"A.F.R"

RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT No. 1 (List A)

T.A. No. 947 of 2010

Friday, this the 31st day of March, 2017

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

Maj Vinod Kumar, S/o Devi Chand, R/o 40 Coy, A.S.C. (Supply), Type -D, Meerut Cantt , Uttar Pradesh. ..………... **Petitioner**

Versus

1. Union of India, Through: Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, Army Headquarters, New Delhi.
3. G.O.C., MP, B & O Area, Jabalpur, M.P.
4. Commanding Officer, 323, Air Defence Regiment, C/o 56 APO. ………… **Respondents**

Ld. Counsel appeared for the Petitioner - Col (Retd) Y.R. Sharma, Advocate

Ld. Counsel appeared for the Respondents - Dr. Chet Narayan Singh, Advocate
Addl. Central Govt. Standing Counsel

Assisted by OIC Legal Cell - Maj Soma John

Order

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

1. Present T.A. has been received by transfer from High Court of Judicature at Jabalpur in pursuance of section 34 of the Armed Forces Tribunal Act, where it was instituted as Writ Petition (Service) No. 5952 of 2005, assailing the order of punishment by which the petitioner was visited with severe reprimand and forfeiture of three years of service for promotion.

2. The facts of the case, bereft of unnecessary details, are that the petitioner was commissioned in ASC of Indian Army on 09.03.1990 and after serving in different Units, he was posted to 299 Coy ASC (Supply), Type –A, Gwalior with effect from 15.01.1995. The petitioner, in the course of service, qualified Officers Transport Management Course in Sept 1995 and then qualified Advanced Patrol Technology Management course in 1996. In both the courses, he obtained 'A' grading. After completing courses aforesaid, he resumed duties in the Unit on 10.07.1996. For want of officers for duties, the petitioner was assigned to perform duties as Butchery officer besides other allied duties. It is stated that Maj H.S.Multani was the officer

Commanding of the said supply Depot. In the morning of 12/13.07.1996, Maj Narendra Singh, the Veterinary Officer from Military Farm Agra paid a surprise visit to the Butchery for inspection of meat (without any prior intimation to anyone). Since aforesaid Veterinary officer had come for inspection without any intimation, wordy duel took place between the Veterinary Officer and Maj Multani as a result of which Veterinary Officer felt offended and during the course of inspection, he rejected 25 carcasses declaring them unfit for supply on the ground that the carcasses were injected with water. Pursuant to rejection of carcasses by Maj Narendra Singh, Major Multani gave orders against supply of meat to the Unit. Strangely enough, the Veterinary Officer did not spray Adrenal on the rejected carcasses. Both the feuding officers namely, Veterinary Officer and Maj Multani went to Station HQ Gwalior and reported the matter to Adm Commandant. However, no action followed in the matter as ostensibly, the matter was amicably settled between the two. It is stated that thereafter, no action was embarked upon by the Veterinary Officer for one week and after one week i.e. on 20.07.1996, Veterinary Officer sent a complaint addressed to HQ Central Command (DDRVS), a copy of which has been annexed as Annexure A-1 to the T.A. A

perusal of the complaint dated 20.07.1996 shows that Veterinary Officer had referred to inspection done by him during which he had found 25 carcasses filled with water which were injected before his arrival and hence the same were rejected by him as unfit for human consumption. He then referred to his interaction with Maj Multani and placed on record his resentment about how Maj Multani had behaved with him. The relevant portion of the complaint dated 20.07.1996 being relevant is reproduced below.

> *"4. The VO went to Bchy at 0.30 hrs on 13 Jul 96 for Meat Insp for the issue of the day. Capt Vinod, CO Bchy was present I the Bchy. With him meat insp was carried out by VO and found 25 carcasses filled with water which were injected earlier. The same were rejected by VO as found unfit for human consumption.*
>
> *5. Soon after CC Sup Dep ASC Gwalior Maj H.S.Multani came to the Bchy who was informed about the rejection of the entire meat due to above reason. CC unit told the VO, in front of all the reps of the units who had come for the collection of meat, not to enter the Bchy without his permission, though OIC ASC Sup Dep Gwalior (CO Bchy) was present there throughout the period when VO inspected the meat. Later Maj H.S.Multani, CO Sup Dep in front of all the reps of units rudely told the VO not to enter Bchy without his prior permission in future, which was not only insulting but was also obstruction in carrying out the assigned bonafide duties.*

> *6. VO came back from Bchy and informed about the above incidence to Adm Comdt 8th Btn HQ Gwalior on telephone. Also informed ASC Sup Dep Gwalior and Btn HQ Gwalior through log message (copy attached for ready ref)."*

3. On a plain reading of the complaint (supra), it would transpire that serious allegations were levelled by the Veterinary Officer against Maj H.S.Multani impliedly involving the petitioner since he was looking after the Butchery. At the face of complaint of Maj Narendra Singh, Veterinary Officer (supra), Station HQ Gwalior ordered a court of inquiry into the allegations in the complaint in order to ascertain the veracity of the allegations vide convening order dated 17.08.1996. It appears that convening order was passed in pursuance of recommendations of the General Officer Commanding. The aforesaid convening order dated 17.08.1996 is annexed as P-2. The same being relevant is quoted below.

