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RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

COURT NO. 1

(List -A)

TRANSFERRED APPLICATION No. 1364 of 2010

Thursday, this the 6th day of April, 2017

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

Hon'ble Air Marshal Anil Chopra, Member (A)

Sub Maj Mohan Singh S/o Sri Govind Singh Chauhan,
R/o Village – Chair Nalia, Patti – Khatsyan,
District Pauri Garhwal (Uttaranchal) - Petitioner

Versus

1. Union of India, through Defence Secretary,
New Delhi.
2. Commandant,
Garhwal Rifles Regiment Centre,
Lansdowne, District Pauri Garhwal.
3. Senior Record Officer,
Garhwal Rifles Abhilekh Karyalaya Records,
Garhwal Rifles, Lansdowne.
4. Adm Btn Officer, Adm Btn,
Garhwal Rifles Regiment Centre,
Lansdowne, District Pauri Garhwal.
5. Maj Deopa, through Garhwal Rifles
Regiment Centre, Lansdowne,
District Pauri Garhwal.
6. Col A.K. Bosh, through Garhwal Rifles
Regiment Centre Lansdowne,
District Pauri Garhwal.
7. Lt Col P.K. Gurang, through Garhwal Rifles
Regiment Centre Lansdowne,
District Pauri Garhwal.

- Respondents

Learned counsel appeared for the petitioner -**Col (Retd) A.K. Srivastava, Advocate**

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

ORDER

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

1. Being aggrieved with the impugned order of punishment dated 28.02.2002 of severe reprimand and denial of the rank of Sub Major and also salary of the said rank w.e.f. 01.08.2000 to 31.08.2002, petitioner preferred a writ petition, bearing No. 1301 of 2004 (SS) in the High Court of Uttaranchal, now Uttarakhand, Nainital, which has been transferred to present Tribunal in pursuance to power conferred by Section 34 of the Armed Forces Tribunal Act, 2007, now registered as T.A. No. 1364 of 2010.

2. We have heard learned counsel for the petitioner Col (Retd) A.K. Srivastava and learned counsel for the respondents Shri Asheesh Agnihotri, assisted by Maj Soma John, OIC Legal Cell and perused the record.

3. In brief the petitioner was enrolled in the Indian Army and joined in 7th Bn Garhwal Rifles on 26.06.1976. In 1982 he successfully completed WWA – 24 Course along with SLALOM and GAIN T SLALOM Races and was awarded Special Battalion Order and admiration on 21.05.1982. He was also awarded a letter of appreciation, issued by Garhwal Rifles on 08.06.1982, followed

by an appraisal letter of the Chief of the Army Staff dated 15.08.1984. The Commanding Officer 7th Bn Garhwal Rifles also appreciated petitioner's work and conduct, vide his letter dated 10.11.1984. Petitioner attained 3rd position in National Ski Championship on 22.05.1986. It is not disputed that the petitioner was also conferred the rank of Naib Subedar on 01.10.1989 and Subedar on 17.03.1993. From 10th October, 1990 to 10th October, 1993, petitioner performed the duty as Instructor at the National Security Guards Training Centre. The function was organized by the Battalion to confer the rank of Sub Major on 01.08.2000. A letter was issued for implementation of substantive cadre on 19.06.2000. Congratulation letter was also sent by Brigadier M.C. Bhandari, AVSM for promotion on 02.07.2000 and thereafter from 01st August, 2000, the petitioner was promoted to the rank of Subedar Major. He was posted to Garhwal Regimental Centre on 26.06.2000. Petitioner completed the Potential Subedar Major Course in Junior Leaders Academy and was promoted to the rank of Subedar Major, vide order dated 19.07.2000. The approved date was 01.08.2000. Copy of approval letter is marked as Annexure No.10.

