

"AFR"**RESERVED****ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****COURT NO. 1 (List A)****O.A. No. 260 of 2016****Tuesday, this the 17th day of January, 2017****"Hon'ble Mr. Justice D.P.Singh, Judicial Member
Hon'ble Air Marshal Anil Chopra, Administrative Member"**

IC-47908F Col Ran Singh Dudee Son of late Shri Ramjilal Dudee, presently posted as Officer Commanding, 133 MC/MF Det, Meerut, C/o 56 APO, Resident of Officers Accommodation 5/6, HQ Pashchim UP Sub Area Officers Mess, Meerut - 250001**Applicant**

Versus

1. Union of India through The Secretary, Ministry of Defence, New Delhi - 110001.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence, South Block, New Delhi - 110001.
3. Military Secretary, Military Secretary's Branch, Integrated Headquarters of the Ministry of Defence, South Block, New Delhi - 110001.**Respondents**

Ld. Counsel appeared for the Applicant - Applicant in person

Ld. Counsel appeared for the Respondents - Mrs. Appoli Shrivastava Advocate, C.G.S.C

Assisted by OIC Legal Cell - Maj Alifa Akbar

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 Applicant's non-empanelment in the rank of Brigadier, detailment on career course of NDC, recreation of dossier, grant of consequential reliefs after the annulment of punishment awarded by the Court Martial Proceedings followed by direction issued by Armed Forces Tribunal, Regional Bench Kolkata in T.A No. 84 of 2011 decided on 16.01.2014 (Annexure A-2).

2. We have heard Applicant who has appeared in person and argued the case himself and also Ms Appoli Srivastava, counsel for the respondents ably assisted by Maj Alifa Akbar, Oi/C Legal Cell, MS Branch.

3. The facts in nut-shell are that the Applicant was enrolled in the Indian Army as Sowar on 19.09.1981 and after undergoing training, he was posted in 17 Horse (The Poona Horse of the Armoured Corps). Thereafter, he toiled hard and romped home in the examination conducted through Union Public Service Commission in 1988 and got commissioned as an officer and was posted as a Second Lieutenant in the Ordnance Corps of the

Army. In his first posting with 17 Mahar, he was deployed in Kargil, and he served in active line of control. On account of his excellent performance, the Applicant was awarded "COAS Commendation Card" in the first year of Commissioned Service. He was also declared outstanding officer of the year on 10.05.1990. The General Officer Commanding of 36 Infantry Division had issued a letter of appreciation dated 01.09 2002 commending that the Applicant had shown exceptional initiative in discharge of duties. According to the Applicant, he was recommended for Sena Medal in Jan 2002 for his exceptional performance and devotion for duties and was recommended for out of turn promotion for the rank of Lt Colonel. Further according to the Applicant, the problems began knocking at his door from the day, he made complaint against his superior officers citing financial irregularities committed by his the then Commanding officer, Maj P.K.Duggal, 2nd in Command, Capt P.K.Singh, Subedar Major S.A. Khan and others. Sensing threat to his life, the Applicant reported the matter to the Brigade Commander vide letter dated 29.06.1990. Offended by the complaint of the Applicant against certain superior officers, the Applicant was immured in armed confinement and made to languish there followed by Court of Inquiry which found no recriminating material

against the Applicant. A First Information Report was also lodged against the Applicant which later-on was found to be stage-managed and based on unfounded grounds. A second court of inquiry was also instituted which in its report dated 07.08.1990 turned the tide on the Applicant himself who was the complainant in the case. In the Court of Inquiry, officers against whom, the Applicant had submitted complaint were found guilty of the charges reported by the Applicant and ultimately after Court Martial, Maj P.K.Duggal was cashiered from service studded with one year R.I. The other officers were also suitably punished.

4. It is averred that the Court of Inquiry held against the Applicant was in contravention of Army Rule 180 and was held *ex parte* inasmuch in the court of inquiry, the charges were framed without giving opportunity of hearing and in violation of Army Rule 22, the Commanding officer proceeded in the matter and ordered summary of evidence. The summary of evidence was ordered to be recorded for a second time after failure to collect any incriminating evidence in the summary of evidence recorded at the very inception. Despite there being no evidence even after the second summary of evidence, a show cause notice was issued on 14.12.1991 proposing administrative action. After receipt of

Applicant's reply, displeasure (non-recordable) was awarded on 30.12.1991 (Annexure P-12). As part of victimization, the Applicant was declared AWOL w.e.f 27.06.1991 for three days even though the Applicant claims that he was present. A copy of the signal dated 30.06.1991 as at Annexure P-14. The attendance register was tampered with and a copy of the same is placed at Annexure P-15. Against this, the applicant approached the Army Headquarters, New Delhi and then it was found that declaring absent was based on unfounded fact and fabrication of record. It is stated that the officers' envy and revenge was because of the fact that on the complaint of the Applicant, the superior officers were punished and cashiered from service (supra). On one pretext or the other the applicant was continued to be persecuted by certain officers being aggrieved by the Applicant's fair working and sticking to truth.