> "(Copy of this HQ convening order No 517/5/Q dt 17 Aug 96)
>
> AS ABOVE
>
> 1. A staff court of inquiry composed as under will assembled at a place, date and time to be decided by the Presiding Officer to

investigate into the complaint made by Maj Narender Singh VO MF Agra Cantt vide MF Area Cantt let letter No RV-28 dt 29 Jul 96 (copy sent):-

(a) Presiding Offr - One Lt Col ex 124 SATA Bty
(b) Members 1. - One offr ex 63 Fd Regt
2. - One offr ex 18 Armd Bde

2. C of I proceedings in quadruplicate, duly completed in all respect will be fwd to this HQ by 25 Aug 96. All adm arrangement for the C of I will be made by Sup Depot ASC Gwalior.

Sd- ID Tyagi
Col
Adm Comdt
for offg Stn Comd

517/5/Q
Station HQrs, Morar Cantt, Gwalior
17 Aug 96
Distribution:
124 SATA Bty, 63 Fd Regt, 13 Armd Bde,
Sup Depot ASD Gwalior
Office copy"

The convening order was forwarded by Lt Col R.Chandra to Station Headquarter Murar Cantt Gwalior on 03.09.1996. In pursuance of convening order dated 17.08.1996, Court of Inquiry was assembled on 23.08.1996, which recorded statement of six witnesses by 24.08.1996.

4. We have heard learned counsel for the Petitioner as also learned counsel for the respondents assisted by

OIC Legal Cell. We have also gone through the materials on record.

5. Learned counsel for the petitioner vehemently argued that it was a court of inquiry, first of its kind in which the petitioner inspite of involving his reputation and character, was not permitted to participate and cross examine the witnesses and also to defend himself and thus, it militated against the provisions contained in Army Rule 180 as settled by Supreme Court in its decision **Col Prithi Pal Singh Bedi Vs Union of India reported in (1982) 3 SCC p. 140** followed by other judgments. It is submitted that by order dated 26.08.1996, Unit Signal Command issued a signal No 1143 dated 26.08.1996 to include Technical representative in the Court of Inquiry which according to petitioner's counsel was not permissible and as a follow up action, Lt Col Anil Kumar detailed to join another court of inquiry vide signal dated 30.08.1996. A court of inquiry was reconstituted on 16.09.1996 and completed on 14.10.1996. Technical officer/Member signed the court of inquiry which according to the counsel for the petitioner is in contravention of para 59 of the R.A. From 15.01.1996 upto 25.01.1997, the court of inquiry was pending for further action in M.B. Area and ultimately General Officer Commanding gave

direction on 25.01.1997 to proceed against the petitioner and others, a copy of which has been annexed as Annexure P-3. The relevant portion of the order of General Officer Commanding as contained in para 3 being relevant is quoted below.

> *"3. I direct that disciplinary action be taken against the following for omissions indicated against each:-*
>
> ***(a) IC-36690A Major M S Multani OC Sup Depot Gwalior***
>
> *(i) Lack of over all supervision of butchery which had to injection of water into the meat and subsequent issue of rejected meat to some units which could have created an epidemic due to foot poisoning in their units.*
>
> *(ii) Doctoring of documents, upholding, influencing and tutoring of witnesses and misleading the court. Production of false receipt of rejected carcases due to lack of proper checks.*
>
> *(iii) Irregular issue of fowls in the name of meat.*
>
> *(iv) Failure to initiate action against the offenders responsible for injection of water in the meat, when pointed out by the Veterinary Officer.*

(v) Restricting the entry of the VO into the Butchery in the presence of unit representatives.

(b) IC- Capt Vinod Kumar of Supply Depot Gwalior

Cannot be read: not readable please hence left out.

(ii) Not ensuring the destruction of rejected carcases which led to the issue of rejected meat to 40 Wing Air Force and 63 Field Regiment.

(iii) Giving false statement to the Court.

(iv) That advising the Station Board of Officers on local purchase matters correctly as a technical Member.

(c) IC-71319W Sub Maj BDS Sengar

(i) Not ensuring destruction of rejected carcasses on 13 Jul 96 which led to the issue of rejected meat to 40 Wing Air Force and 63 Fd Regiment.

(ii) Not following proper documentation and butchery procedures.

(iii) Obeying unlawful command

(iv) Issue of fowls in lieu of meat.

(d) No 6649239P Hav/Skt AK Shaah

(i) Improper supervision of slaughtering which led to injection of water into the meat.

(ii) Irresponsible handling of rejected carcasses which led to their issue to some units.

(iii) Not following proper documentation and butchery procedures.