4. In pursuance of Summary Court Martial proceedings, hereinafter referred to as 'SCM', by the impugned order dated 28.02.2002 the petitioner was awarded the punishment of severe reprimand and later on he was discharged. The character certificate dated 31.08.2002 annexed to the petition as Annexure No. 21 indicates that the petitioner possessed exemplary conduct

while serving the Indian Army. While assailing the impugned order of punishment, it is submitted by the learned counsel for the petitioner that a Court of Inquiry was convened on 14.08.2000 ex-parte, without inviting petitioner to participate in it, though the subject matter involved petitioner's character and reputation, in violation of Rule 180 of the Army Rules, 1954. Summary of evidence commenced on 28.08.2000 and concluded on 02.09.2000. The submission is that since from the material on record no misconduct was borne out, additional Summary of Evidence was recorded between 23.05.2001 to 03.07.2001 by Officer Commanding with recommendation to convene General Court Martial, hereinafter referred to as 'GCM' for short, vide its opinion dated 31.10.2000 but no GCM was held.

5. It is submitted by the learned counsel for the petitioner that the petitioner was treated in the Hospital at Lansdowne 04.01.2002 onwards and in medical case sheet dated 07.01.2002, the rank of petitioner was shown as Subedar Major. After promotion to the rank of Subedar Major petitioner was sent to Kaudia Camp at Kotdwara, District Pauri Garhwal. At Kaudia Camp due to heavy storm more than 100 trees were rooted out. The authorities directed the petitioner to cut those trees through departmental contractor Shri Jagmohan Singh Rawat. Petitioner was charged for cutting of 2 trees of Haldoo, 2 trees of Papari and 3 trees of Eucalyptus, which were cut by him while complying the order, that too under the directions of his superiors, which was recorded in the daily diary maintained by the petitioner. The cutting of the trees

was done for repairs of some houses/huts, which were damaged during storm with due permission of Forest Department on the application of the Captain of the Kaudia Camp. The pleading in this regard, contained in Para-17 of the petition has been denied vide Para-11 of the counter affidavit on the ground that the Court of Inquiry was ordered vide Garhwal Rifles Regimental Centre's order dated 14.08.2000, in which it was admitted by the petitioner that no order for cutting of standing trees, which were not affected by the storm, was given to the petitioner by his superiors. The reliance has been placed on the finding recorded by the Court of Inquiry as foundation to award severe reprimand. Further a defence has been set up in Para-12 of the counter affidavit that the petitioner himself applied for voluntary discharge from service in the rank of Subedar Major on account of his domestic problems, vide his application dated 28.02.2002 (Annexure-5), which was accepted by Officer Commanding on 16.04.2002 and accordingly petitioner was discharged w.e.f. 31.08.2002 as Subedar. It has also been submitted that he was not tried by General Court Martial and with petitioner's consent certificate dated 24.02.2002, the General Officer Command decided his disciplinary case summarily in pursuance of power conferred by Section 83 of the Army Act. It has also been submitted by the learned counsel for the respondents that since the petitioner was promoted to the rank of Paid acting Subedar Major on 01.08.2000 and in terms of Army Instruction 84/68 (Annexure-8) he had not completed 28 days' continuous service as Paid acting Subedar Major, in accordance with Army

Instruction (supra) and on account of break in the period of 28 days, petitioner shall be deemed to have been voluntarily retired with the rank of Subedar. It has further been submitted that the petitioner within 28 days' unbroken service period involved himself in disciplinary case on 28.08.2000, when he marched up to his Commanding Officer (Administrative Battalion Commander), for hearing of charge on tentative charge sheet dated 28.08.2000 (**Annexure-9**), for an offence committed under Section 63 of the Army Act i.e. an act prejudicial to Good Order and Military Discipline. It is also submitted that the punishment of severe reprimand is in accordance with Para- 387 of Regulations for the Army (revised), 1987. According to Army Head Quarters' letter dated 10.10.1997, there should be no red ink entry, including recordable censure for the JCOs for promotion to the rank of Subedar Major. Accordingly, neither the Part-II Order of promotion was ultimately published nor assumption certificate was initiated.