5. In the year 1997, the Applicant was posted to 19 Field Ammunition Depot Banar, Jodhpur and detailed as the member of the tender Opening Board of officers for Pokran field firing ranges where he found that in pursuance of bid, only one person had sent his tender, hence Applicant objected against accepting single tender which was in contravention of normal procedure of minimum three. The objection was over-ruled and single

tender was accepted actuated by ulterior motives. On account of his objection, the Applicant was removed from the Board on specious allegations. Hence he lodged a complaint to the Superior authorities with regard to mal-practices prevailing in auction proceedings. The Applicant also invited attention of superior authorities with regard to sale of scraps to Mafia. After detailed examination, Army Headquarters annulled the proceedings of auction being not in conformity with the rules and principles of fairness.

6. In June 2000, the Applicant was posted to 36 Infantry Div. Maj Subodh Shukla of 36 Infantry Div on coming to know that his promotion to the next rank had been withheld, as he while being member of the Board constituted to accept the bids, indulged in corruption. The corrupt practices of Maj Subodh Shukla were reported by the Applicant to the Commanding officer. Being aggrieved, Maj Subodh Shukla in retaliation forged documents of revenue court ascribing motive to the Applicant in the matter of allotment of land which was otherwise lawful, reported against the misconduct of the Applicant in which the Applicant was made to suffer by facing series of inquiries and despite being found innocent every time, he was visited with the order of punishment which included the order of displeasure. However, the

Divisional Commissioner after inquiry, found it bonafide mistake of revenue court. On representation, the punishment of displeasure awarded to the Applicant and ACR entries of the year 1993,1994 and 1995 were set aside and Applicant's grading was treated as 'C' without restriction.

7. It is also submitted by the Applicant that his brother Sepoy Hawa Singh had made the supreme sacrifice in the 1971 Indo Pak War while fighting in the battle field of Pallanwala and as cherished by his mother, he joined the Indian Army to serve the Country. Being member of Patriotic family, the Applicant could not relish the corrupt practices in vogue in the Army and always tried to inform the superior officers for appropriate action. Such act of the Applicant bounced back on him with victimisation, harassment and persecution.

8. The Applicant was tried by General Court Martial on four charges, the first charge was under section 52 of the Army Act which was to the effect that he at Saugor between Nov 2000 and May 2002 progressed a case for procurement of 8.64 hectares of Govt land to the Defence Department for the purpose of immortalisation of forgotten war Hero Late Sepoy Hawa Singh of 9 JAT with intent to defraud. The second charge was co-lateral charge of the first one to the effect that while performing

duties of Officiating Commanding officer, he improperly wrote a Demi Official letter on 09.11.2000 to the Collector Saugor for the allotment of the aforesaid land. The third charge was that he addressed Demi Official letter to Collector Saugor for the allotment of the said land while the fourth charge also relates to the same to the effect that he failed to submit report on the acquisition of the said land in contravention of the Army order 3/S/98.

9. One strange fact came on record that letter sent by the Applicant was through proper channel and at no stage, he seems to have over-acted in violation of due procedure prescribed for the purpose. Whereas the Applicant pleaded "not guilty" to all the charges, he was convicted on Ist, and Third charges and sentenced to be cashiered and suffer R.I. for three years. GOC-in-C Southern Command confirmed the finding on Ist and 4th Charges and sentence was confirmed by General Officer Commanding (GOC-in-C) Southern Command vide order dated 21.10.2005. The GOC-in-C confirmed the sentence of 'cashiered' and reduced the R I to 2 years and 6 months. The Applicant against the said order, preferred a statutory complaint under section 165 of the Army Act. On the statutory complaint, the entire record was examined by the Government of India and it was found that that first Court of Inquiry was ordered on 07.07.2001

and trial commenced on 19.10.2004. The Government of India, Ministry of Defence, after considering the Applicant representation against conviction through General Court Martial, allowed the statutory complaint and set aside the General Court Martial finding recorded thereon alongwith confirmation of sentence. The order dated 20.11.2013 passed by the Government of India has been annexed as Annexure A-1 to the O.A. The operative portion of the order passed by the Government of India is reproduced below for ready reference.

"8. Now, therefore, the Central Government, under the powers conferred under section 165 of the Army Act, 1950 do hereby annul the proceedings of the General Court Martial findings and sentence dated 16th May, 2005 and confirmation order dated 21st October 2005 being illegal and unjust and allow the petition filed by IC-47908F, Major Ran Singh Dudee, of 36 DOU. Consequently, the penalty imposed upon IC-47908F Ex Major Ran Singh Dudee of 36 DOU stands quashed and he is entitled to all consequential benefits as admissible under rules on the subject.

Sd/-xxxxx

20.11.2013

(Praveen Kumar)

Director of the Government of India"

10. A plain reading of the aforesaid order passed by the Government of India by allowing the Applicant's statutory

complaint shows that the Government while setting aside the punishment provided all consequential benefits as admissible under the Rules on the subject. A perusal of the order passed by the Government of India also shows that while ignoring all the charges levelled against him with regard to allotment of land, it has been observed that the allotment was only to build war memorial which has not been done by surrender of the land to the Government. Hence, any wrongful pecuniary gain cannot be concluded. From an overall consideration, the intent of the Applicant cannot be said to be something which is forbidden by law. It was only to perpetuate the memory of his brother. Thus it appears that while allowing the statutory complaint, the Government of India exonerated the Applicant of all charges for which he was tried and punished by the General Court Martial and no case of misconduct was made out or established against the Applicant. The writ petition filed, in the meanwhile, by the Applicant before the Delhi High Court was transferred to Armed Forces Tribunal, Regional Bench, Calcutta, which was finally decided by the order dated 16.01.2014. The relevant portion of the findings recorded by the Tribunal are reproduced below for ready reference.