(e) ***IC- 646499N-Nb Sub T Hussain*** *– For giving false statement to the court.*

(f) ***No 6360866K Hav/Skt Ramil Lal*** *– For giving false statement to the court.*

(g) ***No 6389640 Nk Narendar Singh*** *-For giving false statement to the court.*

4. I, also direct that No V-426F Maj Narender Singh VO MF Agra be cautioned for not following the drill of sprinkling blue adanl on the rejected meat as required to be done in accordance with para 7 (a) Central Command letter No 234700/S/Q1 dt 11 May 93.

Sd/xx x x x x

Major General

Station *General Officer Commanding*

Dated 25 Jan 97

6. In pursuance thereof, the petitioner was asked to give name of defending officer on 15.10.1999. The charge sheet dated 27.10.1999 was served on the petitioner, which according to the petitioner is not signed by Convening Authority. It is submitted that the trial began on 25.01.2000 after expiry of statutory period of limitation. According to learned counsel for the petitioner, the plea in bar was filed on 17.01.2000 during proceeding of General Court Martial a copy of which has been filed as Annexure P-6, whereby the petitioner requested the Court to examine DAAG M.P.Sub Area Bhopal to prove the case of limitation in

terms of Army Rule 53, but according to learned counsel for the petitioner, it was not allowed by General Court Martial. It is submitted that without deciding the question with regard to bar of limitation contained in Section 122 of the Army Act, General Court Martial examined accomplice as witness in contravention of para 4 of the Memorandum and held him guilty of the main charges which were drawn against the petitioner by proceeding on 25.02.2000 and punished the petitioner. On 05.07.2000, the Commander who is confirming authority ordered that the sentence should be revised under section 164 of the Army Act read with Army Rule 68 attended with the direction to award stricter and more stringent punishment (See Annexure P-11). The General Court Martial assembled on 14.07.2000 and revised and enhanced the sentence by forfeiting three years of service, forfeiture of promotion and severe reprimand. It is submitted that the punishment awarded by General Court Martial is at the command of higher authority who writes ACR. It is also submitted that it was done in contravention of judgment of the Apex Court in **Prithi Pal Singh Bedi vs Union of India** (supra). The petitioner then preferred the statutory complaints, both pre-confirmation and post-confirmation which were rejected vide orders dated

08.03.20001 and 14.09.2004 respectively. The petitioner was then constrained to prefer the writ petition on 24.04.2005 which was received by Tribunal in pursuance of power conferred under section 34 of the Armed Forces Tribunal Act 2007.

7. Though, good deal of submissions have been advanced across the bar by learned counsel for the petitioner while assailing the impugned trial and consequent punishment through General Court Martial but the main brunt of submission advanced across the bar is one relating to limitation. The limitation is a very significant issue which goes to the root of the matter. In case, the court, Tribunal, or authority proceeds beyond the statutory period of limitation, it shall be an instance of lack of jurisdiction and shall vitiate the trial and hence we proceed to decide the issue of limitation as a preliminary issue before we may be called to enter into the merit of the case with regard to other grounds urged across the bar.

8. Section 122 of the Army Act deals with period of limitation. It provides that no trial by court martial may commence for any offence after expiry of period of three years from the date of offence besides other conditions

provided therein. For ready reference, section 122 being relevant is quoted below.

> ***122. __Period of limitation for trial__***.— *(1) Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years [and such period shall commence.-*
>
> *(a) on the date of the offence; or*
>
> *(b) where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to knowledge of such person or authority, whichever is earlier; or*
>
> *(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.]1*
>
> *(2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in sec-37.*
>
> *(3) In the computation of the period of time mentioned in sub-section (1), time spent by such person as a prisoner of war, or in enemy territory, or in adding arrest after the commission of the offence, shall be excluded.*
>
> *(4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army.*
>
> > *__NOTES__*
> > *1. Sub-sec (1) and (2). —(a) The effect of this section is that on the expiration of three years from the commission of the offence — the period of three years to be computed in accordance with sub-sec (3) — the offender is free from being tried or punished under AA by a Court-martial for any offence except those mentioned in AA.s.37. desertion or fraudulent enrolment. It follows that where an accused person is charged with desertion commencing on a date more than three years before his trial begins, he cannot be*

found guilty under AA.s.139(1) of absence without leave from that date, but such absence must, be restricted to a period not exceeding three years immediately prior to the commencement of the trial. Where, however, such a finding and sentence has been wrongly confirmed, the authorities specified in AA.s.163 may substitute a valid finding and pass a sentence for the offence specified or involved in such finding.

(b) A plea in bar of trial may be raised on this ground: AR 53(1)(c).

2. The section, does not prohibit deductions being ordered from his pay and allowances under AA.s.90(a),(c), (g) and (h) or 91(a), (f) and (g) even though the period of limitation for trial has expired. Though the section specifically stipulates the period of limitation for trial by court-martial,the same principle would equally apply to summary disposal of offences under AA.s.80, 83, 84 or 85.

