

AFR
RESERVED
Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 169 of 2011

Friday, the 6th day of October, 2017

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

Lt Col Lokesh Kandpal (IC 56940X) of 8 Gorkha Rifles/Infantry, presently posted at AQMG 4 Infantry Division, C/o 56 APO, Allahabad (UP), India.

.... Applicant

By Legal Practitioner **Shri Shailendra Kumar Singh**, Learned counsel for the applicant.

Versus

1. The Union of India, through Secretary Ministry of Defence, Room No. 101 A, South Block, IHQ of MoD, New Delhi, Pin-110011
2. Complaint and Advisory Board/Chief of the Army Staff Sectt IHQ (Army) DHQ PO New Delhi-110011.
3. Military Secretary, MS Branch, IHQ DHQ PO New Delhi-110011.
4. Adjutant General, AG's Branch IHQ DHQ PO New Delhi-110011.
5. Colonel Hemant Saroch, Director DSC, HQ M & G Area, PIN-908806, C/o 56 APO
6. Brigadier Deepak Vashishta, Brigadier OL, HQ Eastern Command (MS) PIN 908542, C/o 99 APO
7. Major General GG Diwedi, VSM, MGGS Doctrine, Army Training Command (ARTRAC), Shimla,

..... Respondents.

By **Shri RKS Chauhan**, Learned Central Govt Counsel assisted by Maj Salen Xaxa, OIC Legal Cell.

ORDER**Per Hon'ble Mr. Justice D.P. Singh, Member (J)**

1. This OA under Section 14 of the Armed Forces Tribunal Act has been preferred by the applicant being aggrieved with the impugned orders dated 07.06.2011 and 10.06.2011 rejecting the statutory representation/compliant with follow up action of counselling and finding of the Court of Inquiry in relation to alleged error committed by the applicant causing death of ten soldiers and one JCO.

2. We have heard Shri Shailendra Kumar Singh, learned counsel for the applicant and Shri RKS Chauhan, assisted by Maj Salen Xaxa, OIC Legal Cell and perused the record.

In spite of notice issued and served on the respondents No. 5, 6 and 7, none appeared on their behalf, hence we proceed to hear the matter *ex parte* against them.

3. Admission of guilt on unfounded grounds to save the senior's service career or acceptance of the guilt under the extreme subordination of hierarchy of system of the Army is the situation cropped up for consideration in the present case, where the applicant has been held to have committed error while discharging his duty though at later stage he has been granted promotion to the higher rank of Colonel in the Indian Army.

4. The applicant was commissioned in the Indian Army on 07.06.1997. On 26.1.2005 he was awarded gallantry award of

“Mention-in-despatch”. Having bright service record, the applicant was promoted to the rank of Lt Col awaiting further promotion in the Indian Army. He is aggrieved by the Interim Confidential Report including open and hidden portion of the pen picture and box-grading as per MS related statutory complaint for the period 23.07.2005 to 18.03.2006 wherein, it is alleged, in terms of Army Order 45 of 2001 (M/S), his courageous act was not recorded, rather he has been asked by respondent No. 6 for performance counselling. Being aggrieved, he has preferred the present OA in June, 2011 itself.

5. On 19.09.2005, the “A” Company of 5/8 Gorkha Rifles while located in Manipur was ambushed wherein 01 JCO and 10 ORs were killed by terrorists. According to the applicant, there was no Company Commander of the said Company when the Unit was ambushed. After getting information, the applicant alongwith 04 army personnel, namely, Nk Kum Bahadur Rana, Nk Tanka Prasad Oli, Nk Paras Gurung and L/Nk Sunil Adhikari, rushed to the spot, during darkness of night and against all odds of the climatic condition, from Battalion Headquarters to rescue the entrapped party, though, according to the applicant, the Commanding Officer, respondent No. 5 had instructed not to move out of Bn HQrs. The applicant pleads that he alongwith four army personnel (supra) saved the lives of 11 other personnel and sanitized the area from terrorists. One Maj Praveen Kumar, RMO alongwith his nursing assistants aided the applicant to provide first aid and evacuation of survivors. The said rescue operation was carried out from 1745 hrs of 19.09.2005 till 0400 hrs of next day i.e. 20.09.2005, almost whole night.

6. A Court of Inquiry (COI) was held in which the applicant was held responsible for the loss of the lives of 01 JCO and 10 ORs.

7. Submission of learned counsel for the applicant is that the impugned orders rejecting the statutory complaint of the applicant were passed to save the respondent No. 5, who was the Commanding Officer on the fateful day, holding the applicant exclusively responsible for the said incident, in utter disregard to the facts of the case which speak otherwise.

8. On the other hand, it has been vehemently argued by learned counsel for the respondents i.e. learned counsel for the Government of India and learned counsel appearing for the private respondents that the order of counselling is not adverse and in spite of the said order, the applicant has been promoted to the next higher rank and by such orders, his service career is not going to be affected in any way.

9. The aforesaid submission of the respondents has been rebutted by learned counsel for the applicant. His submission is that the applicant's service career shall be looked into in future for further promotional avenues and the incident for which the applicant has been held responsible by the COI shall create obstruction and is likely to be construed as a blot in his service career. He further submits that the applicant is very much grieved over the death of 01 JCO and 10 ORs but he was in no way responsible for the said incident.

AMBUSH

10. It is not disputed that 01 JCO and 10 ORs of the Road Opening Party (ROP) had been done away with on 19.09.2005 on National Highway at about 06.40 p.m. The facts borne out from the record indicate that on 19.09.2005, in the morning shift, road opening in upper Ngaryan (Manipur) was done by the unit under the command of the applicant himself, which continued upto 1700 hrs, whereafter another unit commenced road opening onwards at 1800 hrs with three vehicles carrying ration. According to the applicant, after completing his day task with regard to road opening, he was engaged in his assigned work at Bn HQ and COB Upper Ngaryan. The ROP began its work belatedly at 1800 hrs though according to the Circular it could have started its work before 1700 hrs and not later, that too in the dark evening. The reason for delay in start of road opening is said to be the delay in arrival of unit, collection of ration, change of clothes, etc.

11. The COI was held on 23.09,2005 by the order of General Officer Commanding (GOC), 57 Mountain Division to investigate the circumstance under which ROP of 5/8 GR was ambushed. Brigadier RK Sharma was the Presiding Officer. At that time, Col Hemant Saroch was the Commanding Officer, 5/8 GR. His predecessor Lt Col Paramesh Sarma had briefed him about the security situation in the area and also familiarized him with the AOR, modus operandi of the terrorists and orders and instructions on the security situation in the area. He joined on 23.07.2005 as officiating Commanding Officer. During COI, CO Col Hemant Saroch (Respondent No. 5) narrated the incident and the action taken thereon as under:

“2. On 19 Sep 05, a coln under Maj Lokesh Kandpal, Coy cdr, A coy carried out rd opening between Km 18 to Km 22 on NH-150 with a str of 01-01-21 by 0530 h. Maj Lokesh Kandpal, thereafter proceeded to org a MCA camp at Nungsai Chiru vill. After conduct of ROP and the MCA function, the coy closed in the ROP. Their onward mov to COB commenced at 1800 h, on ft with three vehs carrying rations amidst the ptl. The coy cdr remained at Bn HQ with 03xOR as he was also performing the duties of offg 2IC and QM.

3. At approx 191840h, the ptl was ambushed by UGs with hy vol of auto fire incl lathode gren from right, front and left side of the rd. On being ambushed, the dvr of first veh accelerated with a view to get out of the ambush site. As he reached the sharp turn he lost cont of the veh and consequently veh started mov rearwards. The sec veh too accelerated and at the sharp bend hit the rear of the first veh thus stopping both the vehs in the fwd edge of the ambush site. Hy vol of fire was opened by the UGs from the left and rear sides on these two veh. Own pers retaliated and fired imdt, however, due to constraints of seating inside the veh, own fire was restd. The third veh stopped outside the ambush site.

4. Simultaneously, the following actions were taken:-

(a) A QRT under Maj Lokesh Kandpal with 15 OR was imdt launched as rft to the ambush site followed by Cos QRT and RMO.

(b) Another QRT was desp under a JCO with 14 OR to block escape route from the East at Khongdung Pang N.

(c) A coln ex COB Ngaryan consisting of 01 JCO and 18 OR was sent to est block at pt 1085 (GR 207700).

(d) The Bde HQ was info about this incident.

5. After the route to the ambush site was cleared by QRT as mentioned in para 4(b) above, 1x Sumo Amb, 1xLt Amb and 1x2.5 Ton were imdt rushed for cas evac under the unit RMO. The cas were directed to the civ hosp for first aid under Maj Daniel Kohli, OC D coy alongwith protection of the police and 15 OR ex D Coy. The unit suffered following cas consequent to the ambush:-

(a) Fatal cas -01 JCO, 10 OR (07 OR at the site, 02 OR succumbed to their injuries enroute to MI Room, 01 JCO died enroute to civ hosp at Imphal and 01 OR died at civ hosp Imphal).

(b) Non-Fatal Cas -06 OR.