"5. We have considered the rival submissions so advanced by both sides with reference to the materials and circumstances on record. We

have perused the speaking order dt. 20th November, 2013 passed by the Director, Ministry of Defence on behalf of the Union of India. It appears that all the relevant issues formulated herein have been addressed in its proper perspective. The GCM proceedings have thoroughly scrutinized and on proper consideration to the objections raised on behalf of the appellant challenging the impugned CGM proceedings, it is held by the Govt. of India that the said proceedings are barred by limitation. On ultimate analysis of factual and legal aspects involved in the matter it is opined that the findings and sentence passed by the GCM as confirmed, required interference by the Central Govt. Accordingly, the findings and sentence by the GCM as also subsequent confirmation order being found illegal and unjust are annulled in exercise of power conferred u/s 165 of the Army Act, 1950. Consequently, the appellant is found to be entitled to all consequential benefits as admissible under the rules on the subject.

6. We appreciate the sincere endeavour made by the Central Govt in disposing of the petition u/s 165 of the Army Act filed by the appellant in terms of our directions passed on different occasions. It is also heartening to note that the main reliefs, as sought for in the TA, have now been made available to the appellant who had to pass through miseries and mental agony of long 8/9 years.

7. *Having considered the entire matter in its proper perspective, we are of the considered view that the respondents should be allowed reasonable time to grant further reliefs, as claimed in prayer (iii) of the TA. Accordingly, the respondents are directed to extend all consequential benefits to which the appellant is entitled to as per rules in terms of order dated 20th November, 2013 passed by the Govt. of India, within six months from date of communication of this order.*

8. *A cheque for an amount of Rs. 10000/- towards cost is handed over to the Id. Counsel for appellant in open court as per our order dt. 23.10.2013.*

9. *With the foregoing observations, the TA stands disposed of."*

11. On account of pendency of aforesaid disciplinary proceeding, it would appear, the Applicant had suffered imprisonment for certain period and in the meantime, persons junior to him like Col D.Ahuja were promoted on the post of Brigadier in Jan 2015. According to the Applicant, he was reinstated in service on 13.01.2014 and thereafter, in subsequent period while serving the Army, he has been promoted to the rank of Colonel and that he possessed four outstanding entries. It is also submitted that inspite of approval of the Government of India, there being ground of manipulation of record and ignoring opinion expressed by the Solicitor General of India, he

has not been promoted to the rank of Brigadier. The Applicant further submits that the benchmark for his promotion should be the junior persons who have been promoted to the rank of Brigadier and consequential reliefs include relaxation of procedure and hurdle and promotion to the rank of Brigadier keeping in view the letter and spirit of the order passed by the Government of India and Armed Forces Tribunal Calcutta.

12. Per contra, learned counsel for the respondents assisted by OIC Legal Cell, MS Branch, namely Maj Alifa Akbar contends that the Applicant's case was considered by the Promotion Board but he was not promoted since he did not fulfil the required criteria in terms of policy, it being lesser period of service while holding the rank of colonel. To prop up the contentions, she relied upon cases which are- **C.S.Gill vs Union of India and Another rendered in TA No 29 of 2010 by the Principal Bench of Armed Forces Tribunal New Delhi on 01.09.2010, Naib Subedar Vijay Bahadur Singh vs Union of India rendered in W.P. © 2221 of 2012 by Delhi High Court on 12.09.2014, Yatinder Nath Sharma Vs Union of India and another rendered by Principal Bench, Armed Forces Tribunal New Delhi in TA No 394 of 2009 on 15.10.2016, and Balam Singh vs Union of India rendered in O.A. No 97 of**

**2014 by the Principal Bench Armed Forces Tribunal
New Delhi on 06.11.2015.**

13. There is no room for doubt that ordinarily, right to consider is a fundamental right and in case, the case is considered and incumbent does not qualify because of lack of criteria, he cannot lay claim for promotion. However, the fact remains where in the facts and circumstances as in the present, because of grant of consequential benefits and loss of promotional avenues by virtue of pendency of General Court Martial (supra) and having suspended service period on account of such proceeding which has been held to be based on unfounded facts and allegations, rights that accrue to the Applicant on account of setting aside of punishment order, include the right to seek promotion to the higher rank from the date his juniors have been promoted keeping in view the facts and circumstances of the present case.