3. (a) Offences mentioned in AA.s.37 and desertion on active service can be tried at any time by a Court-Martial. For desertion not on active service and fraudulent enrolment, a person, not being an officer, cannot be tried if he has since served continuously in an exemplary manner for not less than three years with any portion of the regular Army. See sub-sec (4).

(b) A person is considered as having served in an exemplary manner if at any time during his service subsequent to the commission of the offence he has had no red ink entry in his conduct sheet for a continuous period of three years (Regs Army para 465). For 'red ink entries' see Regs Army paras 386 and 387(b).

4. (a) An 'offence' includes a 'civil offence' as defined in AA.s.3(ii); see AA.s.3(xvii).Where, therefore, a person subject to AA has committed a civil offence and his trial by court-martial is barred under this section, he may be handed over to the civil authorities to be dealt with according to law as a civil offence is triable by a criminal court at any time.

5. For forfeiture of service in the case of desertion and fraudulent enrolment, see Regs Pension Reg 123.

6. Sub-sec (3): The period of three years referred to in sub-sec (1) is extended by any time spent by the offender as a prisoner of war, or in enemy

territory or in evading arrest after the commission of the offence; for instance, if a person absconds immediately after misappropriating Govt or regimental funds and later surrenders or is apprehended after the expiry of three years, he can still be tried by a court-martial, the period during which he had absconded being ignored.

7. 'Enemy territory' means any area, at the time of the presence therein of the person in question, under the sovereignty of or administered by or in the occupation of a state at that time at war with the Union.

8. Sub-sec (4). —'On active service', see AA.ss.3(i) and 9.

9. See note 3(b) above. This exemption does not apply to an officer.

10. 'Regular Army' see AA.s.3(xxi).

9. Learned counsel for the petitioner has vehemently put weight on clause (a) of sub section (1) which provides that from the date of offence, the trial may commence only within a period of three years and not thereafter. He also placed credence on a number of cases which we propose to discuss hereinafter.

10. On the other hand, learned counsel for the respondents assisted by OIC Legal Cell submits that the proceedings commenced within a period of three years. In this connection, he precisely submitted that the tentative charge sheet was issued on 15.11.1999 by Brigadier Sanjai Madan, the Commander, to proceed against the petitioner. Thus, it is submitted that the date of knowledge is 15.11.1999. In any case, the date

of knowledge may not travel earlier to 15.01.1997, the date when Major General, the officer commanding directed to take disciplinary action against the petitioner and in any case, the period of limitation is calculated from 25.01.1997 and that the date of knowledge relates back to 25.01.1997 and thus, the trial shall be deemed to begin within a period of three years. The sum and substance of the argument advanced by learned counsel for the respondents is that the trial of the accused/petitioner began on 15.11.1999 and it should be the actual date form which limitation should be reckoned with. However, in so far as communication of involvement of accused through second court of inquiry is concerned, the argument seems to be misconceived for the reason that section 122 of the Army Act speaks for knowledge of the date of offence and not of the date of involvement of an accused. The legislatures in their wisdom have used the expression "expiry of period of three years and such period shall commence on the date of offence". Hence, it is the date of offence which is crucial and not the date of involvement of accused in the offence. No cautious omissus shall be supplied to the provisions contained in section 122 of the Army Act to uphold the argument of the respondents since the provisions contained therein are unambiguous and clear.

11. Thus we are of the firm opinion that it is the date of knowledge of offence to the competent authority which is the material date to assess the limitation and not the date of knowledge of involvement of an accused in an offence. In its wisdom, the Legislature has provided the reckoning of limitation from the date of offence and not from the date of knowledge of involvement of an accused. In so far as the date of knowledge of offence is concerned, there appears to be no room for doubt that allegations in the complaint dated 20.07.1996, signed by Maj Narendra Singh against the petitioner, at the face of the record, indicts the petitioner which prima facie constitutes offence/misconduct. This is further fortified by convening order dated 17.08.1996 and the assembly of court of inquiry on 23.08.1996 and the order dated 25.01.1997 passed by the Commanding officer. Thus, at the face of record, the Commanding officer was well aware with regard of offence in question after receipt of complaint dated 20.08.1996. Thus, limitation begins from the date of complaint.

12. In connection with the above, reliance has been placed by respondents on a case in **Union of India & Ors vs V.N.Singh** decided by the Apex Court on 08.04.2010 reported in 2010 (4) SCR 454, which in our

opinion, does not seem to be applicable in the facts and circumstances of the present case. The relevant portion which the learned counsel for the respondents relies upon being relevant is quoted below.

