNS (Regular) officers may be permitted to remain in service even after marriage at the discretion of the DGAFMS for a period of 2 years at a time. The cases of such married officers as are retained will also be reviewed by the DGAFMS periodically after every two years. This relaxation of the normal rules will be a temporary measure and the position will be reviewed by 1st January, 1970.*

*2. This letter issues with the concurrence of the Ministry of Finance (Defence) vide their u.o. No. 389-P of 1968.*

*Yours faithfully,*
*Sd/-*
*(G.Sen)*
*Under Secretary to the Government of India."*

24. In view of above, service conditions empowering the Government to terminate the services of members of MNS Branch has been modified and in spite of marriage a person shall be entitled to continue in service till age of superannuation i.e. 56 years subject to satisfactory service periodically monitored by DGAFMS. The post is not a tenure post (supra), hence may not be dispensed with without reasonable opportunity.

25. Government of India order has been continued to remain in force till further order by another order passed by the Government of India, Ministry of Defence dated 14 June 1979. Nothing has been brought on record contrary to the aforesaid order issued by the Government of India dealing with marriage of personnel of MNS branch.

26. It is categorically stated by the petitioner that she had not suffered any adverse ACR entry nor she was communicated any such entry. She married after the permissible limit of two years. She has further stated that she was also never asked to improve her working.

27. The Army Order of Aug 1978 deals with adverse ACR report. It provides that before an adverse report is initiated, the Officer shall be warned in writing of all his/her short comings indicating therein that the same has been issued for initiating adverse report. Further the Officer shall be given 60 days' notice to show improvement during said period. Relevant portion from the Army Order annexed by the respondents with their counter affidavit dealing with adverse report, is reproduced as under:-

"*Adverse Report*

*15. An adverse report is initiated by the Initiating Officer to record cases in which officer's service is considered unsatisfactory, namely, when it desired to recommend release of an officer from service or removal from appointment/employment in her acting rank for reasons of professional incompetency, in efficiency or inherent traits of character which make her utility to the service doubtful.*

*16. Before an adverse report is initiated the following will be ensured :-*

*(a) Officer will be warned in writing of her short-comings which are intended to be reflected in the adverse report;*

*(b) The written warning in (i) above will specifically mention that the same has been issued for the purpose of initiating an adverse report;*

*(c) The next higher formation will be informed of the fact that the officer has been warned. A copy of the warning letter will also accompany the adverse report as and when initiated.*

*17. The officer will be given a period of 60 days notice to show improvement during this period. The officer so warned will not be sent on leave/duty exceeding 10 days without obtaining prior permission from DGAFMS/DMS.*

*18. The period of 60 days prescribed in para 17 above of this Order may be waived by the ADMS Div/Area or by the DGAFMS/DMS, in cases of gross professional inefficiency or when the retention of the officer in her unit/appointment is considered inadvisable in the larger interest of service. Such sanction will be accorded in writing before the adverse report is initiated and a copy thereof will accompany the report. Medical Directorate (DMS-4) will be informed by signal as soon as officer is placed on an adverse report. The report will be marked 'Adverse Report' in red ink on top and must reach Medical Dte within (DMS-4) 30 days of initiation.*

*19. Officers placed on adverse or review report will not be given an appointment carrying higher acting rank during the period under such report. However, individual cases in respect of officers placed on a special report will be rendered to the Medical Directorate (DMS-4). An officer placed on adverse report will not be sent on a course of instructions without obtaining prior approval of Medical Directorate (DMS-4). An officer placed on review/special report will not be sent on course of instruction/duty/leave other than Casual Leave without the*

*prior approval of the authority which placed her on such a report.*

28. While filing supplementary counter affidavit dated 25.08.2015/03.09.2015, Sri D.K. Pandey, Additional Central Government Counsel has annexed Army Order 121 of 1978, the relevant portion of which has been reproduced hereunder:-

*"AO 121/78.* ***Instructions for rendering confidential report on Nursing Officers***

*1. This Army Order supersedes SAO 16/S/64 and all existing orders and instructions on the subject and is applicable only to MNS officers."*

29. In the affidavit it has not been indicated that at any point of time or by any stretch of imagination the procedure prescribed by Army Order (supra) was invoked and the petitioner was cautioned or suffered adverse remark; rather it has been stated that no dossier in respect of the petitioner is available in MS Danapore.

30. In view of above and discussions made hereinafter, it may be safely held that that the petitioner was not suffering from any adverse remark or adverse ACR entry or her ACR profile was not upto the mark. Moreover petitioner married after expiry of two years, which is permissible. The order seems to have been passed on unfounded grounds without application of mind, hence vitiated.

**PRESUMPTION WITH REGARD TO CORRECTNESS OF ACR ENTRY**

31. During course of hearing, Ld. Counsel for the respondents stated that record was weeded out in the year 2004. Supplementary affidavit filed by the respondents also says so. The Writ Petition was filed in the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in 1999. Counter affidavit on behalf of Union of India was filed on 21.12.1999 in the High Court at Lucknow. Once counter affidavit was filed and matter was sub judice in the High Court, there appears to be no occasion or justification on the part of the respondents or the authorities of the Army to weed out the record; that too in the year 2004. It reflects that to conceal mis-deeds and by arbitrary exercise of power records were weeded out by someone who could have suffered stricture from the High Court on account of abuse of power in an arbitrary manner. Under Section 114 of the Indian Evidence Act, 1872 Court may presume existence of certain fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. In the present case, counter affidavit was filed during pendency of the case in the High Court and the respondents and their authorities were knowing about the fact of pendency of the

matter in the High Court, thus, they were not justified in weeding out the record.

