RESERVED

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ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO. 1 (List A)

O.A. No. 229 of 2014

Wednesday, this the 11th day of January, 2017

"Hon'ble Mr. Justice D.P.Singh, Judicial Member
Hon'ble Air Marshal Anil Chopra, Administrative Member"

No. 13683408M Ex Hav Ramvir Singh Son of Mukandi Lal Resident of village : Godera PO: Godera (Sonai) District : Mathura. .....**Applicant**

Versus

1. Chief of Army Staff New Delhi.

2. Commandant cum Chief Records Officer Guards Regimental Centre Kamptee.

3. Union of India, Through Secretary, Ministry of Defence New Delhi. .....**Respondents**

Ld. Counsel appeared for the Applicant - **Col (Retd) Ashok Kumar & Shri Rohit Kumar Advocate**

Ld. Counsel appeared for the Respondents - **Shri Sunil Sharma C.G.S.C**

Assisted by OIC Legal Cell - **Maj Soma John**

Order

(Per Se Hon'ble Mr. Justice Devi Prasad Singh, Member (J)

1. Present Application has been preferred before this Tribunal under section 14 of the Armed Forces Tribunal Act (In short the 'Act') , being aggrieved by the order of reduction in rank from Havildar to Sepoy dated 11.12.2009 in pursuance of SCM studded with the prayer to grant him pension in the rank of Havildar with all the consequential benefits.

2. The facts in nut-shell are that the Applicant was enrolled in the Indian Army as soldier/Guard (Infantry) on 31.07.1982 and later-on, he was promoted to the post of Lance Naik and then, in due course, he stood promoted to the post of Havildar with effect from 10.08.1997. It is alleged that on account of stress and strain, which he suffered, was owing to his having served at different places, the Applicant was placed in low medical category (A-3) with lumber problem with effect from 02.06.2001. It is further alleged that in the year 2001, the Applicant moved an Application for premature discharge which was nodded in approval vide order dated 25.04.2001. The sanctioning authority, it is also alleged, while approving premature discharge, commended the Applicant's character as exemplary.

3. The facts leading to his punishment of reduction in rank are that while residing in married accommodation within unit lines, in the absence of his wife, the Applicant wrote two obscene letters addressed to Smt Manjeet Kaur, wife of L/Naik Harjeet Singh, living in the same block. On 20.06.2001, taking advantage of absence of L/Naik Harjeet Singh, who was away on temporary duty, the Applicant gained entry into his house, where he was caught red handed and he was soundly beaten by Maj Ajay Kadian at 1200 hours on 26.06.2001 on account of alleged trespass into the house of L/Naik Harjeet Singh. Thereafter, court of inquiry was ordered by Commander HQ 16 (I) Armed Brigade vide convening order dated 24.08.2001, which was presided over by Lt Col Sanjeev Dhar of 76 Armed Regiment, attended with three members, who were Maj Balvinder Singh, Maj V.M.Chandran, and Maj M. Solomon. During court of inquiry, in all, nine witnesses were produced the details of which are given below.

(i), Witness No. 1 -_No. 13683408M Hav Ramvir Singh of A Coy, 2 GUARDS.

(ii), Witness No. 2 - MS- 13324 Capt satyajit Sahu, RMO 76 Armd Regt.

(iii), Witness No. 3 - IC- 47164F Major Ajay Kadian, OC A Coy, 2 GUARDS

(iv), Witness No. 4 - No. 13686803L Nk Jaspal Singh of Coy, 2 GUARDS

(v), Witness No. 5 - JC- 188599N Sub Maj (Then Sub) Birbal Singh of 2 GUARDS

(vi), Witness No. 6 - Mrs Manjit Kaur wife of L/Nk harjeet Singh of C Coy, 2 GUARDS