> *"Therefore, the date of commencement of the period of limitation for the purpose of GCM of the respondent, commenced on Dec 3,1994 when direction was given by GOC in-C Western Command to initiate disciplinary action against the respondent. The plea that the date of submission of the report by Technical Court of Inquiry should be treated as the date from which period of limitation shall commence has no substance. It is relevant to notice that no definite conclusion about the correct details and the persons responsible for the irregularities were mentioned in the report of Technical Court of Inquiry."*

13. The learned counsel for the respondents seems to have focused his attention on the above quoted observation of the Apex Court in the aforesaid decision without delving into the totality of the judgment inasmuch as in the latter part of the judgment, their Lordships have held that it was held because no definite conclusion about correct details and the persons responsible for the irregularities were mentioned in the technical court of inquiry. Coming to the facts of the

present case, it leaves no manner of doubt that right from the very beginning, in the complaint dated 20.08.1996, alleged involvement of petitioner and Maj H.S.Multani is apparent on the face of the record which fact is further supplemented by the convening order. Hence, there is no reason to hold otherwise.

14. It is trite law that courts should not place reliance upon a decision without discussing as to how the factual situation fits in with a fact situation of the decision on which reliance is placed and it is to be ascertained by analyzing of material facts and issues involved in the case and argued on both sides.

The judgment has to be read with reference to and in context with particular statutory provisions interpreted by the court as the court has to examine as to what principle of law has been decided and the decision cannot be relied upon in support of the proposition that it has not decided. A judgment or order passed in a particular facts and circumstances cannot be applied to other case in case it deals with different facts and circumstances vide **H.H Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur & others. Vs. Union of India, AIR 1971 SC 530; M/s. Amar nath Om Prakash & others. Vs. State of Punjab & others AIR 1985 SC 218; Rajpur Ruda Meha & others Vs.**

State of Gurajat, AIR 1980 SC 1707; C.I.T. Vs. Sun Engineering Works (P) Ltd.,(1992) 4 SCC 363; Sarv Shramik sangh, Bombay Vs. Indian Hume Pipe Co. Ltd. & Anr., (1993) 2 SCC 386; Haryana Financial Corporation & Anr. Vs. M/s. Jagdamba Oil Mills & Anr., AIR 2002 SC.

15. Now, we proceed to consider some of the judgment relied upon by learned counsel for the petitioner by which their Lordships of Supreme Court have interpreted section 467, and 468 (4) of the Criminal Procedure Code which is almost pari material to the provisions contained in section 122 of the Army Act. For ready reference, sections 467, 468 and 469 of the Cr.P.C being relevant are quoted below.

> ***"467. Definitions:-****For the purposes of this chapter unless the context otherwise requires, "period of limitation" means the period specified in Section 468 for taking cognizance of an offence.*
>
> ***468. Bar to taking cognizance after lapse of the period of limitation:-****(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.*
>
> *(2) The period of limitation shall be :-*
>
> *(a) six months, if the offence is punishable with fine only;*
>
> *(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not

exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

469. Commencement of the period of limitation:- *(1) The period of limitation, in relation to an offender, shall commence* **-**

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to

any police officer, the first day on which offence comes to the knowledge of such person or to any police

officer, whichever is earlier; or

(c) where it is not known by whom the offence committed, the first day on which the identity of the

offender is known to the person aggrieved by the offence or to the police officer making investigation

into the offence, whichever is earlier

(2) In computing the said period, the day from which such period is to be computed shall be excluded."

16. A plain reading of provisions contained in section 468 Cr.P.C shows that limitation of three years commences from the date of offence and not from the date of knowledge of involvement of accused. How Supreme Court deals with section 468 is discussed hereinafter. In **SURINDER MOHAN VIKAL VS ASCHARAJ LAL CHOPRA, AIR 1978 S.C. 984**

decided on the 28th of February 1978 appears to be the first decision from the Supreme Court for the first time dealt with the question of limitation in a criminal case relating to an offence under the Penal Code. The principal question was the commencement of limitation of the defamation case there. The High Court held that "cause of action for defamation arose only after acquittal on 01.04.1975. The Supreme Court spoke thus :-

> *"We are constrained to say that the question of "cause of action" could not really arise in this case as the controversy relates to commission of an offence……………………………………………… It would therefore follow that the date of offence was March, 1972 when the defamatory complaint was filed in the Court of the Magistrate, …………"*

The complaint was quashed by the Supreme Court as barred by limitation. Brief reference to Section 470 and 473 of the Code was also made and it was held that Section 470 is not at all applicable and that "the respondent has not sought the benefit of S. 473 which permits extension of the period of limitation in certain cases*.*

17. In the case of **Mrs Sarah Mathew vs The Institute of Cardio vascular Diseases by its**

Director – Dr K.M.Cherian & Ors decided on 26.11.2013, it was held that the limitation with regard to trial shall commence from the date of offence. It is further held by the Apex Court that penal provisions should be construed strictly. The relevant observations as contained in paras 39,40 and 41 are quoted below.