32. Attention has been invited to Regulations 592 to 596 (ii) of Regulations for Army, which under the head 'Retention And Destruction Of Documents' provides the conditions under which a document may be destroyed. Regulation 592 of the Regulations seems to be relevant and for convenience sake is reproduced as under:-

> *"592.* ***Disposal Of Obsolete Documents. –****(a) A board will be assembled annually in every unit and formation office for the purpose of recommending documents for destruction. The board will as far as possible be composed of three officers, but a JCO, WO or Senior NCO with an intimate knowledge of the records may be detailed as a member. All documents coming within the scope for destruction will first be examined by a competent official of the office concerned, who will withdraw for preservation any documents or files containing matter likely to be of value. The recommendations of the board will be submitted on IAFY-2001 to the brigade/sub-area commander or in the case of higher formations, services or departments not under a brigade/sub-area commander to the commander of the higher formation or head of department concerned. The officer to whom IAFY-2001 is submitted will issue orders regarding the disposal of the documents, ensuring that no documents are destroyed with may be of interest from a historical, financial, statistical, instructional, technical,*

*legal or general point of view. The following classes of documents will always be preserved:-*

*(i) Papers containing decisions on important matters or departmental policy.*

*(ii) Maps and plans relation to operations.*

*(iii) Operation Orders.*

*(iv) War Diaries.*

*(v) Regimental Long Roll.*

*Files relating to purchase transactions will be retained for a minimum of five years or more if considered necessary. Before such files are destroyed, orders of the senior officer of the status of GSO 1 or equivalent will always be obtained.*

*NOTE*

*In addition the procedure outlines in the pamphlet "Classification and Handling of Classified Documents" will be followed regarding the destruction of classified documents.*

*(b) The period for which documents relating to disciplinary cases will be preserved is an under:-*

| | | |
|---|---|---|
| *(i)* | *Discipline-Policy* | *Permanent* |
| *(ii)* | *Legal & Judicial* | *do* |
| *(iii)* | *Applicability of Arms Act-Policy* | *do* |
| *(iv)* | *Court-Martial-General & Policy* | *do* |
| *(v)* | *Conduct of civil suits-General and Policy* | *do* |
| *(vi)* | *SCM Proceedings* | *3 years* |

| | | |
|---|---|---|
| *(vii)* | *Administrative action under the Army Act and Rules-Individual cases* | *10 years* |
| *(viii)* | *Arms and Amn-Losses, Disciplinary cases* | *do* |
| *(ix)* | *Plural Marriage*<br>*(aa) Policy*<br>*(ab) Individual cases* | <br>*Permanently*<br>*10 years* |
| *(x)* | *Appeals under Section 26 and 27 of the Army Act* | *5 years* |
| *(xi)* | *Delegation of Power* | *5 years* |
| *(xii)* | *Periodical Reports and Returns* | *10 years* |
| *(xiii)* | *Penal Recoveries* | *10 years* |
| *(xiv)* | *Regimental & Private debts-Officers, JCOs & OR* | *5 years* |
| *(xv)* | *Complaints against Officers, JCOs & OR-Vigilance cases* | *5 years* |
| *(xvi)* | *Civil Suits-Individual cases* | *10 years* |
| *(xvii)* | *Courts of inquiry proceedings Relating to MT accidents not subject Matter of litigation* | *10 years"* |

33. A plain reading of Regulation 592 shows that no document shall be destroyed which may be of interest from historical, statistical, instrumental, technical, legal or general point of view as well as legal and judicial conduct of suit. In the present case, during pendency of Writ Petition in the High Court (supra), documents were destroyed in the year 2004, which at the face of the record seems to suffer from vice of arbitrariness and not permissible. It may be noted that the order dated 22.12.2004 provides that the record of legal cases shall be retained till 5 years after finalization of case. It means that earlier records were to be retained permanently but with effect

from 22.12.2004, it were to be retained for immediate 5 years after finalization of the case; hence there appears to be no room of doubt that destruction of record by the respondents was not permissible.

34. Section 114 of the Evidence Act deals with the presumption of incident of certain facts and Illustration (g) seems to be applicable in the present case. For convenience sake Section 114 of the Evidence Act with Illustration (g) is reproduced as under :-

> *" 114.* ***Court may presume existence of certain facts.—****The Court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events human conduct and public and private business, in their relation to the facts of the particular case.*
>
> *(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who holds it.*

35. Hon'ble Supreme Court in the case reported in ***State, Inspector of Police vs. Surya Sankaram Karri*****,** 2006 AIR SCW 4576 held that a document being in possession of a public functionary, who is under a statutory obligation to produce the same before the Court of Law, fails and/or neglect to produce the same, an adverse inference may be drawn against him. The law gives exclusive discretion to the court to presume the existence of any fact which it thinks likely to have happened. In that process the Court may have regard to common course of natural events, human conduct, public or private business vis-à-vis the facts of the particular case. The discretion conferred by Section 114 of the Evidence Act is an inference of a certain fact drawn from other proved facts. The Court applies the process of intelligent reasoning

which the mind of a prudent man would do under similar circumstances unless rebutted.

36. Hon'ble Supreme Court in the case reported in ***Ram Das vs. State of Maharashtra*** AIR 1977 SC 164 reiterated the well settled proposition of law that in the event of non-production of document, adverse inference may be drawn against the failing party. Similar view has been expressed by Orissa and Patna High Courts in the cases reported in ***Ridhi Karan Ramadhin vs. French Motor Car Co. Ltd.***, AIR 1955 Orissa 60 and ***Devij Shivji vs. Mohanlal Thacker***, AIR 1960 Patna 223 as well as Calcutta High Court in the case reported in ***Burn and Co. vs. State,*** AIR 1976 Cal 389. The Orissa, Patna and Calcutta High Courts constantly held that non production of best illus or withholding of material documents may make out a case to draw adverse inference.

37. What prompted the respondents, or the authorities concerned, to weed out the record may be inferred from the material on record, i.e. to save their neck, since the order of release from Army seems to be per se bad and not sustainable and power has been exercised without jurisdiction. Burden was on the respondents to establish genuineness of weeding out the record during pendency of the Writ Petition which they have failed to do (Vide AIR 2006 SCW 6155 ***B. Venkatamuni vs. C.J., Ayodhya Ram Singh)***

38. Presumption of bona fide by the respondents seems to be frustrated because of weeding out of record during pendency of the Writ Petition in the High Court; that too after filing counter

affidavit. Allahabad High Court in the case reported in 1991 All. LJ 930, ***Harish Chand vs. State of U.P.***, has held that non-production of documentary evidence in case it could be and was bound to be available, would give rise to adverse presumption that if it was produced, it would have been derogatory for the case of the prosecution.

39. From the material brought on record and Service Conditions (supra) the tenure of appointment of the petitioner seems to be 55 years; it means petitioner was to superannuate at the age of 55 years, unless removed, dismissed or terminated earlier in accordance with rules.