14. We do not call in question the proposition argued by the learned counsel for the respondents assisted by Maj Alifa Akbar but it is well settled law that judgment should be considered keeping in view the facts and circumstances of each case and that the judgments relied upon "must fit in" to the pleadings on record. The expression 'judgment' has been defined in section 2 (9) of

C.P.C as "*judgment means the statement given by the Judge on the grounds of a decree or order.*" Thus the essential element in any 'judgment' is the statement of grounds of decision, meaning thereby the Court has to state the ground on which it bases its decision. It must be intelligible and must have a meaning. It is distinct from an order as the latter may not contain reasons. Unless the judgment is based on reason, it would not be possible for an Appellate/Revisional Court to decide as to whether the judgment is in accordance with law. **(Vide Surendra Singh vs State of Uttar Pradesh, AIR 1954 SC 194 and Arjan Dass Ram lal bv Jagan Nath Sardari lal AIR 1966 Pun 227).**"

15. Accordingly, the controversy involved in the present case, merits to be looked into.

16. In the present case, the controversy was placed for opinion before the Solicitor General of India. Shri Mohan Parasaran, Solicitor General of India (as he then was) in his opinion vide his note dated 01.11.2013 with regard to conviction and punishment awarded by the General Court Martial, relied upon by the Government of India, has observed as under:

"16. In my opinion, even assuming that an offence has been committed under Section 52(f), it cannot be said that 15-2-2002 has to be considered as the

date from which the period of limitation commences. For the purpose of computing limitation, what is to be considered is the date of 'knowledge' and not the date of 'actionable knowledge.' While dealing with this issue in the case of V.K. Anand us. UOI (2009) 163 DLT 380), the Hon'ble Delhi High Court has taken the view that:

"24. In the considered view of this Court Section 122 which is a penal provision admits of a strict construction. The said penal provision prescribes a period of limitation for commencement of trial by GCM. If one were to draw an analogy with the general criminal law, for computing the period of limitation for the purposes of Section 468 CrPC, it is not the date of the charge sheet which is reckoned. Section 122 is a virtual reproduction of Section 469 CrPC. When an FIR is registered and both the commission of the offence and the name of the offender are known, that would be reckoned as a date on which the limitation is said to commence since it was certainly within the knowledge of the police officer in question. Perhaps it is only after investigation that the police is confident that the person named in the FIR is the person likely to have committed the offence. There is a whole process that has to be undertaken before a charge sheet is finally signed by the Investigating Officer and filed in Court. These processes might take some time but cannot suspend the period of limitation which has already begun to run in terms of Section 468 Cr P C....."

25. *Even if one were to accept the submissions of the Respondents that in order to be sure of the identity of the offender a Court of Inquiry prior to the commencement of the GCM had to be concluded, that is really a matter of internal administrative convenience of the Respondents. What in effect it means is that the Court of Inquiry convened for confirming the commission of the offence and identity of the offender has to conclude its proceedings well within the three years limitation period which already has begun to run from the date of acquisition of the knowledge of the offence and the identity of the offender. The Court of Inquiry is merely a further confirmation. It does not postpone the time from which the period of limitation for the purposes of Section 122 has already begun to run. The Army is entitled to hold as many enquiries it wishes to for it to have 'actionable knowledge.' However the army will have to get its act together and conclude all such enquiries within the three year period from the date of knowledge and a delay in that process concluding will not have the effect of postponing the date of commencement of limitation."*

17. *Since the first Court of Inquiry was ordered to be convened on 7-7-2001, it can be said that the knowledge of the alleged offence (i.e. fraudulent allotment of land) was gained on or before such date. The Applicant's trial commenced from 19-10-2004, which is 3 years*

beyond such date. Thus, in my opinion, the CGM proceedings are barred by limitation.

18. Even on merits, the finding of the guilt by the CGM is not tenable in view of the fact that even the Ministry is not clear in whose name the land was allotted, as mentioned above in paragraph 12 and that the allotment was even otherwise valid in so far as the MP Government was concerned, as dealt with in paragraph 15. There has been no challenge to the findings arrived at by the magisterial inquiry.

19. It is also an admitted fact that the purpose of the allotment was only to build a war memorial, which has not been done by virtue of surrender of the land to the Government. I am also unable to see any wrongful pecuniary gain. From an overall perspective, the intent of the Applicant cannot be said to be something which is forbidden by law. It was only to perpetuate the memory of his brother. Taking all these facts cumulatively, in my opinion, the findings of the GCM appear to be unacceptable. My view is also confirmed at Note 89 as would be evident from the file of Mr. Praveen Kumar (Director AG-I)."

17. The report of Solicitor General of India dated 01.11.2013 speaks volume and inference may be drawn keeping in view the materials on record that the Applicant was framed by certain persons on unfounded grounds to teach him a lesson. Once in Magisterial inquiry by the Revenue Department of the Madhya Pradesh

Government, nothing illegal was found, then convening of General Court Martial seems to be with the ostensible object of eliminating an officer having bright career from the rolls of Army.

18. Later-on, being aggrieved by the non empanelment in the rank of Brigadier, the Applicant represented the matter to the Government for promotion to the rank of Brigadier, keeping in view the Bench-mark that the juniors to the Applicant had already been promoted and the Applicant was denied the promotion only because of pendency of General Court Martial. Again, the matter was forwarded to the Solicitor General of India, who vide opinion dated 30.12.2015 opined to the following effect.

"(a) Col Ran Singh Dudee cannot be denied promotion to the ranks his batch mates and immediate junior have been promoted and the rules, if any, would stand waived, because of the waiver by the Government of India directing all consequential benefits which is reiterated by the Tribunal. Merely because the words as per rules has been used means only that the rules as they existed had he been in service and since his entire period of 09 years will be accounted as in service the requirement under the rules making any mandatory demands would stand waived.