> *"39. It is true that the penal statutes must be strictly construed. There are, however, cases where this Court has having regard to the nature of the crimes involved, refused to adopt any narrow and pedantic, literal and lexical construction of penal statutes. [See Muralidhar Meghraj Loya & Anr. v. State of Maharashtra & Ors.[43] and Kisan Trimbak Kothula & Ors. v. State of Maharashtra[44]]. In this case, looking to the legislative intent, we have harmoniously construed the provisions of Chapter XXXVI so as to strike a balance between the right of the complainant and the right of the accused. Besides, we must bear in mind that Chapter XXXVI is part of the Cr.P.C., which is a procedural law and it is well settled that procedural laws must be liberally construed to serve as handmaid of justice and not as its mistress. [See Sardar Amarjeet Singh Kalra, N. Balaji v. Virendra Singh & Ors.[45] and Kailash].*
>
> *40. Having considered the questions which arise in this reference in light of legislative intent, authoritative pronouncements of this Court and established legal principles, we are of the opinion that Krishna Pillai will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 of the Cr.P.C., primarily because in that case, this Court was dealing with Section 9 of the Child Marriage*

Restraint Act, 1929 which is a special Act. It specifically stated that no court shall take cognizance of any offence under the said Act after the expiry of one year from the date on which offence is alleged to have been committed. There is no reference either to Section 468 or Section 473 of the Cr.P.C. in that judgment. It does not refer to Sections 4 and 5 of the Cr.P.C. which carve out exceptions for Special Acts. This Court has not adverted to diverse aspects including the aspect that inaction on the part of the court in taking cognizance within limitation, though the complaint is filed within time may work great injustice on the complainant. Moreover, reliance placed on Antulay '1984' Case, in our opinion, was not apt. In Antulay '1984' Case, this Court was dealing inter alia with the contention that a private complaint is not maintainable in the court of Special Judge set-up under Section 6 of the Criminal Law Amendment Act, 1952 ('the 1952 Act'). It was urged that the object underlying the 1952 Act was to provide for a more speedy trial of offences of corruption by a public servant. It was argued that if it is assumed that a private complaint is maintainable then before taking cognizance, a Special Judge will have to examine the complainant and all the witnesses as per Section 200 of the Cr.P.C. He will have to postpone issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer and in cases under the Prevention of Corruption Act, 1947 by police officers of designated rank for the purpose of deciding whether or not there is sufficient ground for proceeding. It was submitted that this would thwart the object of the 1952 Act which is to provide for a speedy trial. This contention was rejected by this Court holding that it is not a condition precedent to the issue of process that the court of necessity must hold the inquiry as envisaged by Section 202 of the Cr.P.C. or direct investigation as

> *therein contemplated. That is matter of discretion of the court. Thus, the questions which arise in this reference were not involved in Antulay '1984' Case: Since there, this Court was not dealing with the question of bar of limitation reflected in Section 468 of the Cr.P.C. at all, in our opinion, the said judgment could not have been usefully referred to in Krishna Pillai while construing provisions of Chapter XXXVI of the Cr.P.C. For all these, we are unable to endorse the view taken in Krishna Pillai.*
>
> *41. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 of the Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale which is followed in Japani Sahoo lays down the correct law. Krishna Pillai will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 of the Cr.P.C.*

18. In the above conspectus, we are of the firm view that limitation is to be counted from the date of complaint which in the present case is 20.07.1996 or at the most from 17.08.1996 on which date the court of inquiry was ordered by the competent authority Senior Adm Comdt I.D.Tyagi which was forwarded to appropriate authority at Station Headquarters.

19. There is another limb of argument advanced by learned counsel for the petitioner which requires to be considered. The plea in bar was raised by the petitioner

during General Court Martial Proceeding in pursuance of power conferred by Rule 53 of the Army Rule. Rule 53 of the Army Rules being relevant is quoted below.

> ***53. Plea in bar****.— (1) The accused, at the time of his general plea of "Guilty" or "Not Guilty" to a charge for an offence, may offer a plea in bar of trial on the ground that—*
>
> *(a) he has been previously convicted or acquitted of the offence by a competent criminal court or by a court-martial, or has been dealt with summarily under section 80, 83, 84 and 85 as the case may be, for the offence, or that a charge in respect of the offence has been dismissed as provided in sub-rule (2) of rule 22; or*
>
> *(b) the offence has been pardoned or condoned by competent military authority; or*
>
> *(c) the period of limitation for trial as laid down in section 122 has expired.]1*
>
> *(2) If he offers such plea in bar, the court shall record it as well as his general plea, and if it considers that any fact or facts stated by him are sufficient to support the plea in bar, it shall receive any evidence offered, and hear any address made by or on behalf of the accused and the prosecutor in reference to the plea.*
>
> *(3) If the court finds that the plea in bar is proved, it shall record its finding, and notify it to the confirming authority, and shall either adjourn, or if there is any other charge against the accused, whether in the same or in a different charge-sheet, which is not affected by the plea in bar, may proceed to the trial of the accused on that charge.*
>
> *(4) If the finding that the plea in bar is proved is not confirmed, the court may be re-assembled by the confirming authority, and proceed as if the plea had been found not proved.*
>
> *(5) If the court finds that the plea in bar is not proved, it shall proceed with the trial, and the said findings shall be subject to confirmation like any other finding of the court.*