(vii), Witness No. 7 - 13692808A L/Nk Saiyed Anwar, C Coy 2 GUARDS

(viii). Witness No. 8 - 13692297F L/Nk Harjeet Singh of C Coy, 2 GUARDS

(ix) Witness No. 9 - JC- 182906K Sub Maj Ranjit Singh, SM of 2 GUARDS

4. Learned counsel for the Applicant submits that the first charge against the Applicant was trespass in the house of L/N Harjeet Singh on 20/21/06.2001. The second charge was with regard to alleged assault on Maj Ajai Kadian, Company Commander of the Applicant. It is argued that instead of recording the statement of prosecution witnesses, the Applicant was examined as witness no. 1 and was cross examined by Maj Ajai Kadian. The learned counsel for the Applicant further submits that this act of the Presiding officer is fraught with the consequence of affecting the fairness of court of inquiry. It is alleged that court of enquiry was commenced on 27.08.2001 and ended on 11.09.2001. It

is further alleged that Applicant declined to cross examine Smt. Manjit Kaur, P.W No 6, the lady to whom the Applicant had allegedly sent letter containing obscene contents.

5. In Para 'L', it has been averred by the Applicant that during court of inquiry, the presiding officer and three other members namely Maj Balvinder Singh and Maj V.M.Chandran and Maj M.Solomon were collectively not present during the course of recording of statements. The pleading contained in Para 'L' has been denied by the respondents and in Para 18 of the counter affidavit, the only contention in rebuttal is that the averments contained in Paras (k) to (m) are denied followed by averment that the Applicant was trying to mislead the Tribunal by making baseless statement and further the Applicant had never raised objection to that effect during court of inquiry. It would thus transpire that the averments contained in Para "L" of the O.A. have not been disputed in categorical terms. The same being relevant are reproduced below:-

> *"18. That the contents of Paragraphs 4 (k) to (M) of the instant O.A is denied. It is submitted that the applicant is trying to mislead the Tribunal by making baseless statements. It is also intimated that the applicant had never*

objected anything at the time of court of inquiry."

6. During recording of statement of witness no1, it is averred; (a) only two members were present who were Maj Balvinder Singh and Maj V.M.Chandran. (b) In the course of recording of statement of witness no 2, none of the members of court of inquiry were present. (c) In the course of recording of statement of P.W 3 only presiding officer was present. (d) In the course of recording of statement of witness no 4, Maj Soloman and Maj V.M.Chandran were present. (e) In the course of recording of statement of witness no 5, only Maj Soloman was present. (f) In the course of recording of statement of witness no 6, Maj V.M.Chandran was present. (g) In the course of recording of statement of P.W 8 and 9, only Maj V.M.Chandran was present.

7. While submitting statutory complaint dated 31.12.2010, the Applicant has brought to the notice of respondents that court of inquiry is convened in accordance with the provisions of Army Rule 177, 178, 179 and 190. For ready reference, the aforesaid Rules are reproduced below.

"177. Courts of Inquiry. (1) A court of inquiry is an assembly of officers or of officers and junior commissioned officers or warrant officers or non-commissioned officers directed to collect evidence, and, if so required, to report with regard to any matter which may be referred to them. (2) The court

may consist of any number of officers of any rank, or of one or more officers together with one or more junior commissioned officers or warrant officers or non-commissioned officers. The members of court may belong to any branch or department of the service, according to the nature of the investigation. (3) A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps.

NOTES 1. See generally as to courts of inquiry Regs Army paras 516 to 526. For disqualification of members of courts of inquiry for serving on subsequent courts-martial, see AR 39(2)(c). 2. A court of inquiry has no poser to compel the attendance of civilian witnesses. 3. The court of inquiry should normally consist of three members.

178. Members of Court not to be Sworn or Affirmed. The members of the court shall not be sworn or affirmed, but when the court is a court of inquiry on recovered prisoners of war, the members shall make the following declaration- "I do declare upon my honour that I will duly and impartially inquire into and give my opinion as to the circumstances in which …….. become a prisoner or war, according to the true spirit and meaning of the regulations of the regular Army; and I do further declare, upon my honour that I will not on my account, or at any time disclose or discover my own vote or opinion or that of any particular member of the court, unless required to do so by competent authority".