(c) *List of cas is att as Appx."*

12. From the statement of CO Col Hemant Saroch (supra), there is no room of doubt that it was the applicant who had rushed to ambush site to execute rescue operation. In his statement the CO admitted that the move was allowed at 1800 hrs on 19.09.2005 in violation of Army instructions. He has stated that the sudden and heavy volume of auto fire coupled with lathode grenade was the cause of death of 11 army personnel on account of ambush by the terrorists. The CO stated that 12 to 15 persons were involved in automatic weapon firing from 3-4 firing positions and terrorists seemed to have carried out their deliberate plan of ambush on account of knowledge of pattern of movement of Army unit. He stated that Army security precautions were taken before move. He further stated that he was given an all OK report by Major Lokesh Kandpal at 1000 hrs on 20.09.2005, informing no loss of weapons, ammunition and other items which the unit was possessing at the ambush site.

13. The statement of CO indicates that because of arrival of rescue team under the command of the applicant, lives of remaining soldiers were saved and weapons, arms and ammunition etc could not be taken away by the insurgents.

APPLICANT'S INVOLVEMENT

14. With regard to his own involvement, the applicant appeared before the COI and narrated the facts as under:

“2. On 19 Sep 05, the coy was tasked to carry out ROP from KM-18 to KM-22 on NH 150, from 190500h till the time cvy of 59 Mtn Bde crosses AOR. A str of 01 Offr, 01 JCO and 21 OR mov out from the COB at 0930h on ft to est the rd opening which was effective by 0530 h and was accordingly intimated.

3. After having est the rd opening I moved to Bn HQ and then to vill Nungsai Chiru for conduct of MCA pgme that terminated at 1500h. Thereafter I returned to Bn HQ and awaited return of my Coy ROP for briefing since I was sch to stay at Bn HQ for compilation of few bds and follow up H/T over progress with the relieving unit i.e. 15 JAKLI (Adv Party).

4. At about 1700h the ROP was reeled back and it mov to the Bn HQ. The day being a fresh/ration issue day, the ROP collected the rations for the coy and loaded it into vehs. A total of 01 JCO and 18 OR were grouped to return back to COB in three 2.5 Ton. I briefed the ROP JCO with regard to security enroute and also coy related issues to follow up till my return that was sch on 21 Sep 05.

5. The cvy mov out of Bn HQ at 1800h along rd Bishenpur-Ngaryan alongwith ptl mov on ft. At about 1840h the ptl was fired upon by the terrorist in the area of GR 213673.

6. While this was on, Bn HQ and COB Upper Ngaryan had come to stand to. A QRT under me ex Bn HQ with 15 OR was imdt launched as rft to the ambush site followed by Cos QRT incl RMO. Another QRT was desp under a JCO with 14 OR to block escape route from the East at khongdung Pang N. A coln ex COB Ngaryan of str 01 JCO and 18 OR was to est block at pt 1085 (GR 207700) which was further tasked to conduct SADO till vill Khoirok.”

15. During COI, in response to question No. 9, the applicant admitted that he was the commander of the unit throughout, which appears to be incorrect at the face of record. It is noteworthy that the instructions given to ROP to leave Bn HQ at 1800 hrs on 19.09.2005 were not by the applicant.

WHO SENT THE ROP FOR ROAD OPENING
AT 1800 HRS ON 19.09.2005

16. We have minutely gone through the report of COI. In para 4 of his statement before the COI, the applicant has stated that at about 1700 hrs the ROP (of day shift) was reeled back and it moved to the Bn HQ. The day being a fresh/ration issue day, the ROP collected the rations for the coy and loaded in into vehicles. And moved out for the assigned task at 1800 hrs. In response to question No. 1, the applicant stated that he had briefed the ROP to move out from the Bn HQ during day time after collecting the rations. Thus, it is incorrect to say that the ROP was instructed by the applicant to move out in violation of Army instructions or it moved late on the instructions of the applicant. There is no averment on behalf of the applicant permitting the ROP to move out after 5 p.m. He further stated that out of three vehicles, two seemed to have halted. However, the third vehicle that had halted approximately 50 mtrs behind seemed to have returned the fire and probably for this reason the terrorists did not venture to take away weapons and other items.

17. Witness No. 3 Major Niraj Srivastava confirmed the statement of the applicant, stating that it was the applicant Major Lokesh

Kandpal who reached the spot to carry out rescue operations and secured the site for conduct of detailed search till subsequent morning.

18. Thus, it is not in dispute that on the fateful day, the ROP left at 1800 hrs though it should have started its operation from 1700 hrs. Major Niraj Srivastava, in reply to question No. 15, stated that ROP was instructed to move on foot; however, it seems that they had boarded the vehicles later, which resulted into the incident in question.

19. Witness No. 4 Sub Deepak Singh Thapa admitted that the same ROP closed in at Bn HQ at 1700 hrs and after collection of dry and fresh rations, they moved out on foot with three vehicles at 1800 hrs. He stated that the evacuation team was sent to the ambush site under Capt Praveen Kumar, RMO of the unit and he under the directions of Adjutant Org was discharging his obligations. He stated that Sub Om Prasad Gurung was the commander of the ROP on its return since Maj Lokesh Kandpal was to stay back at Bn HQ. Reply given by this witness to Question No. 7 seems to be material for fixing the accountability of the incident. To quote:

“Q7. The adm cvy of A coy got delayed, what action did you take to halt them at the Bn HQ?”

Ans. Gen, the ROP leaves the Bn HQ by 1730 h. It got delayed as it was supposed to carry the dry and fresh ration to the coy. The delay was reported to Adjt who ordered to continue the mov by covering the dist on ft after confirming the same from CO.”

20. From the statement of witness No. 4 (supra), it appears that the delay was reported to Adjutant, who ordered to continue the move by covering the distance on foot after confirming the same from CO.

Thus, at the face of record, it is apparent from the statement of witness No. 4 Sub Deepak Singh Thapa that it was the Adjutant of the Command, who with the prior permission of CO Col Hemant Saroch (Respondent No. 5), directed the ROP to move at 1800 hrs though according to HQ instructions, this could have been done upto 1700 hrs.

21. Witness No. 5 Sub Dhan Prasad Pun also confirmed that on account of delay, onward movement to COB commenced at 1800 hrs on foot.

22. Witness No. 6 Hav Nura Bahadur Baral was one of the members of ROP and also injured. He narrated the incident as under:

4. By the time we left the Bn HQ it was already dark. After traversing for approx a Km, on ft, the Sr JCO, Sub Om Prasad Gurung then asked us to mount the vehs since it had started raining and so we climbed the vehs as follows:-

(a) First Veh -01xJCO and 06xOR.

(b) Second Veh -04xOR.

(c) Third Veh -08xOR (incl Self).

5. We must be approx 3 kms away from the Bn HQ (2 Km from own COB), when as the vehs were negotiating an uphill turn, we were suddenly fired upon by hy vol of auto wpns and lethode gren. We imdt knew that we had been ambushed and the terrorists were firing from two

posns rt of the rd and one or two posns from left of the rd. It must have been 1845h then.

6. The dvr of the first veh was hit and thus lost cont of the veh, due to which it mov rearwards and hit the No 2 veh, thereby halting both the vehs. The terrorists fired hy vol of fire from lethode gun and auto wpns from three or four different posns. There was restd reaction by own tps sitting in these vehs. However my veh (the third eh) halted approx 50 mtrs behind. I info the Bn HQ and COB about the incident on H/H Motorola set. I imdt dismounted and retaliated the fire. I also shouted at other OR in the veh to dismount. I and approx 5-6 OR of my veh tried to climb the rd cutting to the left, however, could not do so since it was steep. Suddenly the terrorists opened hy vol of fire in our direction.”

23. From the statement of witness No. 6, it appears that it was Sr JCO, Sub Om Prasad Gurung, who was heading the ROP and had asked the members of ROP to mount the vehicles in violation of the instructions to move on foot. One important material brought on record by witness No. 6 Hav Nura Bahadur Baral is in his reply to question No. 3, which is reproduced as under:

“Q. 3 Were the vehs stopped at the Bn HQ and checked by RP Hav?”

Ans. Yes, he stopped the veh and took permission from SA/Adjt before desp the vehs.

Witness No. 6 (supra) seems to supplement the statement of witness No. 4 Sub Deepak Singh Thapa that the movement at 1800 hrs was in pursuance to permission granted by SA/Adjt and not by the applicant. This fact has been reiterated in response to question No. 6 by witness No. 6, which is reproduced as under:

“Q. 6 How did the adm cvy of A coy get delayed, while returning back to COB?”

Ans. Gen, the ROP leaves the Bn HQ by 1730 h. It got delayed as it was supposed to carry the dry and fresh ration to the coy. The delay was reported to Adjt through Sr JCO who ordered to continue the mov by covering the dist on ft after confirming from CO.

The situation at ambush site was so grim and the firing by insurgents from 3-4 firing locations was so heavy that the ROP did not retaliate immediately, as is evident from the reply given by Witness No. 6 to question No. 8, which is reproduced as under:

“Q8. Why did the party not retaliate imdt?”

Ans. The vol of fire was so hy that in the initial bursts most of the men were hit. The dvr of the first veh was also hit as he tried to move out from the ambush site but lost cont and hit the veh coming behind.”