6. With regard to additional summary of evidence, it has been submitted that it was Col A.K. Bose, Commanding Officer, who recommended for disciplinary action vide his order dated 25.09.2000, vide Annexure SSCA-1 to the second supplementary counter affidavit. It has further been submitted by second supplementary counter affidavit dated 31.01.2017 that Maj H.C. Bhatnagar, DAAG (L) on behalf of Col 'A' ordered to record additional summary of evidence vide letter dated 12.04.2001 for more clarity on the issue which comes in the mind of disciplinary authority Capt Rishi Khosla, Adjt, Garhwal Rifles Regimental

Centre. On conclusion of inquiry, OC Troops recommended for disciplinary action against the petitioner, vide recommendation dated 25.08.2001 as contained in Annexure No. SSCA-4 to the second supplementary counter affidavit. The proceedings of GCM were converted into summary trial pursuant to order dated 13.02.2002, a copy of which has been filed as Annexure No. SSCA-5 to the second supplementary counter affidavit.

7. From what has been stated above, one fact is clear that after additional summary of evidence, a decision was taken to take action against the petitioner. Again by summary trial, after reviewing the decision dated 25.08.2001 by Col Officiating Commandant, it was decided to proceed against the petitioner with GCM.

Court of Inquiry

8. It is not disputed while filing counter affidavit with specific pleading that during Court of Inquiry the petitioner was not permitted to participate in it nor he was permitted to cross-examine the witnesses or adduce evidence. Rule 180 of Army Rules, 1954 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”.

9. Hon’ble the Supreme Court while considering the right of the accused to be present during the course of inquiry, has specifically held that in case the character or military reputation is affected of the charged officer, then he or she shall be permitted to remain present during recording of evidence and will also be permitted to cross-examine the witnesses and lead evidence in defence, vide 1997(9) SCC 1 **Maj Gen Indrajit Kumar vs. Union of India**, 1991 (2) SCC 382 **Maj G.S. Sodhi vs. Union of India** and 1982 (3) SCC 14 **Lt Col Prithivi Pal Singh Bedi vs. Union of India**. Their Lordships of the Hon’ble Supreme Court held that Court of Inquiry or other similar proceedings are statutory for collecting evidence. In the case of Maj G.S. Sodhi (supra) it was held that in case there is violation of mandatory rule (supra), the benefit of same shall be given to the delinquent. For convenience Paras-22, 25, 26 from the judgment of Maj G.S. Sodhi are reproduced as under :-

“22. The next submission is in respect of the alleged unfair manner in which the general court-martial was conducted. It is submitted that the witnesses cited as D.Ws were examined as PWs. However, according to the petitioner Maj. B.N. Lawrence, Capt. R. Choudhury and Capt. Pranvir Singh gave false evidence and the

Judge advocate failed in his duties. According to the petitioner when his Kurta was torn Maj. B.N. Lawrence, Lt. Col. Sukhdev Singh and Capt. R. Choudhury were present. It is also his submission that S.S. Bisht, Maj. B.N. Lawrence and Capt. Gandhi denied having seen the petitioner's head hitting Capt. Shukla's face and that this aspect has not been taken into consideration by the general court-martial. It must be noted that under Rule 77(1) "it is the duty of the prosecutor to assist the court in the administration of justice, to behave impartially, to bring the whole of the transaction before the court, and not to take any unfair advantage of, or suppress any evidence in favour of the accused." On perusal of record it would be seen that the witnesses were examined only from the point of view of bringing the whole transaction before the court. Therefore, there cannot be any grievance against examination as prosecution witnesses of the persons requisitioned as defence witnesses. Coming to the version of the witnesses examined we cannot re-appreciate the evidence and that is not the scope of this Writ Petition, in any event all the necessary evidence have been brought on record and the defence has cross-examined the witnesses effectively and it cannot be said that there is no evidence against the accused. Therefore, it was for the GCM to arrive at a conclusion on the basis of the evidence. The next submission is that there is discrimination in award of punishment. It is submitted that Maj. S.C. Mehra tried in a similar offence was awarded "severe reprimand" and in the case of Maj. Sen Verma only loss of six month seniority was awarded. We see no merit in the submission. It is for the general court-martial to decide as to what sentence should be awarded in the given circumstances of the case. We are unable to hold that the sentence awarded is wholly disproportionate. The further submission is that the findings of the general court-martial have not been confirmed as required under the rules. Section 154 of the Act deals with this aspect and lays down that the findings and sentence of general court-martial may

be confirmed by the Central Government or by an Officer empowered in this behalf by warrant of the Central Government. As per Section 156 such a warrant issued under Section 154 by the Central Government may contain restrictions, reservations or conditions as the Central Government may deem fit. It is submitted that the alleged confirmation was on 18th August, 1989. On 19th August, 1989, 5 Power of Attorney copies were asked from the petitioner and on 26th August, 1989 the petitioner is purportedly dismissed from service without any promulgation. The submission is that the powers so conferred should be by way of notification and until so notified the powers cannot be exercised. Therefore the alleged confirmation is defective.