179. Procedure. (1) The court shall be guided by the written instructions of the authority who assembled the court. The instructions shall be full and specific and shall state the general character of the information required. They shall also state whether a report is required or not. (2) The officer who assembled the court shall, when the court is held on a returned prisoner of war or on a prisoner of war who is still absent, direct the court to record its opinion whether the person concerned was taken prisoner through his own wilful neglect of duty, or whether he served with or under, or aided the enemy; he shall also direct the court to record its opinion in the case of a returned prisoner of war; whether he

returned as soon as possible to the service and in the case of a prisoner of war still absent whether he failed to return to the service when it was possible for him to do so. The officer who assembled the court shall also record his own opinion on these points. (3) Previous notice should be given of the time and place of the meeting of a court of inquiry, and of all adjournments of the court, to all persons concerned in the inquiry except a prisoner of war who is still absent. (4) The court may put such questions to a witness as it thinks desirable for testing the truth or accuracy of any evidence he has given and otherwise for eliciting the truth. (5) The court may be re-assembled as often as the officer who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information. (5A) Any witness may be summoned to attend by order under the hand of the officer assembling the court. The summons shall be in the form provided in Appendix III. (6) The whole of the proceedings of a court of inquiry shall be forwarded by the presiding officer to the officer who assembled the court.

NOTES 1. As to the authorities who can remit the forfeiture of pay and allowances incurred by absence as a prisoner of war, see AR 195(c). If the officer who assembles the court is not one of these authorities, he should forward the proceedings with his recommendation, to one of these authorities. A court of inquiry on a prisoner of war who is still absent may be assembled in order to assist the authorities prescribed in AR 195(c) and 196, in determining what remission of forfeiture of pay and allowances shall be ordered and what provision in terms of AA.ss.98 and 99 shall be made for the dependants of such prisoner of war. A second court of inquiry must be assembled as soon as possible after the return of the prisoner of war. See Regs Army para 522. 2. For form of oath and affirmation see AR 140.

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 and 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.

NOTE Whenever it appears possible that the character or military reputation of a person subject to AA may be affected as the result of the court of inquiry, the authority who assembles the court of inquiry will take all necessary steps to secure that the provisions of this rule are observed. The ultimate responsibility of ensuring that they are observed in every case will, however, rest upon the presiding officer of the court of inquiry, and should it transpire during the sitting of the court that the character or military reputation of any person subject to AA is affected by the evidence put forward, the presiding officer, will immediately arrange for such person to be afforded the full facilities of the rule, adjourning the court if necessary for the purpose of securing his attendance."

8. A perusal of the aforesaid provisions goes to show that a court of inquiry is an assembly of officers or of officers and junior commissioned officers or warrant officers or non-commissioned officers directed to collect evidence, and, if so required, to report with regard to any matter, which may be referred to them. The court may consist of any number of officers of any rank, or of one or more officers together with one or more junior commissioned officers or warrant officers or non-

commissioned officers. A court of inquiry may be assembled by the officer in command of any body of troops, whether belonging to one or more corps. Thus the condition precedent for a variedly consisted of court of inquiry is that the assembly of officers consists of Presiding officer. Once the court of inquiry was consisting of three members (supra), then it was incumbent that all the three members should have been present during the court of inquiry in pursuance of statutory mandate contained in Rule 177 of the Army Rules (supra). Absence of any members makes out a case to adjourn the court of enquiry till assembly consisting of all officers is constituted in terms of Rule 177 of the Army Rules (supra). The provisions contained in Army Rule 179 further lends cogency to the interpretation made hereinabove as under its sub rules, the word 'assembly' has been used by the Legislature and under sub rule (3) of Rule 179, it is envisaged that previous notice should be given of time and place of the meeting of a court of inquiry. In sub rule 5, it is envisaged that court may be re-assembled as often as the officer who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information. Under Rule 180, it is envisaged that in case it 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 (vide (1997) 9 SCC; Maj Gen Inderjit Singh vs Union of India 1991 (2) SCC 382; Maj Gen G.S.Sodhi Vs Union of India; (1982) 3 SCC 140 Lt Col Prithvi Pal Singh Sudhi vs Union of India.)

9. Though the court of inquiry is a fact finding body but the statement given therein may be used to contradict the witnesses under section 145 of the Evidence Act. The absence of any opportunity during court of inquiry or recording of statement of witnesses in the absence of members and presiding officers shall vitiate the proceeding on account of non-compliance with the statutory mandate (supra).