20. Keeping in view the aforesaid statutory right, the petitioner tried to produce a witness to establish that

limitation expired and General Court Martial cannot proceed in view of bar created by section 122 of the Army Act. Sub Rule (2) of Army Rule 53 postulates that in case such plea is raised, the court will record it with its finding as to whether plea in bar raised by the accused is sufficient to support the plea in bar, then it shall receive any evidence offered, and hear any address made by or on behalf of the accused and the prosecutor in reference to the plea. Serious miscarriage of justice has been occasioned by denial of petitioner's right to proceed in terms of sub rule (2) of Rule 53 of the Army Rules. The General Court Martial should have permitted to produce the witnesses and thereafter, should have recorded a finding with regard to plea in bar and in any case, it is proved, the trial may be dropped and in case not proved or confirmed, the General Court Martial may re-assemble by confirming Authority and proceed if the plea has been found not proved with due trial in accordance with law. The General Court Martial committed manifest error of law by rejecting the application containing prayer to produce the witness to establish the expiry of period of limitation which vitiates the trial.

21. It admits of no doubt that whenever plea in bar is raised in pursuance of section 122 read with Rule 53 of

the Army Rules, then it shall always be incumbent on the Court Martial to decide such issue first before proceeding with the trial. The reason is the statutory power to proceed with the trial goes to the root of the matter and trial beyond the period of limitation is an instance where a trial begins and decision taken without jurisdiction. The order passed without jurisdiction suffers from nullity in law. At the risk of repetition, we reiterate that the plea in bar on account of limitation must be decided first in terms of Army Rule 53 in every court martial proceedings and JAG Branch should issue appropriate circular or order to apprise the authorities of the Indian Army rather Armed Forces to keep in mind these proposition of law during the course of trial.

22. To lend further cogency to the opinion expressed herein above, we would like to add that the purpose of limitation provided in an Act or Statute or section 5 of the Limitation Act is with intention to apply doctrine of finality to every controversy and the Court, Authority or Tribunal have been conferred power to condone the delay and then it may be done only on showing sufficient cause (vide **Sita Ram Ram Charan and others vs N.M.Nagarshana and others, AIR 1960 SC 260).**

In the case of **Collector, Land Acquisition, Anantnag and others vs Mst Katiji and others 1987 (2) SCC 107**, the Apex court held that the court should adopt liberal and justice oriented approach for the purposes of condonation of delay.

In **Ex. Capt. Harish Uppal Vs Union of India and others, 1994 (Supp.) 2 SCC 195**, wherein the controversy was relating to entertainment of a petition filed under Article 226 of the Constitution of India, the Apex Court held that the parties should pursue right promptly and not sit over their rights. The party could not be permitted to sleep over their rights and choose to avail the remedy after inordinate delay.

In **P.K.Ramachandran vs State of Kerala and another, 1997 (7) SCC 556**, the Apex Court cautioned the High Court not to condone the delay in a mechanical manner while deciding the issue relating to application filed under section 5 of the Limitation Act.

In **M.K.Prasad Vs P. Arumugam 2001 (6) SCC 176,** the Apex Court held that while construing the provisions of Section 5 of the Limitation Act we should keep in mind that after expiration of the period of limitation prescribed for filing an appeal, a right is created in favour of decree holder to treat the decree as

binding and that is why discretion to condone the delay has been given to the Courts.

In **Nasiruddin and others vs Sitaram Agarwal, 12003 (2) SCC 577,** the Apex Court held that it is settled law that Court can iron out the fabric but it cannot change the texture of fabric. It cannot enlarge the scope of the legislation or the intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It is well settled that the real intention of the legislature must be gathered from the language used.

23. Though the proposition of law contained in the above quoted judgments has no nexus with the present controversy. Herein, the question of condonation of delay is not involved but the aforesaid judgment do enlighten us that the statutory right of limitation where proceeding is barred by time by legislative enactment should not be taken into account. The Apex Court observed that judiciary is respected not on the ground of its power to regularise injustice on technical ground but because it is capable of remedying injustice and it is expected to do so. The statutory right of limitation created in favour of a person cannot be condoned

impliedly or on application to proceed with trial unless such power is conferred by the statute itself or any other legislative enactment covering the field.

24. While considering the right of Court, Authorities dealing with judicial, quasi-judicial, administrative matters to condone the delay in absence of any statutory power in a case reported in **Prakash H. Jain Vs Marie Fernades (MS), 2003 (8) SCC 431,** Hon'ble Supreme Court held that mere fact that authority deemed to be a court only for limited and specific purpose cannot make it a court for all and other purposes to attract the provisions contained in Limitation Act conferring right to condone the delay. The relevant portion of the judgement aforesaid is quoted below.

