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ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO. 1
(List -A)

T.A. No. 65 of 2016

Wednesday, this 22nd day of March, 2017

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

Sanjay Singh , No.2997677 P
S/o Shri Shiv Karan Singh,
R/o Gram Bhagwatpur Channiha,
Purey Amman Singh, Post Hamirmau,
District Raebareli - Petitioner

Versus

1. Union of India through Secretary,
   Ministry of Defence,
   Ministry of Defence,
   New Delhi.

2. The Commanding Officer,
   Training Battalion, The Rajput Regimental Centre,
   Fatehgarh (U.P.).

3. The Chief of the Army Staff,
   Army Headquarter,
   New Delhi.

- Respondents

Learned counsel appeared for the petitioner - **Shri Lakshman Singh** , Advocate, **Shri Vishwa Jeet Singh**, Advocate

Learned counsel appeared for the respondents - **Shri Amit Jaiswal**, Advocate, assisted by Maj Soma John, OIC Legal Cell

ORDER

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

1. Feeling aggrieved with the impugned order of dismissal, petitioner preferred a writ petition, bearing No. 20366 of 2000 in the High Court of Judicature at Allahabad, which has been transferred to Tribunal in pursuance to power conferred by Section 34 of the Armed Forces Tribunal Act, now registered as T.A. No. 65 of 2016.

2. We have heard Shri Vishwa Jeet Singh, appearing for the petitioner and Shri Amit Jaiswal, learned counsel for the respondents, assisted by Maj Soma John, OIC Legal Cell and perused the record.

3. The petitioner was recruited at Rajput Regimental Centre, Fatehgarh (U.P.) on 08.07.1998. As part of the recruitment proceedings, he was to fill the recruitment form. In Para-8 he was required to fill a column as to whether incumbent has been ever imprisoned by the civil power or was under trial for any offence or has any complaint or report been made against him to the Magistrate or Police for any offence. The Petitioner gave his reply in negative. For convenience Para-8 is reproduced as under :-

> *"Have you ever been imprisoned by the Civil Power or are you under trial for any offence or has any complaint of report been made against you to the Magistrate or Police for any citizen? If so, give details.*
>
> *- No".*

4. A letter dated 03.11.1998 was sent by respondent no. 2 to District Magistrate, Raebareli, requesting him to verify the character antecedents of the petitioner i.e. Sanjay Singh S/o Shiv Karan Singh, copy of which has been filed as Annexure-2 to the petition.

5. In pursuance thereof the District Magistrate sent a report with regard to petitioner's alleged involvement in case crime No. 10 of 1997, under Sections 323/504/506 I.P.C. The copy of verification report has been filed as Annexure No.3 to the petition.

6. In pursuance to aforesaid report on 12.03.1999 summary of evidence was recorded by respondent no.2 and filed charge sheet dated 21.06.1999 under Section 44 of the Army Act. A trial was conducted by respondent no.2 on 26.06.1999 by summary court martial proceeding under the Army Act. During the course of trial, according to petitioner's counsel he was forced to confess the guilt and after recording so, by the impugned order dated 26.06.1999 petitioner was dismissed from service. Copy of the impugned order dated 26.06.1999 has been field as Annexure No.6 to the petition.

7. Against the impugned order of dismissal dated 26.06.1999, petitioner preferred a statutory appeal on 15.07.1999, which was dismissed by the impugned order dated 27.03.2000, communicated to the petitioner along with covering letter dated 27.03.2000, copy of which has been filed as Annexure No.13 to the petition. While assailing the impugned order, it has been submitted by the learned counsel for the petitioner that the F.I.R. dated 06.02.1997, pursuant to which the District Magistrate had submitted a report, at the face of record is incorrect for the reason that in the F.I.R. the name of the accused is mentioned as Sanjay Singh S/o Ram Karan Singh. The copy of the F.I.R. dated 06.02.1997 has been filed as Annexure No.7 to the present T.A.