10. The next submission is that the summary of evidence was recorded in pursuance of the convening order of Col H.S.Bhati, Commanding officer of 76 Armed Regiment authorizing Maj H.S.Dhodi to record the summary of evidence, but the petitioner was not handed over the charge sheet together with duly filled in Appendix 'A' to Army order 24/94 as laid down in Instruction 'C' printed with Army Order 24/94.

11. In response to the averments contained in Para 4 (N) (a) and (b), it has been cryptically submitted in Para 19 of the counter affidavit that charge sheet was served

in accordance with Annexure 1 to Appendix A to Army order 24/94. In para 19 of the rejoinder affidavit, the only averment made is that the contents of Para 4 (N) (a) and (b) are reiterated without bringing anything on record to refute the averments contained in Para 19 of the counter affidavit. Reliance has been placed on the letter dated 13.12.2006 of Records Brigade as enumerated in Para 'O' of the O.A which envisages that there is no provision to supply Appendix A to Army Order 24/94, which seems to be misconceived for the reason that it is not a question of format of Appendix 'A' but it is a question of supply of charge sheet in terms of Annexure-1 of Appendix A to the Army order 24 of 94, which according to the averments made in Para 19 of the counter affidavit has been supplied. By this reckoning, it amounts to compliance with Army Rule 22.

12. Learned counsel for the Applicant cited certain decisions to prop up his submission. The Chief of Army Staff passed order but the same was not brought on record. In any case, the judgment and order on judicial side has over-riding effect on the decision taken by the Chief of Army Staff. It is specifically stated in Para 20 of the counter affidavit that Appendix A to Army order 24 of 94 was enclosed by Col H.S.Bhati, Commanding Officer, 76, Armed Regiment. In Para R and S, it has been stated

that there is no compliance with Army Rule 33 (7) and 34 (1). Merely saying that there was non-compliance would not suffice without specific pleading as to how and in what manner the provision has not been complied with. Such vague pleading does not make out a case for interference of such ground. In any case, service of charge sheet before 96 hours seems to be enough which seems to have been done in the present case.

13. It appears that additional summary of evidence was recorded in pursuance of the order of Commanding officer on 28.04.2002 by Maj Sohan Singh with regard to AWL on 21.12.2001. According to the own version, the trial commenced at 9.45 am on 16th June 2001 i.e after lapse of 96 hours from the time of service of charge sheet.

14. Yet another objection of learned counsel for the Applicant is with regard to appointment of Lt Sidharth Babu as friend of accused. The solitary objection seems to be that Lt Sidharth Babu was serving under Col H.S Bhati who is authorized to award annual confidential reports to the officer. Merely because Lt Sidharth Babu was serving under Commanding officer Col H.S Bhati would not suffice to hold it illegal. For a person holding the rank of Havildar, a commissioned officer was provided to work as friend of accused, does not create any doubt that officer would not discharge his duty fairly and honestly to defend

his case. The commanding officer may depute anyone under his command. Otherwise also, the only ground that such person is serving within the command of Col H.S.Bhati may not be sufficient enough to question the integrity and ability of such officer.

15. Learned counsel for the Applicant in Para AB of the OA invited attention to the fact that Col Bhati had made endorsement that "evidence of witness 1 to 12 recorded is attached on fresh page D1 to page D62" which shows that no trial was conducted and only enclosures were attached and that it lacks Applicant's signature and is not in required format. Record also shows that the Applicant had objected to that effect during the course of trial. It is categorically pleaded by the Applicant that charges were framed under section 69 of the Army Act, hence trial by summary court martial was barred more so when the Applicant had objected to it at unit level. It is further submitted that reduction in rank followed by rigorous imprisonment for six months awarded to the Applicant was in pursuance of illegal summary court martial proceedings. It is submitted that the Applicant was sent to Central Jail Amritsar on 24th June 2002 without waiting for approval of confirming authority by the commander Army Brigade who signed only on 15th Sept 2002. It is also argued that confirmation was sent to Jail

on 24.06.2002 while it was signed on 15.09.2002 and thereafter the Applicant was released on 01.08.2002. Since averments aforesaid have not been denied while filing counter affidavit save saying that it is a matter of record. In the circumstances, we have to rely upon the averments contained in the O.A. Section 161 of the Army Act provides that summary court martial proceedings are not required to be confirmed and may be carried out forthwith. For ready reference, section 161 of the Army Act is reproduced below.