25. The petitioner has also contended that he submitted a petition under Section 154(1) of the Act and the same was not disposed of before confirmation. As per this section any person aggrieved by findings of any general court-martial can present a petition to the Central Government or the Chief of Army Staff or any prescribed officer. In the instant case, the petition dated 5th July, 1989 is admittedly received on 14th July, 1989. It is stated on behalf of the respondents that the same was forwarded to the Headquarters 9 Infantry Division which in turn forwarded the same to the Headquarters 11th Corps who further forwarded the same to the Command Headquarters and while processing the petition it was observed that the said petition was not accompanied by power of attorney and the petitioner was apprised of the same and that in the meantime the Army Commander confirmed the findings. It is also submitted by the respondents that the petitioner was apprised of the same and was advised to submit a petition under Section 164(2) of the Act. The said provision lays down that any person subject to the Act, aggrieved by a finding or sentence of any court-martial which has been confirmed may present a petition to the Central Government or the Chief of Army Staff or to any prescribed officer

superior in command to the one who confirmed such findings, as the case may be. We have perused the petition dated 5th July, 1989. It is a very lengthy one. The main prayer in the petition is that the petitioner's posting at Dharandhera may be carried through and that the court-martial proceedings may be annulled and that guilty be court-martialed. It can therefore be seen that this petition in substance is a post confirmation one though dated 5th July, 1989 and the same cannot vitiate the verdict passed by the court-martial and the confirmation thereupon even if this petition is not disposed of.

26. Relying on these above-mentioned so-called irregularities from the point of view of the petitioner, the learned Counsel in a general way relied on the two judgments of this Court. In Ranjit Thakur's case it is observed that:

“The procedural safe-guards contemplated in the Act must be considered in the context of and corresponding the plenitude of the Summary jurisdiction of the Court Martial and the severity or the consequences that visit the person subject to that jurisdiction. The procedural safe-guards shall be commensurate with the sweep of the powers.”

In Capt. Virendra Kumar v. Union of India the termination order passed in non-compliance of the procedural requirements of either Rules 15 or 15-A was held to be invalid. We have examined Rules 15 and 15-A and they deal with a different situation. In the instant case the general and main complaint is about the non-observance of certain rules particularly Rules 22 to 25 of the Army Rules. We have already considered this aspect and we are firmly of the view that there is no flagrant violation of any of the provisions of the Act and the Rules dealing with the procedure which has caused prejudice to the petitioner. For

all these reasons, this Writ petition is dismissed. However, in the circumstances of the case, there will be no order as to costs. ”

10. The Officer Commanding held responsible the petitioner for commission of misconduct on account of cutting of trees while recommending disciplinary action by order dated 25.09.2000. It is only based on the opinion of Court of Inquiry. For convenience the order dated 25.09.2000, annexed with second supplementary counter affidavit as Annexure No. SSCA No.1 is reproduced as under :-

“1. I partially agree with the opinion of the Court.

2. JC-192464 Sub Maj Mohan Singh is found responsible for cutting of Haldu-02, Papri-02 and Eucalyptus-03 Trees in Defence Land at Kaudia Camp.

3. JC-152559F Sub Maj (Hony Lt) Bharat Singh (Retd) is not to be blamed since he was on Depot Drill from 03.07.2000 to 31.07.2000 and thereafter transfer to pension est. Hence Bharat Singh was not present when felling of trees took place at the site.

4. It is recommended that necessary disciplinary action be initiated against JC-192464 Sub Maj Mohan Singh.”

11. Since the very basis of decision to proceed against the petitioner through disciplinary action is based upon the Court of Inquiry, which suffers from substantial irregularity (supra) or the subsequent proceedings against the petitioner, relying upon the finding of Court of Inquiry, vitiates the whole disciplinary action.