24. Witness No. 7 is Rfn Min Bahadur Ale. In para 6 of his statement, he has brought on record the irony that he faced during heavy firing by insurgents when his rifle was jammed. The same is reproduced as under:

“6. The dvr of my veh (the first veh) was hit and thus lost cont of the veh. due to which it mov rearwards and hit upon the No 2 veh. Thereby halting both the vehs. The terrorists fired hy vol of fire from lethode gun and auto wpns from two or three different posns. There was restd reaction by us. However the third veh halted approx 50 mtrs behind. I could not mov since the veh was blocked on one side by steep cutting and No 2 veh on the other. So I continued to stay inside the veh and engage the terrorist from that posn. I fired two mags. However later my rifle got jammed. Suddenly I was hit on my left arm. I was suffering in pain, yet I kept on firing till the terrorists fire stopped. Thereafter, I continued to stay at my loc. After approx 30 min of the incident a QRT under Maj Lokesh Kandpal arr at the spot and we were evac from the site firstly to civ hosp Bishenpur then to RIMS Imphal. Subsequently, I with other cas was taken to 183 MH Leimakhong.”

Witness No. 7 Rfn Min Bahadur Ale further stated that before moving, the unit took permission from Adjutant through Sr JCO, who ordered to continue the movement by covering the distance on foot after confirming from CO. In this regard, question No. 5 and answer to it given by this witness are reproduced as under:

“Q5. Why did the adm cvy of A coy got delayed?”

Ans. Gen, the ROP leaves the BN HQ by 1730 h. On 19 Sep 05, it got delayed as it was supposed to carry the dry and fresh rations to the coy. The delay was reported to Adjt through Sr JCO who ordered to continue the mov by covering the dist on ft after confirming from CO.”

25. Witness No. 8 Rfn Khuman Singh Gurung is also an injured witness, who was a member of the ROP. It is relevant to quote question No. 2 put to this witness during COI and answer given to it by him, which is as under:

“Q2. Were the vehs stopped at the Bn HQ and checked by RP Hav?”

Ans. Yes, he stopped the veh and took permission from SA/Adjt before desp the vehs.”

From the statement of this witness, who was seriously injured and lost his consciousness, there seems to be no room of doubt that permission to move at 1800 hrs was given by Adjutant and not by the applicant.

26. From the statements of the witnesses during COI, it appears that 11 persons lost their lives and 06 were injured: They are as under:

<u>S No</u>	<u>Army No</u>	<u>Rk</u>	<u>Name</u>
1.	JC-623162P	Sub	Om Prasad Gurung
2.	No 5751547M	Hav	Dhal Bahadur Thapa

3.	No 5752400K	Hav	Shri Prasad Gurung
4.	No 5752805N	Hav	Som Bahadur Shrestha
5.	No 5753000H	LHav	Lekh Bahadur Pun
6.	No 5753072M	Nk	Khag Prasad Pun
7.	No 5754440H	Nk	Dhan Bahadur Rana
8.	No 5754706K	Lnk	Jit Bahadur Bahakari
9.	No 5755398F	Rfn	Dan Bahadur Ale Magar
10.	No 5755693K	Rfn	Raju Mangar
11.	No 5757319A	Rfn	Vinod Kumar

Non Fatal Cas

1.	No 5752435Y	Hav	Hum Bahadur Thapa
2.	No 5754214L	Nk	Nar Bahadur Disa
3.	No 5755787P	Rfn	Khuman Singh Gurung
4.	No 5756586P	Rfn	Manoj Thapa
5.	No 5757644A	Rfn	Ajit Kumar Thapa
6.	No 5758112M	Rfn	Min Bahadur Ale

DUTY OF ADJUTANT UNDER ARMY REGULATIONS

27. Para 41 of the Defence Service Regulations (DSR) for the Army, 1987 speaks about Adjutant, according to which the adjutant is a regimental staff officer whose duties are to assist the CO in matters of training, administration and maintenance of discipline in the unit. The adjutant thus discharges duty under the instructions and control of the Commanding Officer. Ordinarily, it is the adjutant who conveys the orders and decisions taken by the Commanding Officer. Para 41 of the DSR is reproduced as under:

“41. The adjutant is a regimental staff officer whose duties are to assist the CO in the training, administration and maintenance of discipline in the unit.

28. Under Para 37 of the Defence Service Regulations for the Army, 1987 (Vol-I), a Commanding Officer is responsible for the maintenance of discipline, efficiency and proper administration in the unit under his command. He is also responsible for its training and readiness for war, and personally accountable to any eventuality.

29. In view of above, we are of the considered view that the ROP which moved at 1800 hrs in violations of the instructions of Army Bgd HQ, had moved out with the permission of the then Adjutant in concurrence of the Commanding Office (Respondent No. 5) and not of the applicant. The fatality seems to be for the following reasons:

- (i) The adjutant and the CO (witness No. 1) seems to have inadvertently missed the Army instructions which prohibited movement of ROP after 17 hrs. There appears to be negligence on the part of Adjutant and CO who later tried to conceal the facts, by shifting their burden of mishap on the applicant
- (ii) Under DSR, the CO is personally accountable to every eventuality with the unit, under his command.
- (iii) Instructions given by Adjutant with prior confirmation of CO was to move on foot, but it appears that Sub Om Prasad Gurug flouted the instructions and boarded the vehicles alongwith his fellow soldiers, under compelling circumstances.
- (iv) During counter attack, the rifle of witness No. 7 Rfn Min Bahadur Ale was jammed and thereafter he was hit by bullet

of insurgents. This jamming of rifle indicates the bad quality of weapon and the Army must look into it and ensure to provide rifles of improved quality to soldiers so that they may not suffer casualty.

- (v) Under Para 41 of DSR, it is the duty of Adjutant to assist the CO in the training, administration and maintenance of discipline in the unit.

COURT OF INQUIRY

30. From the pleadings on record as well as perusal of the original record of COI, it appears that the statements of witnesses recorded. While doing so, statements of the CO as well as the applicant and some injured soldiers/JCOs (supra) were also recorded, but there is nothing to show that the applicant was ever called for or asked to cross-examine the witnesses. Finding has been recorded shifting all burden with regard to killing of 11 army personnel on the applicant's shoulder with mild words. Rule 180 of the Army Rules, 1957 provides that whenever any inquiry affects the character or military reputation of a person, 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. For convenience, Rule 180 of the Army Rules is reproduced as under:

“180. Procedure when character of a person subject to the Act is involved.— Save in the case of a prisoner of war who is still absent whenever any inquiry

affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. The presiding officer of the court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights, under this rule.”

31. It is well well-settled that non-compliance of Rule 180 (supra) vitiates the inquiry and finding recorded thereon. As observed above, the applicant at no stage was permitted to lead evidence in defence or cross-examine the witnesses in COI in compliance of Rule 180 of the Army Rules, which is mandatory in view of law settled by Hon'ble the Supreme Court in the case reported in *Military Law Journal 2013 SC 1 Union of India vs. Sanjay Jethi & Anr.* A finding has been recorded against the applicant's conduct which affects his reputation. Accordingly, the finding recorded in COI on account of non-compliance of statutory mandates (supra) and the consequential orders passed affecting the applicant's reputation and performance counselling vitiate and deserve to be set aside.

ACR ENTRY

32. It is vehemently argued that the Interim Confidential Report (ICR) for the period from 23.07.2005 to 18.03.2006 does not contain the courageous act and duty discharged by the applicant during ambush (supra). So far as the CR entries are considered the question is no more a *res integra*. It is a well-settled law that CR is a

tool for human resource development and it should not be used as a fault finding process. The assessment should be strictly objectively, fairly and dispassionately, keeping in view the service rendered by such officer, his/her commitment to the duty assigned to him/her.

33. We are of the considered opinion that for assessment of overall service working of an officer is required to be assessed strictly objectively, fairly and dispassionately as has been held in the case of **S. Ramachandra Raju vs. State of Orissa, (1994) Supp 3 SCC 424** and reiterated in the case of **State of U.P. versus Yamuna Shankar Misra and another, (1997) 4 SCC 7**. Writing Confidential Report puts onerous responsibility on the Reporting Officer to eschew his subjectivity and personal prejudices and proclivity or predilections and to make objective assessment. Hon'ble Supreme Court in Yamuna Shanker Misra's case, held that, in estimating or assessing the character, ability, integrity and responsibility displayed by the officer/employee concerned during the relevant period for the above objectives, if not strictly adhered to, in making an honest assessment, the purpose and career of the officer will be put to great jeopardy. Hon'ble Supreme Court in the case of **State Bank of India vs. Kashinath Kher (1996) 8 SCC 762** held that, object of writing the Confidential Report is two-fold, i.e. to give an opportunity to the officer to remove deficiency and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellence and efficiency of public service. The case of Kashinath Kher was also considered by the Hon'ble Supreme Court in the case of Yamuna Shanker Mishra.