(b) The stand taken by the AHQ that the Selection Board has to be provided with basic

requirements showing the officer's performance and capability, is devoid of any merit as the capability and performance of which the officer was denied only because of the illegal action of AHQ itself as GCM was ordered even two Col had exonerated the officer, Had the AHQ not committed an illegality on the officer, the capability and performance of those 09 years would have been very much available in the records of the officer. Why should the officer suffer for such illegalities. As after all anything that was against him, stands erased from the record/dossier of the officer. Whatever Value Judgment may or may not be required, the officer should be granted the rank as Brig as per his batch mates and immediate junior, if he is otherwise fit, treating him as always been in service without a break."

19. A perusal of the opinion expressed by the Solicitor General of India shows that the Chief Adviser of the Government has been of the view that since juniors have been promoted Applicant is also entitled to be promoted on the next rank of his batch mates and immediate junior and the contrary rules, if any, stands waived because of the waiver by the Government of India directing all consequential benefits which is reiterated by the Tribunal. The Solicitor General has taken note of the fact that 09 years of his service period was wasted because of pendency of General Court Martial and the punishment awarded based on unfounded facts and that may be

accounted as in service, the requirement under the rules making any mandatory demands would stand waived. One of the features which seem to be on record is that the Ministry of Defence after taking into account report of the Solicitor General of India in its opinion dated 20.01.2016 requested the Army Headquarters to prepare a proposal in the light of the opinion tendered by the Solicitor General of India. Paras 8 and 9 of the opinion dated 20.01.2016 being relevant are reproduced below:

"8. In view of above, we may request AHQ to prepare a proposal in the light of opinion tendered by Ld Solicitor General of India and send the same to this Ministry for consideration.

9. Submitted for approval of Hon'ble Raksha Mantri, (Draft ID note in the said regard is also placed opposite for approval please.)"

20. The aforesaid note was prepared by SO (MS) in Ministry of Defence. The joint Secretary, Union of India on 21.01.2016 made an endorsement to the effect that in accordance with the opinion of learned Solicitor General, Army Headquarters be asked to send a fresh proposal for kind approval. After discussion, the Additional Secretary namely, Shri Ravi Kant recorded his opinion that the Applicant cannot be considered for promotion except by Selection Board. According to the noting on file again, Under Secretary (MS) by his note dated 19.02.2016

opined that the Applicant's case should be considered keeping in view the opinion expressed by the Solicitor General of India for further orders. However, Joint Secretary (G) vide opinion dated 22.02.2016 stated that since Solicitor General's opinion is to be rejected, approval of Secretary be requested. The Additional Secretary thereafter noted that the matter should be discussed again with the Additional Secretary MS on 25.02.2016. The file was required to be submitted for meeting.

21. From the noting of Additional Secretary (Ravi Kant) dated 03.02.20016, it appears that according to him, since it is for the Board to consider for promotion, hence in view of the policy and for the reason that Selection Board has rejected, he cannot be considered for promotion. The Additional Secretary had not discussed how and under what manner the opinion given by the Solicitor General (supra) is not correct and without any valid basis, he overruled it. However, it appears that the record was not placed before Secretary and the Defence Minister for conclusive finding. In the meantime, on account of delay in the matter, the Applicant seems to have submitted a representation which was processed through Defence Minister to consider the matter in the light of the opinion expressed by Solicitor General of India

(supra). The note dated 22.02.2016 shows that the opinion expressed by the Solicitor General of India may be rejected after approval by the Secretary. In spite of placing the matter before the Secretary, Defence, the note dated 23.02.2016 by the Additional Secretary (Ravi Kant) shows that the matter required to be discussed. On 25.02.2016, in pursuance of the discussion, it appears that on 25.02.2016, it was decided to place the record for a meeting. As a follow-up action, the Under Secretary made endorsement on 16.08.2016 after efflux of almost six months. The note dated 16.08.2016 shows that it was prepared in pursuance of the meeting dated 25.02.2016. The inordinate delay in keeping the matter under wraps for six months is beyond comprehension. Different queries have been made on August 17, 2016, and on August 19, 2016 and matter was discussed taking into account the legal notice sent by the Applicant. The last note dated 19.08.2016 shows that the matter required comment from AHQ. While preparing the note dated 19.08.2016, the office of the Ministry of Defence forgot that opinion expressed by the Solicitor General of India was based on materials which included the report of AHQ. Thereafter, a comprehensive note was prepared by the office on 01.09.2016 with following report.

" 16. In view of the above, the file is submitted for consideration of the following –

- (i) We may ask AHQ to apprise Col (TS) RS Dudee that representation dated 02 Jul 2014 has already replied vide their letter dated 15 Oct 2014 in compliance to AFT's Order dated 31 May 2016 as per draft.
- (ii) Col (TS) RS Dudee has requested for waiver for No. 3 and No. 2 Selection Board for promotion to the rank of Brigadier, it is for directions whether we may reject the representation of the officer keeping in view that the officer has already been considered for empanelment and not recommended by AHQ.
Submitted please.