Summary Trial

12. A perusal of the order in format dated 13.02.2000, filed as Annexure No.SSCA-5 to second supplementary counter affidavit indicates that the petitioner was proceeded with summary trial under Section 84 of the Army Act and a charge sheet was served on him, which refers to summary of evidence and additional summary of evidence as evidence in compliance of Army Rule 26. Petitioner was questioned in required format but whole material is typed one. All the four questions are typed, showing that petitioner answered as guilty and declined to make any statement. The copy of the proceeding of summary trial with finding of guilty, awarding punishment of severe reprimand has been signed by Brigadier Rajiv Chopra, Officiating General Officer Commanding on 28.02.2002 at Dehradun. At the face of record, it seems to be a mechanical procedure adopted by the respondents, signed by the petitioner at the corner. Whenever question was asked to the accused during the trial, use of printed or typed copy of the reply to it indicates the pre-decided mind of the authorities. The order dated 13.02.2000 (Annexure No.SSCA-5) is also in typed format and only few words are added therein by pen i.e. 'Il as applicable.' in Para-3. The format of the charge sheet, is also typed one for summary trial and does not contain any endorsement or acknowledgement from the petitioner that copy of summary of evidence and additional summary of evidence were provided to the petitioner. Proceeding seems to be mechanical without due compliance of principles of natural justice and equity. Accordingly, we are of the view that the decision to change GCM into summary trial, even if it was held with

the consent of the petitioner , though not borne out from the record, reflects the pre-decided mind of the authorities to punish the petitioner, who had no other option but to take voluntary retirement.

Cutting of Trees

13. Petitioner has specifically pleaded that the cutting of trees took place in pursuance of the order passed by superiors since more than 100 trees were rooted out in storm. Petitioner has admitted the cutting of trees but with the permission of Maj Deopa to use the trees for repairing work in the premises of Army Camp. It is also pleaded by the petitioner that the Forest Department had also given the permission to cut the trees on the application of Captain Kaudia Camp. No specific reply has been given by the respondents while giving reply to the averments made in Para-17 of the petition in Para-11 of the counter affidavit and simply denied it by saying that trees were cut without prior approval of the department. In view of the above, inference may be drawn that the petitioner had cut the trees with due permission of the Forest Department for repairs of some houses of the Indian Army. There is no occasion or reason for a JCO to do something wrong i.e. for the interest of Army to obtain woods by cutting the trees to repair the houses or huts, unless some permission is granted. There is not even a whisper that the petitioner has cut the trees for extra reason or for other use. The subordinate officer shall always obey the command, even if oral direction is issued.

14. Cutting of trees without permission from the Divisional Forest Officer is prohibited by U.P. Protection of Trees in Rural and Hill Areas Act, 1976, for short 'U.P. Act No.45 of 1976'. Under Sections 4 and 5 of the Act, felling any tree standing on any land has been prohibited, except with prior permission from appropriate authority. For convenience Sections 4 and 5 of U.P. Act No. 45 of 1976 are reproduced as under :-

“4. Except as provided in this Act or the rules made thereunder, no person shall-

(a) fell any tree standing on any land, whether included in a holding or not;

(b) cut, remove or otherwise dispose of any tree other than a tree which is completely dead and has fallen without the aid of human agency on any such land.

5. The competent authority may, on the application of any person entitled to fell a standing tree or to cut, remove or otherwise dispose of a fallen tree after making such inquiry, as it thinks fit, grant permission to him to do so :

Provided that such permission shall not be refused if the tree constitutes danger to person or property :

Provided further that except in such area as may be notified by the State Government in this behalf such permission shall not be required for the felling of any tree with a view to appropriating the wood or leaves, thereof for bona fide use for purposes of fuel, fodder, agricultural implements or other domestic use :

Provided also that such immediate steps as are necessary to remove any obstruction or nuisance or to prevent any danger may be taken without such permission. ”

15. A perusal of Sections 4 and 5 (supra) reveals that the permission for the felling of trees may not be required for the purpose of fuel, fodder, agricultural implements or other domestic

use. Since cutting of trees is prohibited, except with the permission of appropriate authority, it is punishable under Sections 10,11 and 12 of the Act. For convenience Sections 10,11 and 12 of the U.P. Act No. 45 of 1976 are reproduced as under :-