40. In the present case, Service Conditions, statutory provision manner and method of release from MNS Services of the petitioner point out towards one and only one thing - that hasty and arbitrary decision was taken ignoring the statutory mandate and procedural safeguard, hence presumption may be drawn that procedure prescribed by law was not followed and action of the respondents suffers from high handedness and arbitrary exercise of power.

41. In view of above, the presumption may be derived and inference may be drawn that alleged weeding out of the record by the respondents or the authorities of the Army was for extraneous reasons; hence an adverse presumption may be drawn against them to the effect that petitioner was released arbitrarily without following the procedure prescribed by law.

**DOCTRINE OF PLEASURE:**

42. In the Army, commission and appointment thereto is granted by the President of India in pursuance of power conferred under Section 10 of the Act. An Officer's tenure of service is subject to pleasure of the President of India, as provided in Section 18 in tune with Article 310 of the Constitution.

43. Tenure means the term during which office is held. It is a condition of holding an office. Once a person is appointed to a tenure course his appointment to said office begins when he/she joins and it comes to an end on completion of tenure unless curtailed on justifiable grounds. Such a person does not superannuate; rather he/she only goes out of office on completion of his/her tenure. The question of prematurely retiring him/her does not arise. Tenure appointment has fixed life but appointment done against sanctioned post without indicating the tenure shall continue till the age of superannuation unless removed, dismissed or terminated in accordance with law (vide ***L.P. Agarwal (Dr.) vs. Union of India*** AIR 1992 SC 1872). Before enforcement of Constitution of India, it was a well settled principles of English Law that the officers and servants of the crown held appointment till pleasure of the Crown and their services would be terminated without any notice and the inquiry was optional. With the advent of

Constitution and in view of Articles 309, 310 and 311 of the Constitution the scenario changed. Article 310 deals with the tenure of office of person serving the Union or the State and such office shall be held during the pleasure of the President if the post is under Union and during the pleasure of the Governor if the post is under the State. Doctrine of pleasure is embodied in Article 210 whereas Article 210 (2) deals with the cases of persons appointed under contract except as specifically provided by the Constitution. Further, persons who are the members of the Defence Services or of the civil services of Union of India or all India services or holds any post connected with defence or civil post under the Union holds office during the pleasure of President and in the same manner State civil servants hold office during the pleasure of the Governor of the State.

44. Whereas the power contained in Article 310 of the Constitution governs all Government servants, including those in services connected with defence, the benefits of Article 311 of the Constitution which impose limitation on the exercise of this power in cases of punishment, do not extend to those who hold posts connected with defence (vide ***Union of India vs. Subramaniam***, AIR 1976 SC 2433.

45. There is distinction between Article 309 and Article 310 of the Constitution. The former relates to question relating to

service in the office and the latter relates to duration of the offices as well as authority by which a person holds office during the pleasure of the President or of the Governor, as the case may be.

46. It means that termination, removal or reduction in rank of a Commissioned Officer of the Army subject to statutory provisions should come out with the sanction of President of India (Section 10 of the Act). The Government may proceed in accordance with the statutory provisions to frame Rules with regard to removal, dismissal or reduction in rank, but that is subject to finality of Presidential notification.

47. It was in AIR 1958 SC 36, ***Purshottam vs. Union of India*** followed by AIR 1964 SC, ***Moti Ram Deka vs. Union of India*** the Hon'ble Supreme Court held that the doctrine of pleasure codified in Article 310 (1) of the Constitution of India is a legacy of the English. It means that a servant of the Crown holds office during the pleasure of the Sovereign. But in order to protect civil servant against political interference, Article 311 introduces certain safeguards in the Constitution which is subject to specific contract entered into between the employer and the employee, but it is not applicable to defence services.

48. A Constitution Bench of Hon'ble Supreme Court in the case reported in AIR 1961 SC 751, ***State of Uttar Pradesh & ors vs. Babu Ram Upadhyaya*** while considering "pleasure

doctrine" observed that a person cannot be dismissed by an authority subordinate to that by which he as appointed and consequently order of dismissal, removal or reduction in rank cannot be passed without providing reasonable opportunity to show cause against the action proposed or taken in that regard. Hon'ble the Supreme Court has given seven conditions to deal with such matters.

49. In the case of ***Sardari Lal vs. Union of India*** (1971) 3 SCR 461 the Supreme Court held that the President has to be satisfied personally in exercise of executive power or function and that the functions of the President cannot be delegated was not correct statement of law and is against the established and uniform view of this Court as embodied in several decisions. However, the judgment of ***Sardari Lal*** (supra) was not accepted as correct and expressly overruled by larger Bench of the Hon'ble Supreme Court in the case of ***Samsher Singh vs. State of Punjab and Anr***. (1974) 2 SCC 831. In the case of ***Samsher Singh*** (supra) Hon'ble A.N. Ray, C.J. while writing judgment on his behalf and other four Hon'ble Judges, namely Hon'ble D.G. Palekar, Hon'ble K.K. Mathew, Hon'ble Y.V. Chandrachud and Hon'ble Alagiriswami, JJ. concluded in para 57 of the judgment with regard to doctrine of pleasure available to the President of the country and Governors of the States.

For convenience sake para 57 of ***Samsher Singh's*** case is reproduced as under :-

> *"57. For the foregoing reasons we hold that the President or the Governor acts on the aid and advice of the Council of Ministers with the Prime Minister at the head in the case of the Union and the Chief Minister at the head in the case of State in all matters which vests in the Executive whether those functions are executive or legislative in character. Neither the President nor the Governor is to exercise the executive functions personally. The present appeals concern the appointment of persons other than District Judges to the Judicial Services of the State which is to bemade by the Governor as contemplated in Article 234 of the Constitution after consultation with the State Public Service Commission and the High Court. Appointment or dismissal or removal of persons belonging to the Judicial Service of the State is not a personal function but is an executive function of the Governor exercised in accordance with the rules in that behalf under the Constitution."*

50. Hon'ble Krishna Iyer, J. while writing judgment on his Lordship's behalf and on behalf of Hon'ble P.N.Bhagwati, J. expressed their Lordships' opinion while concurring with Hon'ble Ray, C.J. in the following paragraphs:

> *"154.We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under various articles shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers save in a few well-known exceptional situations.*