> *"161. Finding and sentence of a summary court-martial. (1) Save as otherwise provided in sub-section (2), the finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out forthwith. (2) If the officer holding the trial is of less than five years service. He shall not, except on active service, carry into effect any sentence until it has received the approval of an officer commanding not less than a brigade.*
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> *NOTES 1. `Carried out forthwith' The officer holding the trial when passing sentence may, if a sentence of imprisonment be awarded, direct under the provisions of AA.s 183 (2) that the offender be not committed until the orders of the authority/officer specified in AA.s 182 are obtained. See notes to AA.s 183. 2. See AR 132 and notes thereto".*

16. Inspite of section 161 of the Army Act, the provisions contained in section 162 and 163 empowers of the Chief of Army Staff to set aside the proceedings or reduce the sentence. The sentence may be commuted under section 163 of the Army Act. For ready reference, sections 162 and 163 are reproduced below.

162. Transmission of proceedings of summary court-martial.- The proceedings of every summary court-martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held, or to the prescribed officer; and such officer, or the (Chief of the Army Staff)1, or any officer empowered in this behalf by the (Chief of the Army Staff),1 may, for reasons based on the merits of the case, but not any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed.

NOTES 1. 'Division or brigade' : also area and sub area. See table under SRO 135-A dated 22 Jul 1950 Part IV). 2. Prescribed Officer. See AR 200. 3. The proceedings of a SCM cannot be sent back for revision and do not require confirmation, and any sentence passed by the court should, except as provided in AA.ss. 161 (2), 182 and 183 and AR 132, be put into execution forthwith. 4. Under this section and AR 133 the proceedings must be forwarded for review to the reviewing authority (through the DJAG of the Command in which the trial is held, who, if he considers that justice has been done, should countersign the proceedings and return them to the accused's corps for preservation. (AR 146). If a direction under AA.s. 182 has been passed, he should issue his orders thereon, or, if not himself the authority/officer specified in AA.s.182, forward the proceedings to such an authority/officer for orders. The reviewing authority can, for reasons based on the 'merit of the case', but not on merely technical grounds (as to which, see note to AR 133), set aside the proceedings or mitigate, remit or commute the sentence. If the sentence is illegal he must set it aside, or under AA.s. 163 a valid sentence may be substituted by one of the authorities mentioned in AA.s. 179. 5. A sentence of imprisonment for three months or less unaccompanied by dismissal should normally be undergone in military custody. See AA.s. 169 and notes thereto. A reviewing authority may direct that such a sentence should be

undergone in military custody, either when reducing a sentence of imprisonment to three months or less or when the court omits to add such a direction to the sentence. But in the former case if the accused is sent to a civil jail, his consent for being reinstated in the service after the expiration of the sentence is necessary in view of the provisions of AR 168. 6. As to the scale of punishments awardable by SCsM see Regs Army Para 448. REVIEW OF SUMMARY COURT-MARTIAL PROCEEDINGS In exercise of the powers vested under sec 162 of the Army Act 1950, the Chief of the Army Staff has empowered the following officers to review the proceedings of a Summary Court-Martial and pass such orders as mentioned in the said section :- (a) Chiefs of Staff HQ Commands in respect of troops directly under the Command HQ and not forming part of any Corps, Division or Brigades. (b) Chiefs of Staff HQ Corps in respect of troops directly under the Corps HQ and not forming part of any Division or Brigades. (Auth : AHQ letter No 76229/AG/DV-1 dt 19 Mar 85).

163. Alteration of finding or sentence in certain cases. (1) Where a finding of guilty by a court-martial, which has been confirmed, or which does not require confirmation, is found for any reason to be invalid or cannot be supported by the evidence, the authority which would have had power under section 179 to commute the punishment awarded by the sentence, if the finding had been valid, may substitute a new finding and pass a sentence for the offence specified or involved in such finding: Provided that no such substitution shall be made unless such finding could have been validly made by the court-martial on the charge and unless it appears that the court-martial must have been satisfied of the facts establishing the said offence. (2) Where sentence passed by a court-martial which as been confirmed, or which does not require confirmation, not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid, the

authority referred to in subsection (1) may pass a valid sentence. (3) The punishment awarded by a sentence passed under sub-section (1) of sub-section (2) shall not be higher in the scale of punishments than, or in excess of the punishment awarded by, the sentence for which a new sentence is substituted under this section. (4) Any finding substituted, or any sentence passed, under this section shall, for the purposes of this Act and the rules made thereunder, have effect as if it were a finding or sentence, as the case may be, of a court-martial.