8. A perusal of the F.I.R. dated 06.02.1997 (supra) shows that the name of the accused mentioned therein is Sanjay Singh son of Ram Karan Singh

though his father's name is Shiv Karan Singh. Attention has been invited by petitioner's counsel to the judgment and order dated 30.03.1999, passed by Civil Judge (Junior Division), Dalmau, District Raebareli in Crl. Case No.135 of 1999, according to which all the accused named in the aforesaid crime have been acquitted after due trial. The averments contained in Para-28 of the petition with regard to judgment and order dated 30.03.1999, acquitting the accused have not been disputed, with the remark that it needs no comment, being matter of record. In the absence of denial on the part of respondents with regard to acquittal in criminal case in Para-25 of the counter affidavit, the averments contained in the petition deserve to be treated as correct. While proceeding with the arguments, it is submitted by the petitioner's counsel that when the fact relating to F.I.R. came to his knowledge, he appeared before the Magistrate and set up a defence that he is not Sanjay Singh son of Ram Karan Singh and in consequence thereof he was enlarged on bail. It is also submitted that the petitioner appeared in the High School examination in the same year, where his name has been indicated as Sanjay Singh son of Shiv Karan Singh (Para-16 of rejoinder affidavit). The submission of the petitioner is that since at the time when his enrolment form was filled up, he was neither arrested nor faced the prosecution, there was no occasion for him to disclose that he is involved in some criminal case, that too under the teeth of facts and circumstances stated to the effect that his father's name is Shiv Karan Singh. It is vehemently argued by the petitioner's counsel that while summary of evidence/ court of inquiry was recorded, the provisions contained in Rule 180 of the Army Rules were not followed and though he pleaded guilty under compulsion and duress and even it is held to be correct, it is not enough to dismiss the petitioner for the reason that whole

case framed against the petitioner stands demolished since he is neither named in the F.I.R. nor faced the trial, that too when the case resulted in acquittal of all accused. It is also submitted that the provisions contained in Army Rule 115 have not been complied since while framing the charge, the allegations were not explained to him.

9. Copy of summary of evidence dated 12.03.1999 has been filed as Annexure No.4. A perusal of statement of witnesses shows that it has been recorded by the Presiding Officer with remark that the accused declined to cross-examine the witnesses. It also contains endorsement that the accused has also declined to lead his own witnesses.

10. A perusal of SCM proceeding, a copy of which has been filed as Annexure No.6 to the petition, shows that during arraignment petitioner has been held to have pleaded guilty. The procedure with regard to plea of “Guilty” has been provided under Rules 115 and 116. For convenience same are reproduced as under:-

> *“115. **General plea of "Guilty" or "Not guilty**".— (1) The accused person's plea — "Guilty" or "Not guilty" (or if he refuses to plead, or does not plead intelligibly either one or the other, a plea of "Not guilty")-shall be recorded on each charge.*
>
> *(2) If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court; but before it is recorded, the court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence (if any) or otherwise that the accused ought to plead not guilty.*
>
> *(3) where an accused person pleads guilty to the first of two or more charges laid in the alternative, the court may, after sub-rule (2) of this rule has been complied with and before the accused is arraigned on the alternative charge or charges,*

withdraw such alternative charge or charges without requiring the accused to plead thereto, and a record to that effect shall be made upon the proceedings of the court.

*116, **Procedure after plea of "Guilty**".— (1) Upon the record of the plea of "Guilty", if there are other charges in the same charge-sheet to which the plea is "Not guilty", the trial shall first proceed with respect to the latter charges, and, after the finding of those charges, shall proceed with the charges on which a plea of "Guilty" has been entered ; but if there are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding upon any one of the alternative charges to which he has pleaded "Guilty" and a finding of "Not guilty" upon all the other alternative charges.*

(2) After the record of the plea of "Guilty" on a charge (if the trial does not proceed on any other charges), the court shall read the summary of evidence, and annex it to the proceedings or if there is no such summary, shall take and record sufficient evidence to enable it to determine the sentence, and the reviewing officer to know all the circumstances connected with the offence. The evidence shall be taken in like manner as is directed by these rules in case of a plea of "Not guilty".