*156. The second spinal issue in the case, as earlier indicated, bears on fearless justice, another prominent creed of our Constitution. The independence of the Judiciary is a fighting faith of our founding document. Since the days of Lord Coke, judicial independence from executive control has been accompanied in England. The framers of our Constitution, impressed by this example, have fortified the cherished value of the rule of law by incorporating provisions to insulate the judicature.*

*158. The third contention, argued elaborately by both sides, turns on the scope and sweep of Article 311 in the background of the rules framed under Article 309 and the 'pleasure' doctrine expressed in Article 310. The two probationers, who are appellants, have contended that what purport to be simple terminations of probation on the ground of 'unsuitability' are really and in substance by way of punishment and falling short of the rigorous prescriptions of Article 311 (2), they are bad. Their complaint is that penal consequences have been visited on them by the impugned orders and since even a probationer is protected by Article 311 (2), in such situations the Court must void those orders. Naturally, the launching pad of the argument is Dhingra's case (supra). In a sense, Dhingra is the Magna Carta of the Indian civil servant, although it has spawned diverse judicial trends, difficult to be disciplined into one single, simple, practical formula applicable to termination of probation of freshers and of the services of temporary employees. The judicial search has turned the focus on the discovery of the element of punishment in the order passed by Government. If the proceedings are disciplinary, the rule in Dhingra's case is attracted. But if*

*the termination is innocuous and does not stigmatize the probationer or temporary servant, the constitutional shield of Article 311 is unavailable. In a series of cases, the Court has wrestled with the problem "of devising a principle or rule to determine this question" – where non-punitive termination of probation for unsuitability ends and punitive action for delinquency begins. In* ***Gopi Kishore*** *(Supra) this Court ruled that where the State holds an enquiry on the basis of complaints of misconduct against a probationer or temporary servant, the employer must be presumed to have abandoned his right to terminate simpliciter and to have undertaken disciplinary proceedings bringing in its wake the protective operation of Article 311. At first flush, the distinguishing mark would therefore appear to be the holding of an inquiry into the complaints of misconduct. Sinha, C.J. observed.*

*It is true that, if the Government came to the conclusion that the respondent was not a fit and proper person to hold a post in the public service of the State, it could discharge him without holding any enquiry into his alleged misconduct…….Instead of taking that easy course, the Government chose the more difficult one of starting proceedings against him and of branding him as a dishonest and an incompetent officer. He had the right, in those circumstances, to insist upon the protection of Article 311 (2) of the Constitution."*

51. The "pleasure doctrine" contained in Section 18 of the Act is in tune with Article 310 of the Constitution of India, which means that the Parliament in its wisdom has not withdrawn or deleted benefits/procedural safe-guard available through

“doctrine of pleasure” to the Armed Forces personnel in view of Article 33 of the Constitution of India. In the absence of any statutory provision and keeping in view the mandate of Section 18 of the Act flowing from the provision of Article 310 of the Constitution of India, “doctrine of pleasure” shall be applicable to Commissioned Officers. In the present case, as is evident from Army Service Certificate contained i n Annexure-2 to the T.A., the petitioner was granted permanent commission in the MNS, hence it was not open to an Officer of the rank of Lt Colonel, or even higher authority, to discharge the petitioner, that too in violation of principle of natural justice and exercise of formal constitutional power by the President (Section 10 & 18 of the Act).

52. In view of above, the impugned order seems to have been passed by incompetent authority. That apart, Section 18 of the Act provides that a Commissioned Officer shall hold office till pleasure of the President; and in view of Section 10 of the Act (supra),the President is the appointing authority; hence also the impugned order suffers from jurisdictional error.

**SPEAKING/REASONED ORDER**

53. While moving statutory complaint, the petitioner has brought on record that she has served for more than two years and is entitled to enter into wedlock. She also stated that on account of ill-will, the Principal Matron got the petitioner shifted

to other hospital and latter on discharged. No material has been brought on record by the competent authority which may make out a ground to discharge the petitioner. Neither any inquiry was held nor was opportunity given to the petitioner to show cause. The complaint submitted by the petitioner has been rejected by impugned order dated 18.05.1999 without considering the grounds raised by the petitioner in her complaint (supra). The order is cryptic and unreasoned. Even the impugned order (supra) releasing the petitioner does not indicate how and under what manner the petitioner ACR profile is not upto the mark. Being a non-speaking order, depriving a Permanent Commissioned Officer to complete service up to the age of superannuation, the impugned order suffers from vice of arbitrariness and is not sustainable. Now it is well settled proposition of law that every order must be a reasoned and speaking one.

54. It is well settled legal proposition that not only judicial but administrative orders also quasi judicial orders must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court/authority is bound to give reasons for its conclusions. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has

always been insisted upon as one of the fundamentals of sound administration of the justice – delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice. The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affect must know why his application has been rejected or allowed (vide ***Union of India vs. Ibrahim Uddin and anr***, 2013 AIR SCW 2752, ***State of Orrisa vs. Dhaniram Luhar***, AIR 2004 SC 1794, ***State ofUttranchal & anr vs. Sunil Kumar Singh Negi***, AIR 2008 SC 2026, ***The Secretary and Curator, Victoria Memorial Hall vs.Howrah Ganatantrik Nagrik Samity and ors,*** AIR 2010 SC 1285, and ***Sant Lal Gupta and others vs. Modern Cooperative Group Housing Society Ltd & Ors.*** (2010) 13 SCC 336).

**MODE AND MANNER OF ACTION:**

55. Unless the Army Act or the Rules framed thereunder permit to release the petitioner, a Permanent Commissioned Officer, without holding regular inquiry, the order passed in contravention of principles of natural justice shall be violative of Article 14 of the Constitution of India.

56. It is well settled proposition of law that a thing should be done in the manner provided by the Act or the statute and not otherwise vide ***Nazir Ahmed vs. King Emperor,*** AIR 1936 PC 253; ***Deep Chand vs. State of Rajasthan,*** AIR 1961 SC 1527***, Patna Improvement Trust vs. Smt. Lakshmi Devi and ors,*** AIR 1963 SC 1077; ***State of U.P. vs. Singhara Singh and others,*** AIR 1964 SC 358; ***Barium Chemicals Ltd vs. Company Law Board,*** AIR 1967 SC 295; ***Chandra Kishore Jha vs. Mahavir Prasad and others,*** 1999 (8) SCC 266; ***Delhi Administration vs.Gurdip Singh Uban and others,*** 2000 (7) SCC 296; ***Dhananjay Reddy vs. State of Karnataka,*** AIR 2001 SC 1512; ***Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala and others,*** 2002 (1) SCC 633; ***Prabha Shankar Dubey vs. State of M.P.,*** AIR 2004 SC 486 and ***Ramphal Kundu vs. Kamal Sharma,*** AIR 2004 SC 1657.