NOTES 1. Sub-sec (1). (a) This sub-sec enables any of the authorities mentioned in AA.s. 179 to substitute a new finding for an invalid finding or for one which cannot be supported by the evidence, which have been confirmed and which are thus not open to revision and to pass a sentence in respect of the new finding. It also gives these authorities similar powers in regard to a finding not requiring confirmation, i.e., any finding of a SCM. (b) The confirming officer himself has no power to substitute or change the finding; if in his opinion the court has arrived at a wrong finding, he can only send it back for revision or not confirm it. (c) The procedure does not apply where the charge is bad in law or where the charge offends AA.s. 122. 2. Sub-sec (2).- It similarly enables the said authorities to substitute a valid sentence for an invalid sentence not being a sentence passed in pursuance of a new finding under sub-sec (1). 3. Sub-sec (3). (a) This sub-sec requires that the new sentence substituted for an invalid sentence must not be higher in scale than, or in excess of, the original sentence. The words 'invalid sentence' are used to mean a sentence which is authorised under AA but which is inapplicable in relation to the accused or to the offence with which he is charged, as distinct from an illegal sentence or a sentence which is unknown to the said Act e.g., reproof. In case a sentence which is not specified in the scale of punishments in AA.s. 71, is awarded by a court-martial,

> *it is not feasible for the authority specified in sub-sec (1), to say that any sentence which such authority may propose to substitute for the sentence of the court is not "higher" in the scale of punishments. In such cases action under this section for the substitution of the sentence is not permitted and the accused will receive no punishment though the conviction will stand. 4. The substituted finding and/or sentence has the same effect as if it were the original finding and/or sentence. 5. As to mitigation of sentence after confirmation, see AA.s. 179 and AR 72 (2).*

17. Thus, in view of provisions contained in sections 162 and 163 of the Army Act, it was not justified on the part of the Summary Court Martial to send the Applicant to Central Jail on 24.06.2002 without signatures over the proceedings and pronouncement of the decision. Since proceeding was signed on 15.09.2002, the SCM proceeding would be taken to have attained finality on the same day followed by pronouncement. Such action on the part of Commanding officer is not justified and is an instance of highhandedness. In any case, the pronouncement was signed on 15.09.2002 and only thereafter as a follow up action, the proceedings or decision under sections 162,163 and 164 could have taken place. The detention of the Applicant prior to 15.09.2002 shall be taken to be unlawful for which the Applicant qualifies to be compensated by the appropriate court.

18. The power conferred under Article 21 of the Constitution protects the life and property of a citizen and subjected it to statutory law. It is settled law that order or judgment unless signed and pronounced would not be taken to be a valid judgment. Hence the confinement or detention of the Applicant before the proceeding of court martial was signed would be unlawful and would vitiate the trial. The punishment awarded to the Applicant is an instance of cruelty and unconstitutional vide decision of the Apex Court in **Inder Jeet Singh vs State of U.P. reported in AIR 1979 SC 1867.**

19. Further the procedure adopted during SCM seems to be not fair and is hit by Article 14 of the Constitution of India vide decision of the Apex Court in **Maneka Gandhi Vs Union of India reported in 1978 ASC 597.** Article 21 of the Constitution provides that no person shall be deprived of his life and personal liberty except by procedure established by law.

20. Army Rule 131 provides that sentence of Summary Court Martial shall be promulgated in the manner usual in the service at the earliest opportunity subject to Army Rule 132. For ready reference, Rules 131 and 132 of the Army Rules are reproduced below.

131. Promulgation. — The sentence of a summary court-martial shall (except as provided in rule 132) be promulgated in manner usual in

the service, at the earliest opportunity after it has been pronounced and shall be carried out without delay after promulgation.