11. A plain reading of the provisions under Army Rules 115 and 116 shows that the plea of guilty shall be recorded as finding of fact of court; but before it is recorded, the court shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence, if any or otherwise that the accused ought to plead not guilty. A perusal of the arraignment indicates that though the plea of guilty has been recorded but the provisions contained in Sub-Rule (2A) of Rule 115 has not been complied

with in letter and spirit. For convenience relevant portion of the arraignment is reproduced as under :-

> *"[(2-A)Where an accused pleads "Guilty", such plea and the factum of compliance of sub-rule (2) of this rule, shall be recorded by the court in the following manner : -*
>
> *Before recording the plea of "Guilty" of the accused, the court explained to the accused the meaning of the charge(s) to which he had pleaded "Guilty" and ascertained that the accused had understood the nature of the charge(s) to which he had pleaded "Guilty". The court also informed the accused the general effect of the plea and the difference in procedure, which will be followed consequent to the said plea. The court having satisfied itself that the accused understands the charge(s) and the effect of his plea of "Guilty", accepts and records the same. The provisions of rule 115(2) are thus complied with".*

12. A plain reading of the aforesaid reproduced portion of arraignment shows that the Presiding Officer had virtually and literally got typed the relevant portion from the book, contained in Army Rule 115, indicating that the Court explained to the accused the memo of charge(s), to which he had pleaded guilty. Thus, at the face of record the provisions contained in Sub-Rule (2A) of Army Rule 115 has not been complied with. Virtually the entire provisions of Army Sub- Rule (2A) has been typed literally containing same words as given in Army Rule 115 of Army Rules, 1954. It appears that the respondents have dealt with the statutory provisions mechanically without posing the question and communicating the information to the charged accused/petitioner in terms of Army Rule 115.

13. Apart above, Army Rule 156 deals with the arraignment of charges. For convenience Section 156 is reproduced as under :-

> *"**156. Arraignment**. — When the court is sworn or affirmed, the judge-advocate (if any) or the presiding officer shall state to the accused then to be tried, the offence with which he is charged with, if necessary, an explanation giving him full information of the act or omission with which he is*

charged and shall ask the accused whether he is guilty or not guilty of the offence."

14. A perusal of the arraignment of charges reproduced hereinabove (supra) shows that the Presiding Officer in conducting the SCM proceeding has utterly failed to comply with Army Rule 156.

15. The Army Rule 156 provides that the Judge- Advocate or the Presiding Officer shall summon the accused for trial of offence with which he is charged with and if necessary an explanation will be given to him with full information of the act and omission with which he is charged and thereafter he shall ask the accused whether he is guilty or not guilty.

16. The arraignment of charges (supra) shows that the condition precedent before posing the question with regard to confession of guilt has not been complied with by explaining the charges in its letter and spirit, informing the offence for which he or she is tried with due explanation of the act or omission for which the petitioner was charged.

17. In view of non compliance of Army Rule 115 read with Army Rule 156, the trial stands vitiated along with the consequential punishment awarded to the petitioner. Apart from aforesaid substantial irregularity, argument advanced by the petitioner's counsel carries weight that neither in the F.I.R. nor in the judgment of the trial court with regard to case crime no. 10 of 1997, under Sections 323/504/506 I.P.C. petitioner's name with correct parentage description has been given. The appeal has been dismissed by the Chief of Army Staff merely on the ground that the petitioner had confessed the guilt. No finding has been recorded with regard to issue raised by the petitioner that he was never arrested or sentenced for jail nor he is involved in the offence. Petitioner's father had

while submitting his representation dated 05.04.1999 categorically informed the Rajput Regimental Centre that his son's name does not find place in the F.I.R. nor he committed any offence and the Regional Superintendant of Police/ Circle Officer has separated the name of his son Sanjay Singh from the other accused. Copy of representation dated 05.04.1999 submitted by petitioner's grandfather has been annexed as Annexure No.11 to the petition.