57. Hon'ble Supreme Court in the case reported in ***Jaisinghani vs. Union of India and others***, AIR 1967 SC 1427 ruled that decision should be made by the application of

known principles and rules and in general such decision should be predictable and a citizen should know where he is.

**PRINCIPLES OF NATURAL JUSTICE:**

58. The rule of audi alteram partem was recognised in ***R.V. University of Cambridge***, (1723) 1 Str. 557. In that case, the University of Cambridge had deprived Bentley, a scholar, of his degrees on account of his misconduct in insulting the Vice-Chancellor's Court. The action of the University was nullified by the Court of King's Bench on the ground that deprivation was unjustified and, in any case, he should have been given notice so that he could make his defence. In that case, it was noted that the first hearing in human history was given in the Garden of Eden, in the following words:

> *"I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence. 'Adam', says God, 'where' art thou? Hast thou not eaten of the tree, whereof I commanded thee that thou shouldn't not eat? And the same question was put to Eve also"*.

59. The Supreme Court in ***Mahipal Singh Tomar vs. State of Uttar Pradesh***, 2013 (12) SCALE 304 held that in administrative law, the rules of natural justice have traditionally been regarded as comprising 'audi alteram partem' and 'nemo judex in causa sua'. The first of these rules requires the maker

of a decision to give prior notice of the proposed decision to the persons affected by it and an opportunity to them to make representation. The second rule disqualifies a person from judging a cause if he has direct pecuniary or proprietary interest or might otherwise be biased. The first principle is of great importance because it embraces the rule of fair procedure or due process. Generally speaking, the notion of a fair hearing extends to the right to have notice of the other side's case, the right to bring evidence and the right to argue. This has been used by the Courts for nullifying administrative actions. The premise on which the Court extended their jurisdiction against the administrative action was that the duty to give every victim a fair hearing was as much a principle of good administration as of good legal procedure. Under the European Convention on Human Rights and Fundamental Freedoms of 1950, it is provided that :

> *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable by an independent and impartial tribunal established by law*."

60. In ***State of Orissa vs. Binapani Dei***, AIR 1967 SC 1269: 1967 (2) SCJ 339: (1967) 2SCR 625, the Supreme Court observed:

> *"We think that such an inquiry and decision were contrary to the basic concept of justice and cannot have*

*any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first Respondent of the case of the State……..”*

61. In ***Sayeedur Rehman vs. State of Bihar***, AIR 1973 SC 239: 1973 Lab IC 197: (1973) 3 SCC 333, the Supreme Court while considering the challenge to the decision of the Board of Secondary Education, which had reviewed it earlier order granting salary and allowances to the Appellant, reversed the order passed by the Patna High Court and held :

*“This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestant. This right has its root in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties. The omission of express requirement of fair hearing in the rules or other source of power claimed for considering an order is supplied by the rule of justice which is considered as and integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties.”*

62. In ***Maneka Gandhi vs, Union of India***, AIR 1978 SC 597: (1978) 1 SCC 248: (1978) 2 SCR 621, a seven-Judge Bench of Supreme Court held:

> *"Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of audi alteram partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice.*
>
> *Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must always be: Does fairness in action demand that an opportunity to be heard should be given to the person affected?"*

63. In ***Mohinder Singh Gill vs. Chief Election Commissioner, New Delhi***, (1978) 1 SCC 405: AIR 1978 SC 851: (1978) 2 SCR 272, a Constitution Bench observed that :

> "*Fair hearing is a postulate of decision making, canceling a poll, although a fair abridgment of that process is permissible. It can be fair without the rules of evidence or form of trial. It cannot be fair if apprising the affected and appraising the representatives is absent. The philosophy behind natural justice is, in no sense, participatory justice in the process of democratic rule of law. The silence of a statute has no exclusionary effect except where it flows from necessary implication".*

64. In ***Union of India vs. Tulsiram Patel,*** (1985) 3 SCC 398: AIR 1985 SC 1416: 1985 Lab IC 1393, the Constitution Bench, speaking through Madon, J considered the various facets of the principles of natural justice and application of the same in the context of Article 14 observed that :

> *"..the principles of natural justice are not the creation of article 14, article 14is not their begetter but their constitutional guardian. The principles of natural justice apply not only to the legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of "State" in article 12,is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially."*

65. It cannot be doubted that the principles of natural justice cannot be put into a straight-jacket formula and that its application will depend upon the fact situation obtaining therein. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. This is what has been held by the Supreme Court in ***K.L. Tripathi Vs. State Bank of India & Ors***., AIR 1984 SC 273p; ***N.K. Prasada Vs. Government of India & Ors.***, (2004) 6 SCC 299; ***State of Punjab Vs. Jagir Singh***, (2004) 8 SCC 129; ***Karnataka SRTC & Anr. Vs. SG Kotturappa & Anr.,*** (2005) 3 SCC 409; and in ***Viveka Nand Sethi Vs. Chairman, J&K Bank Ltd***., (2005) 5 SCC 337.

66. In the present case attention of the Tribunal has not been invited to any statutory or non-statutory provision whereby principle of natural justice has been curtailed/excluded or Commissioned Officers have been deprived of their right by exercising power conferred by Article 33 of the Constitution of India. In the absence of any such statutory prohibition, compliance of principles of natural justice is must. In the present case, not only incompetent authority had passed the impugned order but the decision has been taken behind the back of the petitioner without serving show cause notice or holding any inquiry or giving opportunity to defend her cause. There is blatant abuse of power and order being violative of principles of natural justice is not sustainable.

**MALICE IN LAW:**

67. While preferring the present petition, the petitioner has not impleaded the Principal Matron as a party against whom she has alleged mala fide or personal grudge. However, the material on record and the manner in which the petitioner has been terminated is blatant abuse of power by incompetent authority seems to make out a case of malice in law.