Sd/- xx xx xx
(Revati Raman)
US (MS)
01.09.2016"

A perusal of the report dated 01.09.2016 shows that opinion of the Solicitor General of India was considered alongwith opinion of the Ministry of Law and Justice which relies upon the opinion of the Solicitor General of India (supra) according to which, the Applicant has been promoted to the rank of Col (Time scale) but he has not

been considered for Col (Selection Grade) due to lack of AE. It further appears that after 01.09.2016, the Joint Secretary made an endorsement "As slightly amended". However, the Additional Secretary could not express any opinion. Attention has not been invited to any materials on record, which may indicate as to what action has been taken after 19.08.2016. It goes to show serious slackness on the part of the respondents in not taking any conclusive decision after taking into account the opinion expressed by the Solicitor General of India. The office note seems to be correct that in case the respondents want to take a decision different from what has been opined by the Solicitor General, then they have to record cogent and lawful reasons, which is necessary to meet out the requirements of law. It is said that opinion may be overruled but as observed, that may be done after recording reasons under the teeth of the observations made by the Solicitor General of India that 'Why should the officer suffer for such illegalities as after all that was against him, stands erased from the record/dossier of the officer, all consequential benefits of promotion to the rank of Brigadier from the date his immediate juniors have been promoted on the rank of Brigadier.

22. On query made by the Court as to whether Government of India had got right to waive or relax the

rules, it is vehemently argued by the counsel for the respondents as well as by Maj Alifa Akbar that Rules cannot be relaxed or bent keeping in view the position contained in the Army Act. In the light of the above contentions, it would be appropriate to look into the provisions contained in the Army Act. Sections 164, and 165 of the Army Act empowers the Central Government and Chief of the Army Staff to annul proceeding of any Court Martial on the ground that they are illegal or unjust. However, section 165 further empowers the Government of India and Chief of the Army Staff to pass orders thereon as it or he thinks fit. For ready reference, sections 164 and 165 being relevant are reproduced below.

"164. Remedy against order, finding or sentence of Court-Martial. – (1) *Any person subject to this Act who considers himself aggrieved by any order passed by any Court-Martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such Court-Martial, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.*

(2) Any person subject to this Act who considers himself aggrieved by a finding or

sentence of any Court-Martial which has been confirmed, may present a petition to the Central Government, ⁴⁴(the Chief of the Army Staff) or other officer, as the case may be, may pass such orders thereon as it or he thinks fit.

165. Annulment of proceedings. – *The Central Government, ⁴⁴(the Chief of the Army Staff) or any prescribed officer may annul the proceedings of any Court-Martial on the ground that they are illegal or unjust.”*

23. A plain reading of the provisions contained in section 164 shows that a person aggrieved by any order passed under the Act by any Court Martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such Court Martial. Sub section (2) of Section 164 further empowers the aggrieved person to represent his cause in case aggrieved by a finding or sentence of any Court Martial which has been confirmed, to the Central Government or Chief of the Army Staff or any prescribed officer superior in command. The Legislatures in their wisdom used the word “**may pass such order thereon as it or he thinks fit**”. The provisions contained in sub section (2) read with section 165 gives exhaustive power to the Chief of Army Staff and the Central Government to pass appropriate orders to meet the ends of justice. In the above conspectus, we are of the view that the Government of India in pursuance of

the powers conferred by Section 164 read with section 165 of the Army Act has jurisdiction to waive the service conditions to meet out the ends of justice where a person has been suffering irreparable loss and injury on account of Court Martial Proceedings. In the present case, once office note dated 21.01.2016 directs to prepare a proposal to promote the Applicant to the rank to which immediate junior has been promoted, in the present case to the rank of Brigadier, then at a later stage, other Additional Secretary seems to have over-acted by exceeding jurisdiction rescinding the earlier order of waiver. Then again keeping the matter pending, it appears that pulls and pressures were brought to bear in the office of Raksha Mantraleya by some persons who were against the cause of the Applicant.

24. In our considered view, once the opinion has been taken by Raksha Mantraleya to prepare the proposal keeping in view the opinion of Solicitor General, then at a later stage as obvious from the record, it was not open to again take a contrary decision. The note shows that once Additional Secretary took the opinion which seems to have been affirmed to make proposal for promotion of the applicant to the rank of Brigadier, then at a later stage, the same was reversed. We are further of the opinion that the opinion expressed by Solicitor General of India is well

founded opinion and does not suffer from any infirmity or illegality.

25. Apart from the above, the Applicant is entitled for consequential benefits with promotion on the rank of Brigadier for the reasons discussed hereinabove. So far as power of Government of India as well as the Chief of the Army Staff is concerned, letter and spirit of sections 164 and 165 abundantly makes it clear that while granting consequential reliefs, they have the power to relax rules and procedures which seem to be implied under the statutory provisions. The opinion of the solicitor General of India as apparent from the note of the Additional Secretary (M) intends to waive and relax the rules/procedural hurdles. In this connection we feel called to refer to **Matajog Dobey V H.C Bhari, AIR 1956 SC 44**, where the Constitution Bench of the Supreme Court held that any authority, which is empowered to do something, has a power, to exercise in its incidental and ancillary powers to enforce the statutory provisions. The court held as under:-

"Where a power is conferred or a duty imposed by statute or otherwise, and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it the power of doing all

such acts or employing such means as are reasonably necessary for such execution. If in the exercise of the power or the performance of the official duty improper, unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or overcome the resistance. This accords with common sense and does not seem contrary to any principle of law. The true position is neatly stated thus in Broom's Legal Maxims 10th Edn. At p. 312. "It is a rule that when the law commands a thing to be done, it authorised the performance of whatever may be necessary for executing its command."