34. In our considered opinion, the parameters given in Forms for evolution of Basic Qualities of an officer Part-II of Form Basic Assessment subsequently covers the various aspects of one officer which individually is different subject for overall assessment of personality of the officer which depends upon the combination of or independent assessment value and thereafter assessment of “potential value” of the officer and other facets to be judged at the different level. An officer can be judged on the basis of initially, by addressing to the various gamut of the person’s personality and then by drawing objectively inference about his overall personality. This cannot be done mechanically or numerically and therefore, it is specifically provided in the instruction No.117 of the instructions of 1989 that, reporting officers are required to give overall figurative assessment of the officers in the box which is a box for grading Clause 117 reads as under:

“The reporting officers are required to give overall figurative assessment of the officers in the box provided for this purpose: commonly known as box grading. This assessment is NOT numerical average of the assessment made in other parts of the report but overall assessment which includes potential of the officer as well. Following need to be ensured by the reporting officers with regard to the box grading.”

35. The Clause 117 clearly says that ‘assessment is not a numerical average of the assessment made in other parts of the report but overall assessment which includes potential of the officer as well. The ‘potential of an officer’ is not any of the attributes mentioned in Form Part-II of Basic Assessment of the officer nor in

Clause 12, 14 and 16 whereunder officers “regimental and command assignments” are assessed. Further more, we are of the considered opinion that any objective assessment of an officer guidelines gives them guidance to examine the officer and while doing so, the initiating officer is required to look into the aspects mentioned in the above Form and that Form alone is not the totality of the objective assessment and therefore, numerical calculation has not been made the criteria for objective assessment of the officer in “Box Grading” and for “potential assessment” of an officer is also required to be assessed though it is not mentioned in Part-II of the Form whereunder personal qualities are assessed by the Initiating Officer.

36. The Hon’ble Supreme Court in the case reported in **S.T. Ramesh vs. State of Karnataka and Anr. (2007) 9 SCC 436** by expressing its opinion observed that confidential report is an important document as it provides the basic and vital inputs for assessing the performance of an officer and further achievements in his career. The performance appraisal through CRs should be used as a tool for human resource development and should not be used as a fault-finding process but a developmental one.

37. It is well settled that assessment of overall service of an officer is to be assessed strictly objectively, fairly and dispassionately, keeping in view the service rendered by such officer, his/her commitment to the duty assigned to him/her. That is why Para 15 of the Army Order (supra) mandates for full signature indicating the date, so that in the event of any controversy or during the course of

judicial review of the action, the Initiating Officer or others may be called upon to explain their conduct, keeping in view over all profile contained in the pen picture of the officer concerned.

38. The Military Secretary's Branch issued a Brochure under title "Guidelines for Rendering Confidential Reports". Foreword appended to the said Guidelines, contains the observations made by the Military Secretary on 05.04.2013, as follows:

*"1. Confidential Reports form the foundation of an efficient Human Resource Management System to ensure that only professionally competent and best officers are selected for promotion and tenant higher select ranks of Indian Army. It is the **shared and collective responsibility of all reporting officers** to further strengthen and appraisal system so as to assist the MS Branch in fulfilling its mandate.*

*2. It is the desire of COAS that the environment be continuously sensitized and educated on all important aspects of appraisal, from time to time. Towards that end the need was felt for a **publication that can be brief, handy and encompass all essential aspects of CR policy**. This is a nascent effort to provide such a publication to the environment.*

*3. In addition to the basic issue of technical correctness of CRs, responsibilities of ratee/reporting officers, detailed guidelines have been included for **reporting officers to enable them to render an objective assessment on the ratee**. A small brief on methodology of analysis of CRs at MS Branch and certain other misc aspects have also been covered to amplify the existing instructions.*

4. I am confident that these guidelines will assist all offrs both as ratee and reporting offrs to ensure correct, timely and objective rendition of confidential reports."

39. In para 2 of the aforesaid guidelines, reference has been made to Army Order 45/2001/MS. With regard to Reporting Officer, it has been observed that the period for which the Reporting or Initiating Officer endorses his opinion is the period which the ratee has actually served under the IO. Para 9 (e), (f), (g), (h) and (i) of the said Guidelines relevant for adjudication of the present controversy are reproduced as under:

*“(e) **Period Covered by Report.** This is the period which the **ratee has actually served under the IO.**(Para 17 of AO). Complete **details of physical service** of ratee under IO, RO and SRO are required to be provided as part of docus to be att with CR.*

*(f) **Reporting Offrs.** The details should be as per the **Channel of Reporting** applicable. The entitlement of Reporting Offr (Present/Previous) can be ascertained as per Appx F & H of AO. As a guiding principle the period served under RO/SRO should be concurrent with the period actually served under IO.*

*(g) **Reason for Initiation.** Mention the type of CR (eg. Annual CR/ Interim CR/ Early CR/ Delayed CR) and the reason for initiation of current CR (eg. ACR on due date/Posting out of Ratee/IO or Special CR as the case may be).*

*(h) **Appts Held.** Mention all appts held by ratee for the period of report. Appt should be same as reflected in IAFF 3008.*

*(i) **Correctness of details.** The ratee will authenticate the details given in Part I of the CR form. The ratee will be **personally responsible for the correct completion of details** in the CR form. **Certificate of correctness of details rendered by the ratee is irrevocable.**”*

40. The aforesaid guidelines are in tune with Army Order 45/2001/MS. It seems to have been issued to fill up the vacuum to supplement the Army Order 45/2001/MS and Army Act, Rules and

Regulations and has binding effect. Vide *AIR 2008 SC 3, Union of India versus Central Electrical & Mechanical Engineering Services.*

PEN PICTURE

41. Pen-Picture has been provided under Para 36 of the Guidelines. It says that the quality of a pen-picture **provides valuable input for selection** of officers for important and sensitive appointments, analysis of an assessment for objectivity during Internal Assessment and analysis of complaints. Different qualities which are required to be appreciated while writing pen-picture by IO, RO and SRO, is borne out from Para 36 of the Guidelines. For convenience para 36 of the Guidelines (supra) is reproduced as under:

“36. Pen Picture

*(a) **The purpose of the pen-picture is to give soul to the skeleton of figurative assessment.** The manner in which this is done is left to the indl style of the reporting offr. The same may be formatted under following heads:-*

- (I) **Personality and Leadership.***
- (II) **Employment and performance.***
- (III) **Any other Special Attributes and Achievements.***

*(b) **The quality of a pen-picture provides valuable input for selection** of offr for important and sensitive appointments, analysis of an assessment for objectivity during Internal Assessment and analysis of complaints.*

*(c) **Internal assessment in the MS Branch indicates that most reporting offr concentrate on the figurative assessment and neglect the pen-picture, which are cryptic and non-committal in nature.***

(d) **Use of superlative adjectives should be avoided.** It is clarified that **no standard list of words or phrases** are expected in support of different grades of figurative awards.

(e) Pen picture must highlight specific achievements by the ratee during the reporting period. This could be his contribution during ops, trg, ex, op discussion, adm, improvement in stn, quality of instr, staff work etc as per the appt tenanted by the offr.

(f) Pen picture should **provide additional information over and above** what is implicit in **the figurative assessment**. A suggested list of qualities which may be commented upon in the pen picture is as under:-

(I) **Acceptance of Suggestions and Criticism.**

Attitude of the ratee towards suggestion and reaction to objective criticism/ corrective measures,

(II) **Conceptual Skill.** Demonstrated ability to conceive and comprehend plans/concepts. It may also include value additions carried out in discharge of duties.

(III) **Esprit-de-Corps.** Altruist behavior exhibited by the ratee.

(IV) **Emotional.** Capability to resist undesired agitation of the mind.

(V) **Employability.** This may include potential of the ratee for employment in various Important / specific appointments based on his ability, flair and talent. (eg. Media / I T / Foreign language / Financial Management / Project Management)

(VI) **Foresight and Planning.** Demonstrated ability to analyse / foresee a problem and formulate a plan for its solution.

(VII) **Man Management.** Efficient handling of troops/subordinates and specific activities aimed at maintenance of their morale and welfare.

(VIII) **Self improvement.** Endeavour of the ratee to improve self in terms of acquiring knowledge and adjusting socially.

*(IX)**Tact.** Skilful handling of men and sats which may include mention of specific instances.”*

33. *While writing pen-picture, recommendations are also to be made for promotional avenues keeping in view the merit of the ratee, as provided under Para 38 of the Guidelines, which is reproduced below:*

“38. Recommendations for Promotion.

*(a) Recommendations for promotion are required to be given in four shades, i.e., **Should Promote, May promote, Not yet Recommended and Not Recommended.***

*(b) These shades are meant to provide requisite dispersal in the otherwise congested figurative grades. Amongst these, **only ‘Not Recommended’ is a definite negative recommendation** while the other three shades are meant to be positive, although on a reducing scale.*

(c) Reporting offrs are required to base their Recommendations for Promotion based on the awards in QsAp.

*(d) Reporting offrs must ensure that there is no mismatch between QsAP and Recommendations for promotion. **A quantified relationship between QsAP and Recommendation for Promotion has been specified.** However, in its absence a broad co-relationship can still be drawn.”*

42. Keeping in view the Guidelines referred to hereinabove, we are of the considered view that subject to genuineness of the action taken by the applicant in rescue operation for the whole night of 19/20.09.2005, the event should have formed part of his pen-picture/ACR, more so when it was not the applicant who sent the ROP to clear the road on fateful day.