18. No attention has been invited to any material or pleading on record, which may indicate or establish that Sanjay Singh son of Ram Karan and Sanjay Singh son of Shiv Karan Singh is the same person. The respondents have failed to prove that the petitioner intended to give incorrect information while filling the recruitment form. Foundation of involvement in criminal case of a person 'Sanjay Singh son of Ram Karan' from the evidence and pleading on record has not been established that said person is petitioner himself. In such circumstances when the foundation is weak, the whole building collapses. Unless the basic facts are established as incorrect, the consequential decision cannot be held to be bad, vide (1985) 2 SCC 468 **H.V. Pardasani and others vs. Union of India and others,** AIR 2010 SC 3676 **Amarjeet Singh vs. Devi Ratan.** In view of above, the impugned order seems to be an instance of arbitrary exercise of power, that too without application of mind with the correctness of charges on record and without following the procedure prescribed by law (supra), hence is not sustainable at the test of Article 14 of the Constitution of India, therefore, stands vitiated.

19. The learned counsel for the petitioner has referred a recent judgment of the Hon'ble Supreme Court, reported in (2016) 8 Supreme Court Cases

471 ***Avtar Singh vs. Union of India and others***. Their Lordships of the Hon'ble Supreme Court in identical case observed that in case on verification the antecedents are not found good, based on trivial matter, and in case fact was truthfully declared, such person may be appointed. The relevant portion from the case of Avtar Singh (supra), decided by 3 Member Bench of Hon'ble Supreme Court is reproduced as under :-

> "*27. When we take stock of the aforesaid decisions of this Court in a nutshell it emerges that :*
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> *27.1. In **State of M.P. vs. Ramashanker Raghuvanshi**, reported in (1983) 2 SCC 145, this Court has opined that activities in Jan Sangh and RSS could not be made a ground to deprive employment. In a democratic set-up "McCarthysism" is not healthy. Some leniency to young people cannot be ruled out.*
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> *27.2. In **T.S. Vasudevan Nairvs. Vikram Sarabhai Space Centre**, reported in (1999) Supp SCC 795, a three Judges' coordinate Bernch of this Court held that due to non-disclosure of conviction in a case of violation of the defence of India Rules by shouting slogans, the cancellation of appointment was illegal.*
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> *27.3. In **Commissioner of Police vs. Dhaval Singh**, reported in (1999) 1 SCC 246 though pendency of case was suppressed when verification form was filed, however, the information about it was furnished before cancellation of appointment order on the ground of suppression was passed. This Court set aside the order on the ground of non-consideration of effect of disclosure made before order of cancellation of appointment was passed.*
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> *27.4. In **Commissioner of Police vs. Sandeep Kumar**, reported in (2011) 4 SCC 644 this Court in the back drop fact of the case that offence suppressed was committed under Sections 325/34 IPC at the time when incumbent was 20 years of age, held that young people are to be dealt with leniency. They should not be deprived of appointment as suppression did not relate to involvement in a serious case.*
>
> *27.5. In **Ram Kumar vs. State of U.P.**, reported in (2011) 14 SCC 709, this Court considered a case when*

pending criminal case under Sections 324, 323 and 504 IPC in which subsequently acquittal had been recorded, no overt act was attributed by sole witness to incumbent and moreover government instructions dated 28.4.1958 requiring authority to consider suitability as such was not complied with, denying back wages to incumbent, his appointment was ordered.

27.6. In ***Bank of Baroda vs. Central Govt. Industrial Tribunal*** *reported in (1999) 2 SCC 247, this Court declined to interfere under Article 136 in view of subsequent acquittal in a case under Section 307 IPC. The decision of the Labour Court was not interfered with. Passage of time was taken into consideration. However, this Court clarified that decision will not be treated as precedent.*

27.7. In ***Kamal Nayan Mishra vs. State of M.P.****, reported in (2010) 2 SCC 169, action was taken when the employee was not on probation. He had been confirmed in service and was holding civil post, attestation was filled after 14 years of service and then after 7 years of that, action was taken. It was held that confirmed employee could not have been removed in view of protection under Article 311 (2) without enquiry. Removal was held to be void.*

27.8. In ***Union of India vs. M. Bhaskaran****, reported in 1995 Supp (4) SCC 100, it was held that when the employment was taken on bogus and forced casual labourer service card no estoppels was created against employer by appointment and such appointment was voidable.*