26. Coming to the decisions cited across the bar by learned counsel for the respondents, we have gone through those judgments cited above and we are of the view that the judgments relied upon by the respondents are distinguishable inasmuch as they have been rendered on different set of facts and circumstances and cannot be imported for application to the present case.

27. In the case of **Dilbagh Rai Jarry vs Union of India (1973 (3) SCC 554)**, the Apex Court nodded in approval the observation from a decision of the Kerala High Court which are reproduced below.

"The state, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that

the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay-out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957."

28. In another case which is **Urban Improvement Trust Bikaner Vs Mohan Lal decided on 30th Oct 2009**, their Lordships of Supreme Court held as under:

"The Central Government is now attempting to deal with this issue by formulating realistic and practical

norms for defending cases filed against the government and for filing appeals and revisions against adverse decisions, thereby, eliminating unnecessary litigation. But, it is not sufficient if the Central Government alone undertakes such an exercise. The State Governments and the statutory authorities, who have more litigations than the central government, should also make genuine efforts to eliminate unnecessary litigation. Vexatious and unnecessary litigation have been clogging the wheels of justice, for too long making it difficult for courts and Tribunals to provide easy and speedy access to justice to bona fide and needy litigants."

Applicant's Career

29. It appears that the Applicant possessed outstanding career at pre GCM stage and post GCM stage. At pre GCM stage, his box grading in the year 2000-2001, 2001 to 2002 and in post GCM stage, June 2014 to Nov 2014, Nov 2014 to Feb 2014, March 2015 to May 2015 and June 2015 to May 2016 are as under:

Period of CR from to Rank	06/2000 to 05/2001 Maj+	06/2001 To 05/2002 Maj +	06/2014 to 11/2015 Lt Col	11/2014 to 02/2015 Lt Col	03/2015 to 05/2015 Lt Col	06/2015 to 05/2016 Col (TS)
Box Grading IO/RO/SRO/NSRO	8	8 7	9 9 9	9 9 9	9 9 9	9 8 9
Box Grading FTO/HTO/HOA	8 8	8 8	-	-	-	-

30. The Box Grading seems to be overwhelmingly "9" (outstanding). The pen picture of the period from 01.06.2014 to 21.11.2014 given by the Initiating officer, Review Officer and Senior Review Officer is as under with box grading '9' by all the three officers.

PEN PICTURE

Col JK Malik, SM Col A HQ Pashchim Up Sub Area

(IO)

Lt Col RS Dudee is extremely Conscientious, sincere, dynamic, motivated, hardworking – dedicated and professional offr with analytical military mind and has the rare capability to define a long term vision and convert it into practical results on ground. He has been able to revitalize the relations with civ adm which resulted in effectively running the anti encroachment drive resolving long standing civil mil issues with speed and justice. A natural leader, he is versatile and can be assigned any task and ensures timely completion with perfection.

Ibid qualities makes Lt Col R S Dudee on ideal offr for much higher and challenging appts. An outstanding offr who delivers effective results much before expected time. The offr is happily married and they both make a social couple. An asset to the org.

Brig S.K. Verma, Dy GOC HQ Pashchim UP Sub

Area(RO)

Professionally competent, highly motivated and innovative, Lt Col R.S. Dudee has displayed rare zeal, determination and highly proactive approach in accomplishment of organisational goals. Always cheerful under stress and strain he is capable of handling unforeseen and adverse contingencies with utmost perfection and effectively. Happily married and socially well adjusted he is an asset to the organisation.

Maj Gen Sunil Yadav, YSM, GOC, Pashchim UP

Sub Area (SRO)

Lt Col Dudee in short stay with my PQ has been instrumental in tuning the civil military relation on high from low. This resulted in resolving major and minor issues with State Govt. Even large no of ex Sr have been benefited by proactive action taken with civil/police admn. Full of Josh, pro-active and bold officer who is asset to any of organisation. Overall outstanding officer. The officer awarded GOC-in.C Commendation card to his contribution for the Ex Service and serving persons.

31. The box grading of the period from 01.06.2015 to 31.05. 2016 given by the Initiating officer, Review Officer and Senior Review Officer are 9, 8, 9 respectively with outstanding pen-picture. Being relevant, the same are reproduced below for ready reference.

PEN PICTURE

"Col Samarendra Jha, Gp Cdr HQ 21 MC Gp (IO)

Col Dudee is a well built and a mature officer, with a soldierly bearing. The officer is logical in his approach and clear in his expression."

During the period of report the officer has performed the duties of OC MC/MF det at Meerut. During the discharge of his duties, the officer has displayed very high degrees of resourcefulness and foresight. He took keen interest in the administration of his men and took measures to improve the quality of life of his troops. The officer is thoroughly dependable and took on additional responsibilities with clear & enthusiasm. Col Dudee is bless with a fine social grace and is an asset of any team.