68. In ***Ravi Yashwant Bhoir vs. District Collector, Raigad***, AIR 2012 SC 1339; 2012 AIR SCW 1877: (2012) 4 SCC 407, the Supreme Court held that the State is under an obligation to act fairly without ill will or malice in fact or in law. Where malice

is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. “Legal malice” or “malice in law” means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for “purposes foreign to those for which it is in law intended”. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorized purpose constitutes malife in law. (see: ***A.D.M., Jabalpur v. Shivakant Shukla***, AIR 1976 SC 1207: (1976) 2 SCC 521: 1976 Cr LJ 945; ***Union of India thr. Govt of Pondicherry vs. V. Ramakrishnan***, (2005) 8 SCC 394: AIR 2005 SC 4295: 2005 AIR SCW 5147; and ***Kalabharati Advertising vs. Hemant Vimalnath Narichania***, AIR 2010 SC 3745: (2010) 9 SCC 437: (2010) 9 SCALE 60).

**OTHER CASES:**

69. It shall be appropriate to consider certain cases relied upon by Ld. Counsel for the petitioner.

70. In ***Union of India and ors vs. Rajpal Singh***, (2009) 1 SCC 216, their Lordships of the Hon'ble Supreme Court held that the an executive authority must be rigorously held to the standards by which it processes its action to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.

71 In ***Air India etc etc. vs. Nergesh Meerza and ors***, 1981 AIR 1829, Hon'ble Supreme Court held that decisions relating to employment cannot be predicated on mere 'stereotyped' impressions about the characteristics of males or females. There cannot be gender discrimination while dealing with subject matter in the matter of employment. While considering earlier judgments, it was observed:

> *"In view of our recent decisions explaining the scope of Art. 14, it has been held that any arbitrary or unreasonable action or provision made by the State cannot be upheld. In M/s Dwearka Prasad Laxmi Narain v. The State of Uttar Pradesh, this Court made the following observations:*
>
> *"Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness, and unless it strikes a proper balance between the freedom guaranteed under article 19 (1) (g) and the social control permitted by clause (6) of article 19, it must be held to be wanting in reasonableness.*

*In Maneka Gandhi vs. Union of India, Beg, C.J. observed as follows:*

> *"The view I have taken above proceeds on the assumption that there are inherent or natural human rights of the individual recognised by and embodies in our Constitution. If either the reason sanctioned by the law absent, or the procedure followed in arriving at the conclusion that such a reason exists is unreasonable, the order having the effect of deprivation or restriction must be quashed."*

*And Bhagwati, J observed thus:*

> *"Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied"*

*In an earlier case in E.P. Royappa v. State of Tamil Nadu and Anr. Similar observations were made by this Court thus:*

> *"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 4."*

*In State of Andhra Pradesh and Anr. vs. Nalla Raja Reddy and Ors, this Court made the following observations:*

*"Official arbitrariness is more subversive of the doctrine of equality than statutory discrimination. In respect of a statutory discrimination one knows where he stands, but the wand of official arbitrariness can be waved in all directions indiscriminately."*

72. With the aforesaid observations with regard to applicability of Article 14 of the Constitution, their Lordships further held that the provision which leads to unbridled power cannot in any sense characterized as reasonable.

73. In the case of ***D.K. Yadav vs. J.M.A. Industries Ltd***, (1993) 3 SCC 259, their Lordships reiterated the well settled law that procedure prescribed for depriving a person from livelihood would be liable to be tested on the anvil of Article 14 of the Constitution. The principle of natural justice is part of Article 14 of the Constitution and the procedure prescribed by law must be just and fair and not fanciful or oppressive. The colour and contents of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. The order of

termination of the service of an employee/workman visits with civil consequences of jeopardizing not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his/her case is given and domestic inquiry conducted complying with the principles of natural justice. There is no distinction between the quasi judicial function and an administrative function.

74. In the case of ***Delhi Transport Corporation vs. D.T.C. Mazdoor Congress & Ors.,*** 1991 Supp (1) SCC 600 their Lordships have held as under :-

> "*There is need to minimize the scope of the arbitrary use of power in all walks of life. It is in advisable to depend on the good sense of the individuals, however high-placed they may be. It is all the more improper and undesirable to expose the precious rights like the rights of life, liberty and property to the vagaries of the individual whim and fancies. Individuals are not and do not become wise because they occupy high seats of power, and good sense, circumspection and fairness does not go with the posts, however, high they may be. There is only a complacent presumption that those who occupy high posts have a high sense of responsibility. The presumption is neither legal nor rational. History does not support it and reality does not warrant it. In particular, in a society pledged to uphold the rule of law, it would be both unwise and impolitic to leave any aspect of its life to be governed by discretion when it can conveniently and*

*easily be covered by the rule of law. Hence the absence of guidelines cannot be defended on the ground that the discretion is vested in high authorities".*

75. In the case of ***Lt Col SPS Rekhi and ors vs. Union of India and Ors***, (Mil LJ 2005 Del 5) a Division Bench of Delhi High Court held that in case a person is deprived from service and prevented from discharging duty on unfounded grounds then such person may be restored with full back wages.

76. In ***Roop Singh Negi vs. Punjab National Bank & Ors.*** (2009) 2 SCC 570 Hon'ble Supreme Court granted full back wages where the employee was dismissed from service without inquiry.

77. In the case of ***State of Mysore vs. P.R. Kulkarni & Ors Etc***, (1973) 3 SCC 597 their Lordships of Hon'ble Supreme Court held that exercise of every power, whatever its nature, lodged in Government authorities, is controlled by the need to confine it to the ambit within which it could justly and reasonably be expected to take place. A power used under the misapprehension that it was needed for effectuating a purpose, which was really outside the law or the proper scope of the power, could be said to be an exercise for an extraneous or collateral purpose.

78. The aforesaid proposition of law has been reiterated by Hon'ble Supreme Court in the case of ***Bachan Singh vs. State of Punjab,*** (1982) 3 SCC 24.

79. A Division Bench of Allahabad High Court, Lucknow Bench, in the case of ***Gopal Prasad vs. Union of India & ors.*** [2014 (32) LCD 652] relying upon the judgment of Hon'ble Supreme Court in the case of ***Amareet Singh & others vs. Devi Ratan and ors.*** (2010) 1 SCC 417 applied the maxim "*actus curiae neminem gravabit",* meaning that the act of the court shall not prejudice any one and accordingly held that litigants cannot be deprived from benefits available in due course of law because of pendency of a matter in the court.