STATUTORY COMPLAINT

43. After COI, a show cause notice dated 02.11.2005 was issued to the applicant by GOC HQ Mountain Division, respondent No. 7. Reply to it was submitted by the applicant on 11.12.2005 with a request for personal hearing by GOC HQ Mountain Division. Instead of taking into account the grounds urged by the applicant, vide order dated 06.02.2006 the Brigade Commander, 73 Mountain Brigade (respondent No. 6) was asked to look into the matter, who issued performance counselling (Anneuxre A-3). The applicant did not accept the said performance counselling and represented his matter back on 12.02.2006 with endorsement to maintain averment of his reply to show cause notice (Anneuxre A-4). On 18.03.2006, the applicant was posted to MHOW. His Interim Confidential Report for the period from 23.07.2005 to 18.03.2005 was raised and forwarded for his signature at his new unit MHOW on 02.08.2006. The performance Counselling was issued directly by RO respondent No. 6 and not through IO respondent No. 5 vide letter dated 14.08.2006. The applicant submitted a detailed representation on 10.09.2006 (Anneuxre A-7) which was returned without any action on 27.09.2006. Feeling aggrieved, the applicant preferred the statutory complaint (Anneuxre A-9) on 21.11.2006. He was advised to segregate the statutory complaint into two parts for MS and AG Branch vide letter dated 04.01.2007 (Anneuxre A-10).

44. We feel that such advise was uncalled for and it was incumbent upon the statutory authority to decide the statutory complaint on merit

in accordance to law. Thereafter the applicant forwarded his statutory complaint pertaining to AG Branch on 24.03.2007 and another to MS Branch on 27.03.2007, as advised. On 15.08.2010 the applicant was awarded commendation by Chief of the Army Staff for his meritorious services. When even after a lapse of more than four years, the applicant's statutory complaints were not decided, the applicant moved a detailed representation to the Chief of the Army Staff on 21.04.2011 seeking his interview. Thereafter both the statutory complaints were decided vide impugned orders dated 07.06.2011 and 10.06.2011 and rejected.

45. While submitting the statutory complaint, the applicant had invited attention to the comments of Commanding Officer Col Hemant Saroch, a copy of which is on record. The same is reproduced hereunder:

“COMMENTS OF COMMANDING OFFICER

1. *The ROP returning back to the COB was ambushed at Upper Ngaryan on 19 Sep 05 at about 1840h resulting in 01 JCO and 10 Ors being killed in action. This incident could have been avoided by adhering to various security instrs and orders on the subject.*

2. *The views brought forth by the offr in his reply to the show cause notice may be considered.*

Station : C/O 99 APO

Sd/-x x x

(Hemant Saroch)

Dated: 11 Dec 2005

Col

Commanding Officer 5/8 GR”

46. The grievance of the applicant is that by show cause notice dated 02.11.2005, whole burden with regard to the killing of 11 brave solders has

been shifted on the applicant's shoulder on unfounded grounds. For convenience, the show-cause notice dated 02.11.2005 is reproduced as under:

“SHOW CAUSE NOTICE : OFFICERS

1. *On perusal of the proceedings of the Court of Inquiry held to investigate the circumstances under which a ROP of 5/8 GR was ambushed in gen A Upper Ngaryan RM 2167 on 19 Sep 05 resulting in death of 01 JCO and 10 OR and GSW to 06 OR of same unit convened vide HQ 57 Mtn Div Convening order No 57001/Ops/GS (Ops) dt 23 Sep 05. The GOC 57 Mountain Division has observed that you did not ensure mov of tpt and vehs from the Bn HQ to COB at Upper Ngaryan with proper security arngs and ROP. It is apparent that you have moved tps and vehs, in a similar manner on earlier occasions which set a predictable pattern and complacency in the tps of your Coy.*
2. *It appears to GOC 57 Mountain Division that it is justified to initiate adm action against you for aforesaid lapse. You are therefore, afforded an opportunity to explain as to why adm action should not be initiated against you for the lapse on your part.*
3. *You should submit your reply to Show Cause Notice within one month of its receipt failing which it will be assumed that you have no grounds to urge against the proposed action and an ex parte decision will be taken.*
4. *A copy of the proceedings of the Court of Inquiry (less its findings, opinion and direction of competent authority) is enclosed for your perusal and return please.*

Sd/- x x x
(S Krishnan)
Colonel
Colonel Administration
For General Officer Commanding”

47. Subject to above, the order of Performance Counselling was issued in February, 2006, which is reproduced as under:

"HQ 73 Mtn Bde
PIN-908073
C/O 99 APO

0107/BSG/OCF

Feb 06

Maj Lokesh Kandpal
5/8 GR (Rear)
C/O 99 APO

PERFORMANCE COUNSELLING

1. Ref
 - (a) HQ 57 Mtn Div SCN No 57380/5/8GR/Ambush A (ii) dt 02 Nov 05.
 - (b) Your reply to the SCN fwd vide letter No 357/1/A dt 12 Dec 05.
2. The incident of 19 Sep 05 in which one JCO and 10 OR of your unit were killed and eight OR sustained gunshot wounds in the ambush laid by the insurgents in your battalion area of responsibility could have been avoided if as a Company Commander, you had taken adequate measures to ensure that security instructions were adhered to and suitable instructions were imparted to the tps prior to their move from bn HQ to their COB at Ngarian.
3. I advise you to be more responsible in future towards performance of your duties to prevent recurrence of such avoidable incidents.
4. Kindly acknowledge.

Sd/- x x x
(Deepak Vashishta)
Brig
Cdr

(Maj Lokesh Kandpal)
IC-56940X
Copy to

HQ 57 Mtn Div (A) -for info
C/O 99 APO"

48. It is thus evident from the record that the CO (respondent No. 5) and other senior officers have put the liability with regard to the death of 11 army personnel on the shoulder of the applicant though he does not appear to have any concern with the despatch of ROP on the fateful day at 1800 hrs (supra), which was done in pursuance to the instructions given by the Adjutant with prior permission of CO, Col Hemant Saroch. The grievance of the applicant seems to be justified that he has been made the scapegoat to save the seniors.

49. Mala fide has been alleged by the applicant in his letter dated 10.09.2006 (Annexure A-7) addressed to Col Hemant Saroch (respondent No. 5) while raising a grievance with regard to non-inclusion of his courageous act done during rescue operation (supra). The applicant has also brought on record the fact that the CO himself had not gone for rescue operations and he despite the orders of CO not to leave the camp premises, moved for rescue operation. The relevant assertion of his correspondence (supra) is reproduced below:

“3. You may well want to recall the following:-

(a) I move for the rescue/rft ops despite your orders which were “NO one to lve the camp premises”.

(b) I move with only 4xOR and NOT 10 as given in my reply that was asked to be so written by you for reasons not known to me.

(c) You followed me after an hr (against your own earlier appreciation of not to move), but unfortunately only to return from 1/10th the way through, for reasons best known to you; yet not the least, difficult to guess. Here, you left the RMO (who was part of your team) alone in a

most precarious sit in the face of the militants, who then travelled in his amb (the only veh) with just a NA, BFNA and dvr and managed to reach me; though an hr and a half later.

(d) The effected coy did NOT have a coy cdr for over two month. I was NOT the coy cdr of the coy. It was to protect further damage of the unit in gen and you in particular in the Court of Inquiry that I agreed to be the coy cdr, without any malafide, purely on your insistence. I was shown the coy cdr only later over a draft BRO signed in back date (i.e. of 15 Sep 05) by the Adjt again on your insistence.

(e) I chose to reply the way I did in my reply to the Show Cause Notice, i.e., continuing to contest the case as a coy cdr, though you, not being in consensus, quoting the reply as fighting the system, asked me to simply accept the charges levied, to which I did not oblige.

(f) A BC, with minor splinter injuries that could not be reported to MH due to the battle fd confusion was decided to be treated at civ by you, through my acquaintances, but fortunately serenity prevailed in me to say NO. This ambush survivor was ref to the MH only a week later, finally to find safe hands of a doctor.

(g) As offg 2IC capacity, I am sure I just managed to tone down the obvious impulse of tps and thus an incident in the unit, of which I am sure you are NOT aware.

4. I stood by my CO (though for a wrong cause) always. I observed the issue of the Show Cause Notice and Performance Counseling for my Cos sake, that I should not have got. Your intentions were only exposed upon the receipt of my ICR extracts and the non inclusion of the three imp aspects as given above despite our tele conv on the subject."

50. The contents of applicant's letter as well as the grounds urged in his statutory complaint are of serious nature. It indicates that the

respondent No. 5 i.e. the CO though proceeded to participate in rescue operation from Bn HQ, but returned back without disclosing any reason. On the other hand, the applicant continued the search, seizure and rescue operation whole night, which has not been disputed by the respondents.

The applicant in his statutory complaint has come forward with specific pleading that the CO advised him not to fight with the system. He did not take cognizance of his reply, but forwarded the matter to Bge Commander, who too, without giving any personal hearing to the applicant, issued the performance counselling summarily. The allegations in the statutory complaint are serious more so when the matter relates to military officers who are not supposed to do any cowardice act and shift their omissions and commissions on subordinates. It is unfair; the respondents should have looked into it while deciding the statutory complaint of the applicant.