27.9. In ***Delhi Admn. Vs. Sushil Kumar****, reported in (1996) 11 SCC 605, on consideration of background facts of the pending case which was suppressed under Sections 304, 324/34 and 324 IPC, it was held not desirable to appoint incumbent not withstanding his subsequent acquittal.*

28. This Court has also opined that before a person is held guilty of suppression of a fact it was to be considered whether verification form is precise and is not vague, and what it required to disclose. In ***Daya Shankar Yadav vs. Union of India,*** *reported in (2010) 14 SCC 103, it was held that in case verification form is vague no fault can be found on the ground of suppression. However, facts which have come to knowledge it has to be determined by employer whether antecedents of*

incumbent are good for service, to hold someone guilty of suppression, query in the form has to be specific. Similarly, in ***Deptt. Of Home, A.P. vs. B. Chinnam Naidu****, reported in (2005) 2 SCC 746, when column in verification form required to disclose detention or conviction, it did not require to disclose a pending criminal case or fact of arrest, removal on the ground of material suppression of pending case and arrest was set aside as that was not required to be disclosed.*

29. The verification of antecedents is necessary to find out fitness of incumbent, in the process if a declarant is found to be of good moral character on due verification of antecedents, merely by suppression of involvement in trivial offence which was not pending on date of filling attestation form, whether he may be deprived of employment? There may be case of involving moral turpitude/serious offence in which employee has been acquitted but due to technical reasons or giving benefit of doubt. There may be situation when person has been convicted of an offence before filling verification form or case is pending and information regarding it has been suppressed, whether employer should wait till outcome of pending criminal case to take a decision or in case when action has been initiated there is already conclusion of criminal case resulting in conviction/acquittal as the case may be. The situation may arise for consideration of various aspects in a case where disclosure has been made truthfully of required information, then also authority is required to consider and verify fitness for appointment. Similarly in case of suppression also, if in the process of verification of information, certain information comes to notice then also employer is required to take a decision considering various aspects before holding incumbent as unfit. If on verification of antecedents a person is found fit at the same time authority has to consider effect of suppression of a fact that he was tried for trivial offence which does not render him unfit, what importance to be attached to such non-disclosure. Can there be single yardstick to deal with all kinds of cases?

30. The employer is given "discretion" to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer comes to the conclusion that

suppression is immaterial and even if facts would have been disclosed it would not have adversely affected fitness of an incumbent, for reasons to be recorded, it has power to condone the lapses. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However, same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed, to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully, the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence, etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or of dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment, incumbent may be appointed or continued in service".

20. The Hon'ble Supreme Court in Avtar Singh (supra) reaffirmed that fraud and misrepresentation vitiates a transaction and where appointment has been procured fraudulently, incumbent may be terminated without notice and subject to protection under Article 311 (2). The finding has been recorded by the Hon'ble Supreme Court in Paras-37 and 38 of Avtar Singh case (supra), for convenience same are reproduced as under :-

"*37. The "McCarthyism" is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformative theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.*

38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted.

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has

the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of supprresio very or suggestion false, knowledge of the fact must be attributable to him".

21. Keeping in view that the allegations are pertaining to record against the petitioner in terms of fraud and material on record, it does not transpire that the knowledge of the fact with regard to involvement in the criminal case may be attributed to the petitioner. He seems to have acted bonafide and not suppressed any material fact, that too under the teeth of material on record that neither in the F.I.R. nor in the charge sheet he has been

named with correct parentage. Moreover, procedure prescribed for SCM proceeding has not been followed.

22. The petition deserves to be allowed. Accordingly, the petition is **allowed**. The impugned order of dismissal dated 26.6.1999, contained in Annexure No. 6 and order dated 23.03.2000, rejecting the statutory appeal of the petitioner, contained in Annexure No.13 are set aside with all consequential benefits, which will be payable to the petitioner in accordance with the rules. Petitioner shall be treated in service from the date of dismissal and shall be deemed to be in continuous service for all practical purposes. Let consequential benefits be paid to the petitioner expeditiously, say, within a period of four months from the date of service/communication of the order.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice Devi Prasad Singh)
Member (J)

JPT