**MISCELLANEOUS:**

80. Though it is out of bound and not of much concern but keeping in view the written arguments and arguments advanced by Ld. Counsel for the petitioner it is necessary to make a brief observation on question of love and marriage. Ld. Counsel submitted that marriage solemnized by the petitioner with Maj Vinod Raghwan was to fulfill the divine need of sexualism. The institution of marriage, particularly amongst Hindus, it is solemnized to maintain social order as well as to continue civilized society, compliment and cooperate with each other and to nourish and educate generations to come apart from love. English translation of two of the hymns which are

sworn by the bride and the bridegroom during marriage ceremony are reproduced as under:-

(a) *"O Lord Indra! May you bring together this newly married couple in the same manner as a part of chakravaka birds; let them enjoy marital bliss, and along with their progeny live a full life (Atharvaveda)"*

(b) *"You have walked seven steps with me; be my friend.*

*We have walked seven steps together; let us be friends.*

*Let me get your friendship. Let me not part from your friendship.*

*May you not part from my friendship. – Vivaaha karmakaanda."*

81. While delivering on behalf of Full Bench in the case **Smt. Chawli vs. State of U.P. and ors**, reported in 2015 All LJ 402, one of us (Justice D.P. Singh) dealt with the institution of marriage with the finding that it is based on thousand years of civilization experience necessary for orderly society which need not be elaborated.

82. The quest of man through the ages is how to attain happiness or pure pleasure. Love, which is primary condition for pure happiness has been mostly interpreted by various literatures connecting it with physical relationship. Love is culmination and fulfillment of both life-hunger and beauty-

hunger. Instinct, intuition, passion, interest and intelligence combine in one supreme moment of fusion or identification of subject with object, desire with delight, hunger with food, breath with blood, flesh with feelings and faith with truth, as Gitananda says. In the love of man and woman, in their highest variety, we find this exemplified in every day experience. That is the nearest approach, on the worldly plane, to *Ananda*. That is why jayadeva in his Gita *Govinda,* takes the conjugal union of a happy couple (Radha and Krishna) as an example of *Ananda.* It will be sheer absurdity to consider it as an erotic effusion. Of course, there was also the profound symbolism in *Gita Govinda*, of Radha wedded to the world (symbolized by her husband) yearning for the Lord now and then, as all of do, and running back to the world from Him again and again, as all of us do (A Layman's Bhagvad Gita Vol-I Introductory Chapter p. Lxxvi).

83. In Indian School of Thought, love does not necessarily involve physical relationship. Pleasure of love for which man is struggling to achieve is not based on physical relationship between man and woman; it requires fulfillment of certain other aspects of life, peace and harmony criterion with the change of mindset. Otherwise there shall be no love at old age. Pure pleasure cannot be obtained by physical relationship whereas impure pleasure, which is purely temporary phase, may be

obtained by various factors including physical relationship.

The difference between pure pleasures, bringing happiness, and impure pleasures, bringing sorrow, is emphasized in the Gita. Impure pleasures result from the union of the senses with the sense-objects, and are like nectar in the beginning, like drinking or debauchery, but are, in the end, like poison, whereas pure pleasures, like works for *Loka-sangraha* or the search for God, are like poison in the beginning but are like nectar in the end. (**A Layman's *Bhagavad Gita***, Vol-1; Introductory Chapter p. Lxxvii).

84. Accordingly, institution of marriage for common men is to maintain social order and carry its progeny from one generation to other with impure or temporary pleasure; whereas for persons of spirituality on higher pedestal, institution of marriage and the union thereon may be for public service and combined effort to attain divine pleasure by search of God and deal with worldly affairs. King Geord Edward VIII abdicated crown in 1936 to marry Walis Simpson and settled in France with her. Nothing is higher than love.

85. Father of the Nation Mahatma Gandhi said, to quote:

> *"Love never claims, it ever gives. Love never suffers, never resents, never revenges itself.*"

Dr. R.D. Rande said, to quote:

> *"It is the soul and not the body which is worth loving and he must be a poor admirer who loves the grace of the body and not the beauty of the soul."*

86. Constant love and demotion may be seen in the songs of Meera, Radha and saint Theresa, to quote:-

*"Kanh have I bought; the price he asked I paid;*

*Some cry, "Too great", while others jeer,*

*"T was small";*

*I paid in full, weighed to the utmost grain,*

*My love, my life, my self, my soul, my all."*

*(Mira Bai—Sir George Grierson's Translation),*
*A Layman's Bhagvad Gita Vol-II p 187.*

*"Say that I—Radha—in my bower languish*
*All widowed, till He find the way to me;*
*Say that mine eyes are dim, my breast all anguish,*
*Until with gentle murmured shame I see,*
*His steps come near, His anxious pleading face."*

*(Gita-Govinda-Sir Edwin Arnold.)*
*A Layman's Bhagvad Gita Vol-II p 188.*

*"Love's whole possession I entreat;*
*Lord, make my soul thine own abode,*
*And I will build a nest so sweet,*
*It may not be too poor for God".*

*Saint Theresa says to Christ*
*A Layman's Bhagvad Gita Vol-II p 188.*

87. Petitioner and Maj Vinod Raghwan seem to fell in true love and married after expiry of period of two years permissible under the Service Conditions (supra). In such situation, the respondents and the authorities concerned should have welcome the event and should have greeted the petitioner and her husband for solemnizing marriage with good wishes for happy matrimonial life. Unfortunately, without any sanctity or sense of responsibility, the respondents have hurt the sentiments of the petitioner and her husband, discharging her

from service by blatant abuse of power causing mental pain and agony to them. The petitioner has been fighting for the cause of justice since 25 years; and thanks to the Supreme Court and the Parliament to establish Armed Forces Tribunal whereby the petitioner's case was transferred and is taken on merits and adjudicated at earliest possible time, otherwise the petitioner could not have seen the result of her quest for justice.

88. It is irony of our system that the petitioner who suffered from highhandedness, had to invest almost 25 years to obtain justice from the Court of Law. The pleasure and happiness of life which has been denied to the petitioner cannot be compensated in terms of money, but symbolically she seems to be entitled for exemplary costs and all service benefits to maintain the majesty of law in our democratic polity.