51. While submitting his statutory complaint and seeking interview with the Chief of Army Staff vide letter dated 21.04.2011, the applicant has given the gist of his complaints for consideration by the statutory authority. The same is reproduced as under:

“3. Gist of the Complaints.

(a) *On 19 Sept 05 ‘A’ Coy COB of 5/8 GR was ambushed in Manipur in which 01 JCO and 10 OR were killed. I rushed for rescue of the entrapped party with only 4xOR, despite the CO’s instructions not to move out of the Bn HQ. In this rescue op I saved lives of 11 OR of which 7xOR were non fatal cas & 4xOR were survivors. I also foiled the attempt of trts of snatching away own wpns etc of the ambushed party.*

(b) Later on, after I left for the rescue op, the CO also followed me to join and rft my team but he returned steadily in the face of en (trts in this case) mid away to Bn HQ without rft the ambush site, leaving the RMO who was also accompanying him, un-info and unescorted. The RMO thus traversed the complete distance upto the ambush site all alone. This utter non tac mov of the RMO was a consequence of CO's cowardice & incompetence & is an example towards his comrades.

(c) There was no coy cdr posted with 'A' Coy since mid Aug 05 & my CO falsely showed me as coy cdr of this coy in the C of I in order to save himself of the great lapse of not posting any coy cdr in the coy. I did not object to my being shown as coy cdr by CO as firstly he was constantly breathing down my neck, in order to save himself & of course due to my sense of brotherhood & comradeship that embraced me towards my men. At this juncture, I did not sense the ulterior motive of CO in falsely showing me the coy cdr of the ambush party as no well meaning per will ever doubt one's sr at the outset of such events. Thus my not objecting to falsely showing me as coy cdr by CO in the C of I should & cannot be attributed to any improper motive of benefit to self, but was only an act out of extreme sense of comradeship on my behalf coupled with the exploitation of my faith on my superior, the CO.

(d) In the event of cas evac following the incident, CO asked me to treat a BC in civ rather than in MH so that the list of cas already submitted remains unaltered. This cas was admitted to MH after a week when I declined to do so.

(e) Post ambush I was issued with a show cause notice by GOC as the coy cdr of ambushed coy. This show cause notice was a consequence of my CO's (falsely) showing me as coy cdr of the coy. In my reply to a show cause notice I indicated lapses as causation of the ambush incident that as a matter of fact were part of CO & fmn HQ responsibility more than that of the coy of which any way I was never the coy cdr. The CO wanted me to simply accept the charge and advised me not to fight the system. But (sic) did not take any cognizance of my reply and request instead passed on the issue to Bde Cdr for dealing it further.

(f) *The Bde Cdr, instead of GOC who issued the show cause notice gave me a performance counseling vide his letter dated 06 Feb 06. He too, without giving me a personal hearing as requested in my reply to show cause notice issued me this performance counseling summarily. It is noteworthy and smacks of the ominous design as brought out by me in the complaint too that the Bde Cdr did not endorse the copy of the performance counseling issued to me to the CO who was my IO and who had to fill page no 7 coln 12 (a) of ICR specifically indicating the issuance of performance counseling to me. The letter of performance counseling issued to me was however endorsed by the Bde Cdr to GOC, but the GOC also did not object to Bde Cdr's action of not endorsing the same to CO, thus maintaining the error thereby further proving the ominous design as stated in the complaint.*

(g) *Thus this is indicative that the action of CO/Bde Cdr/GOC, as mentioned in sub para (c) (e) & (f) above, were not only incidental but were carried out in their full knowledge with an ulterior motive to save themselves of the gross lapses on their part.*

(h) *Notwithstanding with their mischievous efforts to snub me down I continued to resent and not participate in the cover up to thus refused the issuance of performance counseling in letter & spirit & maintained my averments as in reply to show cause notice. Surprisingly no disciplinary action was instituted against me. This too proves my contentions very correct & in place.*

(j) *On receipt of the extract of my ICR for signature, I found that the entry regarding the issuance of performance counseling to me in page 7 para 12 (a) of the ICR has been written as NOT APPLICABLE by the CO. I brought this fact of wrong recording in the ICR to my CO vide my letter dated 14 Aug 06 & requested him to suitably amend the said entry. But the CO did not do so.*

(k) *Thereafter vide my DO letter dated 10 Sep 06 I brought to the notice of the CO the following facts:-*

(i) *Non inclusion of performance counseling in the ICR issued to me.*

(ii) *Non mention of rescue carried out by me in the ICR.*

(iii) My voluntarily going for the rescue op despite the CO's orders of not to lve the campus.

(iv) The fact that the he returned from mid way while coming as rft of the rescue team led by me with only four OR. In doing so he left the unit RMO uninformed who then traversed the distance till the ambush site unescorted.

(v) The ambushed coy had no coy cdr & I agreed to be shown as coy cdr of this coy purely on his (CO's) insistence with no improper motive or benefit to self.

(vi) The official docu of BRO /offrs str return were manipulated to show me as coy cdr (by signing in back date) by the adjt on insistence of the CO again.

(vii) A BC with splinter injuries could not be reported to MH in time due to CO's effort to conceal any further op loss. For this the BC was planned to be treated in civil thus entailing no change in the list of cas already submitted to the higher HQs.

(l) The CO vide his letter dated 27 Sep 06 simply returned my DO letter dated 10 Sep 06 in original & unactioned. This clearly proves the trustfulness & acceptance of the facts by the CO as raised by me and the attempt of ominous design by the CO & superior offrs, as brought out in the complaint.

(m) To set right the WRONG DONE, I had sent a single STATUTOTY complaint to MS & AG Br for being wronged by the CO and superior offrs in the post ambush incident (19 Sep 05) while 5/8 GR was posted in Manipur vide my letter dt 21 Nov 06. It contained issues concerning both the MS & AG Br being interconnected, so that the decision on points raised may be facilitated by taking relevant info from each others br. But the MS Br vide their letter No 36668/GEN/INT/06/MS-19 dated 04 Jan 07 asked me to segregate the complaint in 2 parts; one for matters concerning MS & the other for AG Br. In compliance of this I submitted two separate statutory complaints-one to AG Br & other to MS Br on 06 Feb 07 that was fwd by Inf School MHOW vide their letter Nos 1236/MS dt 08 Feb 07. Redressal sought were:-

- (i) *The entire contents of ICR wrt the pen picture & box grading be set aside.*
- (ii) *Withdrawal of Show Cause Notice & setting aside the Performance Counseling issued to me.*
- (iii) *Due recognition be given to the rescue op carried out by me.”*

52. Instead of recording a finding on the allegations of the applicant as contained in the statutory complaint (supra), the Government of India, Ministry of Defence rejected his complaint vide impugned order dated 07.06.2011 after four years without taking into account the material placed, holding that the assessments of IO, RO and SRO in the impugned ICR are well moderated, corroborated, performance based and technically valid. The relevant portion of the impugned order dated 07.06.2011 is reproduced as under:

“The complaint of the officer has been examined in detail alongwith his overall profile and other relevant documents. It has emerged that the assessments of IO, RO and SRO in the impugned ICR 06/05-03/06 are well moderated, corroborated, performance based and technically valid.

The documentary evidence confirm that the complainant was the company commander of ‘A’ Company during the period of impugned CR when the column of a Coy was ambushed resulting in loss of life of one JCO, 10 OR and resulting in gunshot wounds to six more OR.

The Show Cause Notice issued to the officer post the incident was legally in order as also was the ‘Performance Counseling’. These were corrective measures, initiated by the organization and there is no evidence of any overall design of deliberately harming the officer or making him a scapegoat.

The Central Government, therefore, rejects the Statutory Complaint dated 27 Mar 2007 and 21 Nov 2006/06 Feb 2007, submitted by IC/56940X Maj Lokesh Kandpal, Inf (now Lt Col), against ICR 06/05-03/06 and 'Performance Counseling' respectively."

UNREASONED ORDERS

53. The impugned orders do not seem to be a speaking and reasoned orders. No reason has been assigned by the COI, how the applicant could be held responsible for the death of 11 Army personnel, who fell prey in Ambush by the insurgents on the fateful day when the ROP had left the Bde HQ at 1800 hrs on the instructions of Adjutant with due confirmation of Commanding Officer? The Government of India has also not considered what role the applicant had played in the incident, which had resulted into ambush followed by death of army personnel (supra). The Government of India has further failed to appreciate that the Commanding Officer himself had not gone to the site of ambush initially, though for the whole night the applicant remained engaged in rescue operation followed by search and seizure.

54. It is well settled that unreasoned and cryptic order without discussing the grounds urged is hit by Article 14 of the Constitution of India. A non-speaking, unreasoned or cryptic order passed or judgment delivered without taking into account the relevant facts, evidence available and the law attracted thereto has always been looked at negatively and judicially de-recognized by the courts. Mere use of the words or the language of a provision in an order or judgment without any mention of the relevant facts and the evidence

available thereon has always been treated by the superior courts as an order incapable of withstanding the test of an order passed.