132. Promulgation to be deferred in certain circumstances. — When the officer holding the trial has less than five years' service, the sentence of a summary court-martial shall not (except on active service) be carried out until approved by superior authority as provided in sub-section (2) of section 161.

21. Army Regulation 473 deals with promulgation and provides that the date of promulgation will be recorded on the proceeding. According to clause (2) of Regulation 473, the details of proceedings will be read out to the accused by his commanding officer and thereafter the sentence shall be executed. In case, a person has been dismissed or reduced to rank or to lower rank or grade then after promulgation of sentence, he should be stripped off badges of rank or regimental insignia. For ready reference, Regulation 473 is reproduced below.

> *"473.* ***Promulgation****. -(a) The charge (s), finding, sentence, recommendations to mercy, if any, and confirmation or non-confirmation of the proceedings of a court-martial will be promulgated in all cases to the accused in the manner stated below. The date of promulgation will be recorded on the proceedings :-*
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> *(i)* ***Officers****.-The details of the proceedings will be read out to the accused by his formation commander in the presence of his commanding officer and such other officers of his staff as he considers necessary. If he has been sentenced to cashiering or dismissal, he*

will be stripped of his badges of rank and all regimental insignia.

(ii) ***JCOs, WOs and OR**.-The details of proceedings will be read out to the accused by his commanding officer in the presence of the Adjutant and the senior JCO of the unit. If he has been sentenced to dismissal or to be reduced to the ranks or to a lower rank or grade he will be stripped of his badges of rank and other regimental insignia.*

The promulgation of General and District Courts Martial proceedings in units commanded by officers below the rank of Major will be done by formation commanders.

If the confirmation authority thinks fit, he may order the promulgation to take place at a parade in such form as he decides. In cases of Summary Courts Martial, the Commanding Officer of the unit may order the promulgation to be carried out at a parade.

*(b) The result of all courts-martial will be published in the orders of all formations in which the notice of the convening of the court appeared. In every case such results will be published in the orders of the unit concerned, in Part I orders in the case of Officers and in Part II Orders in the case of **JCOs, WOs and OR**, (see Para 584).*

(c) If, subsequent to conviction but before promulgation can be effected, an accused absents himself, and a declaration by a court of inquiry under Section 106 of the Army Act is made in respect thereof,

the proceedings of the court-martial may be promulgated by the publication of the foregoing particulars, in the case of an officer in Part I Orders and in the case of a JCO, WO or OR in Part II Orders of the unit. The will, however, forthwith be communicated to the accused on his apprehension (if liable for further service) or surrender."

22. In view of the above, there seems to be no room for doubt that the Applicant could not have been sent to prison or jail without promulgation of sentence affecting his life and liberty arbitrarily in violation of his fundamental rights protected by Article 21 of the Constitution of India.

23. There appears to be gross abuse of power by the officers of the respondents while awarding the impugned punishment of reversion to lower rank. Otherwise also, reduction in rank ordinarily should be one step below. In the present case, if at all, it ought to have been from Havildar to Naik and not to sepoy/soldier. In case reduction is to the lowest rung of Army, then appropriate reasons should be assigned indicating the gravity of charges because of which the punishment of such serious nature is inflicted.

24. There are certain other grounds raised across the bar, but we feel it unnecessary to enter into those

grounds or reasons for the reason indicated herein above and also to avoid swelling the judgment any further.

25. As a result of foregoing discussion, the O.A deserves to be allowed with costs which we propose to quantify at Rs 50,000/-

26. Accordingly, the O.A is allowed. The impugned order dated 11.12.2009 is set aside with all consequential benefits which shall be provided to the Applicant expeditiously say within four months from the date of production of a certified copy of the order. The cost is quantified at Rs 50,000/- which shall be deposited by the respondents in Tribunal within a period not exceeding six months and the same shall be released in favour of the Applicant by the Registry through cheque. Since the order of punishment has been set aside, the Applicant shall be deemed to have continued in service on the rank of Havildar till date of his superannuation and he shall be paid post retiral dues accordingly within four months.

(Air Marshal Anil Chopra) **(Justice D.P. Singh)**
Member (A) **Member (J)**

Dated: January , 2017

MH/-