Maj Gen K Manmeet Singh, GOC, HQ Pashchim

UP Sub Area (RO)

Col Ran Singh Dudee is a capable and resourceful officer who has performed the duties of OC/MF Det quite well. The officer cheerfully shoulders additional responsibilities and maintains good liaison with the military and civil authorities.

Maj Gen K Umamaheswar, VSM ,ADG (MOV)

(SRO)

I have seen the performance of the officer and found it to be outstanding. A go getter and enthusiastic officer who rendered selfless service as MCO.

32. Thus a person of the Indian Army who has got outstanding entry even after GCM with excellent performance through four CR Entries with recommendation to grant waiver by the Solicitor General of India (supra) seems to be well founded and within the competence and jurisdiction of Government of India (supra).

33. Much water has flown from river Ganges during last 17 years whereby the Supreme Court covered the different facets of lives and protected it under Article 21 of the Constitution of India which includes, the dignity, quality and status and other different facets required for human living. The quality, dignity and status is the prime concern for every lively society while making effort to have a shop as the source of livelihood. It is part and parcel of social justice to compensate a person giving stress to the stretch of the law to its maximum height. The Apex Court in the case of **G.B.Pant University of Agriculture & Technology, Pantnagar vs State of U.P. and others delivered on 10.08.2000** while considering interpretative jurisprudence observed as under:-

"Society is to remain, social justice is the order and economic justice is the rule of the day. Narrow pedantic approach to statutory documents no longer survives. The principle of

corporate jurisprudence is now being imbibed on to industrial jurisprudence and there is a long catena of cases in regard thereto the law thus is not in a state of fluidity since the situation is more or less settled. As regards interpretation widest possible amplitude shall have to be offered in the matter of interpretation of statutory documents under industrial jurisprudence. The draconian concept is no longer available. Justice social and economic, as noticed above ought to be made available with utmost expedition so that the socialistic pattern of the society as dreamt of by the founding fathers can thrive and have its foundation so that the future generation do not live in the dark and cry for social and economic justice.”

34. In view of the above, we may infer that draconian concept of sticking to strict and narrow interpretation of law now no more may become hurdle to advance justice, to ensure and to compensate a person who suffered with irreparable loss and injury.

35. According to the Applicant, he shall attain the age of superannuation on 31.01.2017 and in case he is promoted to the rank of Brigadier, his age of superannuation shall be further increased to few more years. Hence, early action in the matter is required.

36. It is not out of place to mention that sometimes actions are taken against honest and fair person to thwart

progress in the service career on unfounded grounds with intention to teach a lesson. In case, because of right action, adhering to truth and firm discharge of duty, a person is persecuted and his career is spoilt on account of pendency of proceedings like Court Martial without any remedy by administration of justice, then it may give serious setback to the credibility of administration of justice. Why the respondents kept the matter under wraps for six months to convene the meeting and why no final decision has been taken by the Ministry of Defence keeping in view the opinion expressed by the Solicitor General of India is not understandable?

37. Materials on record show the plight of people who in their service career tried to oppose corruption and uphold the truth. A Careerist ordinarily did not face problem, being one obeying the orders of superiors. Corrupt always yield to the pressure of the superiors to save his service career but honest and upright persons ordinarily face problems and coterie of corrupt people try to spoil their service career. It is unfortunate part of the present society where truth is struggling for its survival.

38. We have our own limitations to grant relief to the Applicant through process of judicial review. Ordinarily, it is not permissible for the Court or Tribunal to direct to carry out promotion though it depends upon facts of each

case. In the present case, no final decision has been taken by the Ministry of Defence keeping in view the observations made by Solicitor General of India (supra) to which we also agree. It is for the respondents to take final decision that too before his superannuation which is not impossible in today's advanced communication technology, computerisation of the system. In this view of the matter, the Application deserves to be allowed.

ORDER

39. Accordingly, O.A is allowed with the following directions.-

(A) The impugned order dated 15.10.2014 (Annexure 3) passed by respondent no 3 vide MS Branch IHQ of MoD (Army) Letter No A/21501/4SB/MS-5 is set aside with all consequential benefits.

(B) Let final decision be taken by the respondents keeping in view the opinion expressed by the Solicitor General of India dated 20.01.2016 (supra) within two weeks from today for Applicant's promotion to the rank of Brigadier (selection grade).

(C) In case no decision is taken within two weeks or till the date he attains the age of superannuation, the Applicant shall continue on the rank of Colonel till the final decision is taken in pursuance of the present

order/judgment. The period after the date of superannuation shall be deemed to be extended period of service with all consequential benefits.

The OIC Legal Cell is directed to communicate the order to the MoD and the Chief of the Army Staff for compliance forthwith.

The Registrar of the Tribunal shall also send a copy of the present order to Defence Secretary and Chief of the Army Staff within 48 hours.

Let certified copies of judgments be issued to the parties of the case today itself in accordance with Rules.

The Registrar shall return the original records forthwith to the OIC Legal Cell.

40. There shall be no order as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

Dated: January, , 2017

MH/-