55. It is settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. In **Kumari Shrilekha Vidyarthi vs. State of Uttar Pradesh**, AIR 1991 SC 537 : 1993 AIR SCW 77 : JT 1990 (4) 211, the Apex Court has observed as under:-

“Every such action may be informed by reason and it follows that an act uninformed by reason is arbitrary, the rule of law contemplates governance by law and not by humour, whim or caprice of the men to whom the governance is entrusted for the time being. It is the trite law that “be you ever so high, the laws are above you.” This is what a man in power must remember always.”

56. In **L.I.C. of India vs. Consumer, Education & Research Centre**, (1995) 5 SCC 482 : AIR 1995 SC 1811 : 1995 AIR SCW 2838, the Apex Court observed that the State or its instrumentality must not take any irrelevant or irrational factor into consideration or appear arbitrary in its decision. “Duty to act fairly” is part of fair procedure envisaged under articles 14 and 21. Every activity of the public authority or those under public duty must be received and guided by the public interest. Same view has been reiterated by the Supreme Court in **Mahesh Chandra vs. Regional Manager, U.P. Financial Corporation**, AIR 1993 SC 935 : 1992 AIR SCW 3629 : (1993) 2 SCC 279; and **Union of India vs. M.L. Capoor**, AIR 1974 SC 87 : (1974) 1 SCR 797 : 1974 Lab IC 338.

57. In **State of West Bengal vs. Atul Krishna Shaw**, AIR 1990 SC 2205 : (1990) Supp 1 SCR 91, the Supreme Court observed that *“giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review.”*

58. In **S.N. Mukherjee vs. Union of India**, AIR 1990 SC 1984 : 1990 Cr LJ 2148 : (1990) 4 SCC 594, it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

59. In **Krishna Swami vs. Union of India**, (1992) 4 SCC 605 : AIR 1993 SC 1407 : (1992) 4 SCR 53, the Apex Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne-out from the record. The Court further observed that *“reasons are the links between the material, the foundation for these erection and the actual conclusions. They would also administer how the mind of the maker was activated and actuated and there rational nexus and synthesis with the facts considered and the conclusion reached. Lest*

it may not be arbitrary, unfair and unjust, violate article 14 or unfair procedure offending article 21.”

60. Similar view has been taken by the Supreme Court in **Institute of Chartered Accountants of India vs. L.K. Ratna**, AIR 1987 SC 71 : (1986) 4 SCC 537 : (1987) 61 Com Cas 266; **Board of Trustees of the Port of Bombay vs. Dilipkumar Raghavendranath Nadkarni**, AIR 1983 SC 109 : (1983) 1 SCC 124 : (1983) 1 SCWR 177. Similar view has been taken by the Rajasthan High Court in **Rameshwari Devi vs. State of Rajasthan**, AIR 1999 Raj 47 : 1998 (2) Raj LR 263 : 1999 (1) Raj LW 398. In **Vasant D. Bhawsar vs. Bar Council of India**, (1999) 1 SCC 45, the Apex Court held that an authority must pass a speaking and reasoned order indicating the material on which its conclusions are based. Similar view has been reiterated in **Indian Charge Chrome Ltd. vs. Union of India**, AIR 2003 SC 953 : 2003 AIR SCW 440 : (2003) 2 SCC 533; and **Security, Ministry of Chemicals & Fertilizers, Govt. of India vs. CIPLA Ltd**, AIR 2003 SC 3078 : 2003 AIR SCW 3932 : (2003) 7 SCC 1.

61. Ours is a judicial system inherited from the British Legacy wherein objectivity in judgments and orders over the subjectivity has always been given precedence. It has been judicially recognized perception in our system that the subjectivity preferred by the Judge in place of objectivity in a judgment or order destroys the quality of the judgment or order and an unreasoned order does not subserve the doctrine of fair play as has been declared by the Apex Court in the matter of **Andhra Bank v. Official Liquidator**, 2005 (3) SCJ 762.

For a qualitative decision arrived at judicially by the courts, it is immaterial in how many pages a judgment or order has been written by the Judge as has been declared by the Apex Court in the matter of **Union of India v. Essel Mining & Industries Ltd., (2005) 6 SCC.** The impugned orders, therefore, are liable to be set aside.

62. In view of above, there seems to be no room of doubt that neither the applicant was the Commanding Officer of the party which moved at 1800 hrs on 19.09.2005 for road opening purpose, nor had he instructed the party to go for the task with regard to road clearance. The grounds raised by the applicant in statutory complaint have not been taken into account while rejecting the same, hence it suffers from the vice of arbitrariness. The applicant appears to have been made scapegoat by shifting the burden on his shoulders on unfounded grounds.

63. In **M. Sankaranarayanan, IAS vs. State of Karnataka & Ors., AIR 1993 SC 763**, the Hon'ble Supreme Court observed that the Court may "draw a reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of institution, surmise or conjecture".

64. In **N.K. Singh vs. Union of India & Ors., (1994) 6 SCC 98**, the Hon'ble Supreme Court has held that "the inference of mala fides should be drawn by reading in between the lines and taking into account the attendant circumstances".

65. In the present case, there is enough material on record (supra) which establish malicious intent of Respondent No.5, to persecute the applicant.

66. The State is under obligation to act fairly without ill will or malice-in facts or in law. "*Legal malice*" or "*malice in law*" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. 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. It is an act which is taken with an oblique or indirect object 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, which intent is manifested by its injurious acts. (Vide **Jaichand Lal Sethia vs. The State of West Bengal & Ors.**, AIR 1967 SC 483; **A.D.M. Jabalpur vs Shiv Kant Shukla**, AIR 1976 SC 1207; **State of AP vs. Goverdhanlal Pitti**, AIR 2003 SC 1941.)

67. Learned counsel for the Applicant invited attention to a case reported in (1986) 1SCC 133, **Express Newspaper Papers Pvt Ltd & others vs Union of India & others**. In the said case, Hon'ble Supreme court relied upon Judicial Review of Administration Action, Fourth Edn by Prof. De Smith as well as Administrative law by Prof.

H.W.R Wade and held that in case power is not exercised bonafide for the end design, then it shall be fraud on powers and void the order. Their Lordship held that concept of a bad faith eludes the decision where allegation is uncontroverted. The person against whom such allegations have been made, should come forward with answer refuting or denying such allegations. Relevant portion of the said decision is quoted below for ready reference.

“Where certain allegations against the Minister went uncontroverted, had occasion to administer a word of caution. Where mala fide are alleged, it is necessary that the person against whom such allegations are made should come forward with an answer refuting or denying such allegations. For otherwise such allegations remain unrebutted and the Court would in such a case be constrained to accept the allegations so remaining unrebutted and unanswered on the test of probability. That precisely is the position in the present case, m the absence of any counter- affidavit by any of the respondents.”

68. Hon’ble the Supreme Court while concluding the findings with regard to abuse of power held as under:

“119. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an 63 authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in S. Pratap Singh v. State of Punjab, [1964] 4 S.C.R. 733. A power is exercised maliciously if its repository is motivated by personal Animosity towards those who are directly

affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred in mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in General Assembly of Free Church of Scotland v. Overtown, L.R. [1904] A.C. 515, 'that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred'. It was said that Warrington, C.J., in Short v. Poole Corporation, L.R. [1926] Ch. D.66, that :

"No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative."

In Lazarus Estates Ltd. v. Beasley, [1956] 1 Q.B. 702 at pp.712-13, Lord Denning, LJ. said :

"No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

See also, in L Lazarus case at p.722 per Lord Parker, CJ :

"'Fraud' vitiates all transactions known to the law of however high a degree of solemnity."

All these three English decisions have been cited with approval by this Court in Partap Singh's case."

"120. In Dr. Ram Manohar Lohia v. State of Bihar & Ors., [1966] 1 S.C.R. 708, it was laid down that the Courts had always acted to restrain a misuse of statutory power and more readily when improper motives underlie it. Exercise of power for collateral purpose has similarly been held to be a sufficient reason to strike down the action. In State of Punjab v. Ramjilal & Ors., [1971] 2 S.C.R. 550, it was held that it was not necessary that any named officer was responsible for the act where the validity of action taken by a Government was challenged as mala fide as it may not be known to a private person

as to what matters were considered and placed before the final authority and who had acted on behalf of the Government in passing the order. This does not mean that vague allegations of mala fide are enough to dislodge the burden resting on the person who makes the same although what is required in this connection is not a proof to the hilt as held in Barium Chemicals Ltd. & Anr. v. Company Law Board, [1966] Supp. S.C.R. 311, the abuse of authority must appear to be reasonably probable.”

69. In another case reported in 1992 Supp (1) SCC 222 **State of Bihar & another vs P.P.Sharma & Anr.**, the Apex Court re-asserted that the order with bad faith or malice should not stand on record. Their Lordships held that even in the absence of any prohibition expressed or implied, preliminary enquiry is desirable. Their Lordships further held as under:

“In State of U.P. v. B.K. Joshi, [1964] 3 SCR 71 Mudholkar, J. in a separate, but concurring judgment at page 86 and 87 held that even in the absence of any prohibition in the Code, express or implied, a preliminary enquiry before listing the offence was held to be desirable. In this view, though it was desirable to have preliminary inquiry done, the omission in this regard by the Administrator or to obtain administrative sanction before laying the First Information Report would at best be an irregularity, but not a condition precedent to set in motion the investigation into the offence alleged against the respondents.”