> "*We have carefully considered the submission of the learned counsel appearing on either side. Questions of the nature raised before us have to be considered not only on the nature and character of the authority, whether it is court or not but also on the nature of powers conferred on such authority or court, the scheme underlying the provision of the Act concerned and the nature of powers, the extent thereof or the limitations, if any, contained therein with particular reference to the intention of the legislature as well, found*

> *expressed therein. There is no such thing as nay inherent power of court to condone delay in filing proceedings before a court/authority concerned, unless the law warrants and permits it since it has a tendency to alter the rights accrued to one or the other party under the statute concerned--------"*

Again Hon'ble Supreme Court had proceeded to held as under:-

> *"the provisions of Chapter VIII stand apart, distinctly and divorced from the rest of the act, except to the extent indicated therein itself land for that matter has been given an overriding effect over any other provisions in the very act or any other law for the time being in force, though for enforcement of other remedies o even similar remedies under the provisions other than Chapter VIII, altogether different procedure has been provided for. It is unnecessary to once again refer to the special procedure provided for in Chapter VIII, but the various provisions under Chapter VIII unmistakably indicate that the competent authority constituted there-under is not* ***"court"*** *and the mere fact that such authority is deemed to be court only for limited and specific purposes, cannot make it a court for all or any other purpose and at any rate for the purpose of either making the provisions of the Limitation Act, 1963 attracted to proceedings before such competent authority or clothe such authority*

with any power to be exercised under the Limitation Act. It is by now well settled by innumerable judgments of various courts including this court, that when a statute enacts that anything shall be deemed to be some other thing the only meaning possible is that whereas the said thing is not in reality that something, the legislative enactment requires it to be treated as if it is so. Similarly, though full effect must be given to the legal fiction, it should not be extended beyond the purpose for which the fiction has been created and all the more, when the deeming clause itself confines, as in the present case, the creating of fiction for only a limited purpose as indicated therein. Consequently, under the very scheme of provisions enacted in Chapter VIII of the Act and the avowed legislative purpose obviously made known patently by those very provisions, the competent authority can by no means be said to be "court" for any and every purpose and that too for availing of or exercising powers under the Limitation Act, 1963."

In one other earlier case, **Sakuru Vs Tanaji reported in AIR 1985 SC 1279,** their Lordships of Supreme Court reiterated the proposition of law that provisions contained in Limitation Act shall apply to a proceeding of court and not before any other authority or bodies.

> *"………….. It is well settled by the decisions of this court in Town Municipal council, Athani V. Presiding officer, Labour Court, Hubli (1970) 1 SCR 51: (AIR 1969 SC 1335).Nityanand M. Joshi V. Life Insurance corpn. Of Indian (1970) 1 SCR 396: (AIR 1970 SC 209) and Sushila devi V. Ramanandan Prasad (1976) 2 SCR 845: (AIR 1976 SC 177) that the provisions of the Limitation Act, 1963 apply only to proceedings in **"**courts**"** and not to appeals or applications before bodies other than Courts such as Quasi-judicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the codes of Civil or Criminal Procedure. The collector before whom the appeal was preferred by the appellant herein under S. 90 of the Act not being a Court, the Limitation act, as such, had no applicability to the proceedings before him. But even in such a situation the relevant special statute may contain an express provision conferring on the appellate authority, such as the Collector, the power to extend the prescribed period of limitation on sufficient cause being shown by laying down that the provisions of S.5 of the Limitation Act Shall be applicable to such proceedings…………"*

25. In the above conspectus, we veer round to the view that in the present case, General Court Martial proceeding began and concluded after expiry of

statutory period of limitation and since Court Martial proceeding is barred by limitation, the trial is vitiated and in consequence thereof, the punishment awarded to the petitioner is also vitiated.

26. As a result of foregoing discussion, the T.A deserves to be allowed and is allowed accordingly considering that since the trial began after expiry of statutory period of limitation rendering the trial as well as punishment awarded being without jurisdiction, void and illegal. The impugned orders 26.02.2000 as contained in P-10 and 14.09.2004 as contained in P-14 as well as the charges i.e. 3rd, 4th and 5th and findings of guilty on those charges as arrived at by the General Court Martial with all consequential benefits. In so far as salary for the period is concerned, it is directed that it shall be confined to 50% of the total salary that the petitioner is entitled to in accordance with law. Let consequential benefits be provided to the petitioner within four months from the date of production of certified copy of this order.

27. The Government of India shall consider the case for sanction in the light of the judgment of this Tribunal within two months from the date of communication of the order, then the Record Office shall process the

matter within one month and thereafter, the PCDA (P) Allahabad shall issue appropriate orders/PPO within one month thereafter providing all consequential benefits within four months in all in letter and spirit of the decision of this Tribunal.

28. There shall be no orders as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

Date: March, , 2017.

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