**COSTS:**

89. Hon'ble Supreme Court in the case of ***Ramrameshwari Devi and others V. Nirmala Devi and others,*** (2011) 8 SCC 249 has given emphasis to compensate the litigants who have been forced to enter litigation. This view has further been rendered by Hon'ble Supreme Court in the case reported in ***A. Shanmugam V. Ariya Kshetriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and others,*** (2012) 6 SCC 430. In the case of ***A. Shanmugam*** (supra) Hon'ble the Supreme considered a

catena of earlier judgments for forming opinion with regard to payment of cost; these are:

1. ***Indian Council for Enviro-Legal Action V. Union of India,*** *(2011) 8 SCC 161;*
2. ***Ram Krishna Verma V. State of U.P***., (1992) 2 SCC 620;
3. ***Kavita Trehan V. Balsara Hygiene Products Ltd***. (1994) 5 SCC 380;
4. ***Marshall Sons & CO. (I) Ltd. V. Sahi Oretrans (P) Ltd.,*** (1999) 2 SCC 325;
5. ***Padmawati V. Harijan Sewak Sangh,*** (2008) 154 DLT 411;
6. ***South Eastern Coalfields Ltd. V. State of M.P.,*** (2003) 8 SCC 648;
7. ***Safar Khan V. Board of Revenue***, 1984 (supp) SCC 505;
8. ***Ramrameshwari Devi and others*** (supra).

In the case of ***South Eastern Coalfields Ltd*** (supra), the apex Court while dealing with the question held as under :

> *"28. ...Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable*

*in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation".*

90. In the case of ***Amarjeet Singh V. Devi Ratan***, (2010) 1 SCC 417 the Supreme Court held as under :-

*"17. No litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been field. The maxim actus curiae neminem gravabit, which means the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party involving the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court".*

91. The question of award of cost is meant to compensate a party who has been compelled to enter litigation unnecessarily for no fault on its part. The purpose is not only to compensate a litigant but also to caution the authorities to work in a just and

fair manner in accordance to law. The case of ***Ramrameshwari Devi and others*** (supra) rules that it the party who is litigating, is to be compensated.

92. In the case of ***Centre for Public Interest Litigation and others V. Union of India and others***, (2012) 3 SCC 1, the Hon'ble Supreme Court after considering the entire facts and circumstances and keeping in view the public interest, while allowing the petition, directed the respondents No 2, 3 and 9 to pay a cost of Rs. 5 crores each and further directed respondents No 4, 6, 7 and 10 to pay a cost of Rs. 50 lakhs each, out of which 50% was payable to the Supreme Court Legal Services Committee for being used for providing legal aid to poor and indigent litigants and the remaining 50% was directed to be deposited in the funds created for Resettlement and Welfare Schemes of the Ministry of Defence.

93. In the case reported in ***National Textile Corporation (Uttar Pradesh) Limited V. Bhim Sen Gupta and others,*** (2013) 7 SCC 416 the Hon'ble Supreme Court took note of the fact that the Textile Corporation has not placed the correct facts before the Court and so the contempt petition was dismissed and the cost was quantified at Rs 50,000/-.

94. Ld. Counsel for the petitioner in written arguments and during course of hearing assailed Service Conditions (supra) to the extend the Army Orders and Regulations imposed certain

conditions with regard to marriage and fall-out thereon. He relied upon the Judgment of Hon'ble Supreme Court in the case of ***Air India etc etc. vs. Nergesh Meerza and ors,*** and ***C.B. Muthamma vs. Union of India & ors***, (1979) 4 SCC 260. However, Since in the Writ Petition, the vires or legality of the Service Conditions (supra) have not been challenged, we are not inclined to interfere with the existing provisions. It is for the Army to look into it in accordance with advice.

**FINDINGS:**

95. In view of above, we summarise our findings as under:

(1) Under Service Conditions (supra) and statute it is the Government which has got right to release or terminate Commissioned Officer after completing formal consent of President and not the Lt. Colonel as has been done in the present case.

(2) The doctrine of pleasure in terms of Article 310 of the Constitution read with Sections 10 and 18 of the Army Act seem to be miserably flouted in utter disregard to Service Conditions. No Presidential Notification of discharge has been issued in terms of Service Conditions (supra). In view of Section 10 of the Act (supra), President is the appointing authority.

(3) In view of Service Conditions (supra), the work of the petitioner was never assessed to find her unsuitability necessary to make entry in ACR.

(4) Since the petitioner was married after lapse of 2 years from the date of commission, she was liable to continue in service upto the age of superannuation unless otherwise removed in accordance with law.

(5) Statutory procedure (supra) as well as Service Conditions (supra) have not been followed and decision has been taken arbitrarily without following due process of law on unfounded grounds.

(6) The impugned order seems to suffer from malice in law and is not sustainable (supra).

(7) The impugned order has been passed by the authority without jurisdiction, hence void ab initio (supra).

(8) The record was weeded out during pendency of the Writ Petition in the High Court though it is barred by Army Regulations, hence inference may be drawn that it was weeded out for extraneous reasons to shield the arbitrary action of the respondents while releasing the petitioner from service.

(9) Neither statutory provisions nor the Service Conditions (supra) permit the respondents or its competent authorities to release/discharge the petitioner from service without complying the principles of natural

justice (supra), hence order is per se bad and not sustainable.

96. In view of above, the T.A. deserves to be allowed with exemplary cost.

97. Accordingly, T.A. is allowed and impugned order dated 27.08.1988 releasing the petitioner from service and order dated 18.05.1999 by means of which representation preferred by the petitioner was rejected are set aside with all consequential benefits and back wages. The petitioner shall be restored in service before three months and be paid arrears of salary. However, in case she has reached the age of superannuation of the rank in terms of Service Conditions, she shall be paid full salary till the age of superannuation, i.e. 55 years or more, with notional promotions as the case may be, along with permissible pension with post retiral dues within four months.

Cost is quantified to Rs. 5,00,000/- (Rupees five lacs) which shall be deposited in the Tribunal within three months and shall be released in favour of the petitioner by the Registry. Costs shall be apart from petitioner's right to claim damages from competent Court.

98. T.A. is allowed accordingly.

**(Air Marshal Anil Chopra)**
**Member (A)**

**(Justice D. P. Singh)**
**Member (J)A**

Anb