70. Hon’ble Supreme Court in the case of P.P.Sharma (supra) further held that when material is brought to the notice of investigating officer regarding existence of certain documents that throw doubt on complicity of accused, the matter should have been investigated.

71. Another case cited by the learned Counsel for the applicant is **Col A.K.Singh vs Union of India and Others** 2010 SCC Online AFT

795. In this case Hon. Apex Court set aside the entry initiated by the Initiating officer even though Initiating officer and Reviewing Officer were not made party.

72. By not considering the statements of injured witnesses giving due weightage to the statements, the Presiding Officer of the COI as well as the respondents seem to have committed gross error at initial stage and later on at Bde HQ. The Government of India also seems to have acted without application of mind by not recording a finding keeping in view the pleadings contained in the statutory complaint and the alleged fact that the CO himself returned from midway during night of 19/20.09.2005, though the applicant continued search, seizure and rescue operation whole night. There appears to be concealment of material facts while attributing responsibility on the applicant's shoulders by tailor-made adjudication of controversy, followed by impugned finding recorded thereon, which seems to suffer from bias as well as malice in law.

73. It is asserted on behalf of the applicant that the question is not only of promotional avenue, which has been granted to the applicant but question is of applicant's dignity, reputation and character as member of Armed Forces. The applicant does not wish to live with allegation of commission or omission on his part, resulting into death of 11 brave soldiers of Indian Army.

74. Undoubtedly, the reputation co-relates with a credibility of a person. Bad reputation and aspersions are like death sentence to a person who is living a dignified life. Reputation is a sort of right to

enjoy the good opinion of others and it is a personal right and an enquiry to reputation is a personal injury.

75. When reputation is hurt, a man is half-dead. It is an honour which deserves to be equally preserved by the down trodden and the privileged. It is dear to life and on some occasions it is dearer than life. And that is why it has become an inseparable facet of article 21 of the Constitution. No one would like to have his reputation dented. Thus, scandal and defamation are injurious to reputation. Reputation has been defined in dictionary as "*to have a good name, the credit honor, or character which is derived from a favourable public opinion or esteem and character by report*". Personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. Therefore, it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution. International Covenant on Civil and Political Rights, 1966 recognises the right to have opinions and the right of freedom of expression under article 19 is subject to the right of reputation of others. Reputation is "*not only a salt of life*" but the purest treasure and the most precious perfume of life."(Vide: **Kiran Bedi vs. Committee of Inquiry**, (1989) 1 SCC 494 : AIR 1989 SC 714: 1989 Cr LJ 903; **Board of Trustees of the port of Bombay vs. Dilipkumar Raghavendra nath Nadkarni**, AIR 1983 SC 109: (1983)1 SCC 124: (1983) 1 SCWR 177; **Nilgiris Bar Association vs. TK Mahlingam**, AIR 1998 SC 398: 1997 AIR SCW 4386: 1998 Cr LJ 675; **Mehmood Nayyar Azam vs. State of**

Chhattisgarh, AIR 2012 SC 2573: 2012 AIR SCW 4122: 2012 Cr LJ 3934, **Vishwanath Sitaram Agrawal vs. Sau Sarla Vishwanath Agrawal**, AIR 2012 SC 2586 2012 AIR SCW 4300: (2012) 7 SCC 288, **Kishore Samrite vs. State of Uttar Pradesh**, (2013) 2 SCC 398: 2012 AIR SCW 5802 and **Om Prakash Chautala V. Kanwar Bhan**, AIR 2014 SC 1220: 2014 AIR SCW 972: (2014) 5 SCC 417).

FINDINGS

76. In view of what has been discussed above, our findings in the case are as under:

- (1) The statement of witnesses establish that the ROP in contravention of HQ instructions moved to clear the road at 1800 hrs in pursuance to permission granted by Adjutant with the concurrence of Commanding Officer.
- (2) Para 41 of the Defence Service Regulations for the Army, 1987 it is the duty of the Adjutant to assist the CO in the training, administration and maintenance of discipline in the unit. Hence for the instructions issued by the Adjutant to ROP to go ahead for road clearance at 1800 hrs on the fateful day with the concurrence of Commanding Officer, the applicant cannot be held responsible for casualty in ambush.
- (3) No opportunity to cross-examine the prosecution witnesses or to lead evidence in defence was given to the applicant during COI, which is in violation of Army Rule 180 and invalidates the COI.

- (4) The impugned orders dated 07.06.2011 and 10.06.2011 rejecting the statutory complaint of the applicant are unreasoned and cryptic orders; they alongwith the order dated 06.02.2005 for performance counselling are liable to be set aside.
- (5) The courageous act done by the applicant during rescue operation in the night of 19/20.09.2005 wherein he saved the lives of remaining Army personnel deserves well consideration by the respondents to be mentioned in ACR/pen-picture.
- (6) The adjutant and the CO (witness No. 1) seems to have inadvertently missed the Army instructions which prohibited movement of ROP after 17 hrs. There appears to be negligence on the part of Adjutant and CO who later tried to conceal the facts, by shifting their burden of mishap on the applicant.
- (7) Under DSR, the CO is personally accountable to every eventuality with the unit, under his command, but no action was taken against him.
- (8) Instructions given by Adjutant with prior confirmation of CO was to move on foot, but it appears that Sub Om Prasad Gurug flouted the instructions and boarded the vehicles alongwith his fellow soldiers, under compelling circumstances.
- (9) During counter attack, the rifle of witness No. 7 Rfn Min Bahadur Ale was jammed and thereafter he was hit by bullet

of insurgents. This jamming of rifle indicates the bad quality of weapon and the Army must look into it and ensure to provide rifles of improved quality to soldiers so that they may not suffer casualty.

77. This is a case where the applicant appears to have been penalised for no fault of his own, hence the petition deserves to be allowed with exemplary costs. The Hon'ble Supreme Court, in the case of ***Ramrameshwari Devi and others vs. Nirmala Devi and others***, (2011) 8 SCC 249, has given emphasis to compensate the litigants, who have been forced to enter into unnecessary litigation. This view has been fortified by Hon'ble Supreme Court in the case of ***A. Shanmugam vs. 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: ***Indian Council for Enviro-Legal Action vs. Union of India***, (2011) 8 SCC 161; ***Ram Krishna Verma vs. State of U.P.***, (1992) 2 SCC 620; ***Kavita Trehan vs. Balsara Hygiene Products Ltd.*** (1994) 5 SCC 380; ***Marshall Sons & CO. (I) Ltd. vs. Sahi Oretrans (P) Ltd.***, (1999) 2 SCC 325; ***Padmawati vs. Harijan Sewak Sangh***, (2008) 154 DLT 411; ***South Eastern Coalfields Ltd. vs. State of M.P.***, (2003) 8 SCC 648; ***Safar Khan vs. Board of Revenue***, 1984 (supp) SCC 505; ***Ramrameshwari Devi and others*** (supra).

ORDER

78. In view of above, the OA is **allowed**. The Court of Inquiry and the findings recorded thereon are set aside with consequential benefits. The impugned orders dated 07.06.2011 and 10.06.2011 rejecting the statutory complaint of the applicant as well as the order dated 06.02.2005 for performance counselling are also hereby set aside with all consequential benefits. However, it shall be appropriate for the respondents, keeping in view the gravity of incident to order for a fresh COI to be convened in accordance to rules to fix accountability with follow-up action.

The respondents are further directed to consider afresh the applicant's claim with regard to ICR/pen-picture for the period from period 23.07.2005 to 18.03.2006 and record in accordance to rules therein the courageous act done by the applicant during rescue operation in the fateful night of 19/20.09.2005 whereby he had saved the lives of army persons of the ROP. We make it open to the respondents to look into the whole episode afresh keeping in view the material on record as placed in this petition as well as collecting the material otherwise keeping in view the observations made in the present order and take appropriate corrective measures to tone up the unit and higher level administration of the Army.

Cost is quantified to Rs.1,00,000/-, which shall be deposited by the respondents within four months in the Registry of the Tribunal and the same shall be released to the applicant through cheque as soon as the same is received from the respondents.

Let this order be complied with by the respondents within four months from today.

(Air Marshal Anil Chopra)
Member (A)

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

Dated :Oct 6, 2017

LN/-

Form No. 4

{See rule 11(1)}
ORDER SHEET**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Court No. 1 (List A)****O.A. No. 169 of 2011**

Lokesh Kandpal

Applicant**By Legal Practitioner for the Applicant**

Versus

Union of India & Others

Respondents**By Legal Practitioner for Respondents**

Notes of the Registry	Orders of the Tribunal
	<p><u>06.10.2017</u> <u>Hon'ble Mr. Justice D.P. Singh, Member (J)</u> <u>Hon'ble Air Marshal Anil Chopra, Member (A)</u></p> <p>Judgment pronounced. O.A. is allowed.</p> <p>For orders, see our judgment and order of date passed on separate sheets.</p> <p>Copy of the order be supplied to learned counsel for the parties on payment of usual charges within two days.</p> <p>(Air Marshal Anil Chopra) Member (A)</p> <p>(Justice D.P. Singh) Member (J)</p> <p>LN/-</p>