“10. Whoever fells or cause to be felled any standing tree, or cuts, removes or otherwise disposes of any fallen tree, in contravention of the provisions of section 4, or contravenes any condition of any permission granted under this Act, shall be punished with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

11. (1) If the person committing an offence under this Act is a company, the company as well as every person in-charge of and responsible to the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1) where an offence under this Act has been committed by a company and it is proved that the offence was committed with the consent or connivance of, or is attributable to any neglect on the part of any managing agent, Secretary, treasurer, director, manager or other officer of the Company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

12. (1) Where any person is convicted of an offence under this Act any timber or the tree in respect of which an offence is committed and the implements used for felling such trees may be ordered by the court to be forfeited to Government.

(2) Any timber forfeited under this section shall be disposed of by the competent authority in such manner as may be prescribed.”

16. Section 13 of the Act further provides that such person, which is guilty of offence under the Act may be arrested without warrant. For convenience Section 13 of the U.P. Act No. 45 of 1976 is reproduced as under:-

“13. (1) Any forest officer not below the rank of a Forest Ranger or police officer, not below the rank of a Sub-Inspector, may without a warrant, arrest any person against whom there is reason to believe that he has been concerned in any offence under this Act :

Provided that in relation to the hill area the reference to Sub-Inspector in this sub-section shall be construed as a reference to Naib Tehsildar.

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case, or to the officer-in-charge of the nearest police station.

(3) Any person arrested under this section shall be released on his executing a bond to appear, if and when so required, before the Magistrate having jurisdiction in the case.”

17. In view of aforesaid statutory provisions, it need not to say that in case the petitioner had cut the trees without prior permission obtained by Captain or appropriate authority of the Indian Army, petitioner would have been arrested and charged for the offence by the Forest Department but here it is not the case. In such a circumstance, inference may be drawn that the trees were cut by the petitioner with the prior permission of Captain or appropriate authority of the Indian Army and the authorities have unnecessarily charged the petitioner by shifting the liability.

18. It is further obvious on the face of record that no permission shall be granted by the Forest Department or Member of Indian

Army unless the Commanding Officer or Captain of the team moves appropriate application, seeking the permission. The averments made in Para-17 of the petition that the trees were cut on the basis of permission, seems to be correct. This un-rebutted evidence on record goes to the root of the matter and falsifies the charges for which the petitioner was tried.

Rank

19. It is not disputed that the petitioner was promoted to the rank of Subedar Major and he is recipient of number of awards and appreciations and was also Instructor at the National Security Guard Training Centre; he completed Potential Subedar Major Course (Annexure No.9) and was conferred Subedar Major rank in a function organized in the Battalion on 01.08.2000. When it is not denied that the petitioner has served in the period in question on the rank of Subedar Major then why he has not been paid salary of the rank of Subedar Major is not understandable. Assuming that 28 days' continuous paid service is required in terms of Army Instructions for finality of the order to treat the petitioner as Subedar Major then keeping in view the admitted fact on record that the petitioner started to work in the regular rank of Subedar Major from 01.08.2000, the period of 28 days stood completed on 28.08.2000 itself. The petitioner was awarded severe reprimand in court martial proceeding. Since the punishment is given effect only after it is awarded, petitioner shall be deemed to be in continuous service in regular rank of Subedar Major on 28.08.2000 and moreover since the order of punishment vitiates the finding on

record referred to hereinabove, petitioner shall be entitled to enjoy the rank of Subedar Major with all consequential benefits in accordance with the rules.

20. We are sorry to note that a person/ JCO, a lowest rung of Indian Army worked as barber, possessing number of commendations with certificate of exemplary conduct has been dealt with badly in utter disregard to courtesy, friendliness, which a member of Indian Army requires.

Additional Summary of Evidence

21. No reason has been assigned by the respondents for recording additional summary of evidence. Once the summary of evidence is recorded in accordance with the rules, then further proceedings should have been drawn up in accordance with the finding recorded therein. Recording of additional summary of evidence is exceptional and such power cannot be used to fill up the vacuum and in such a circumstance an inference may be drawn that the authorities were pre-decided to punish the charged officer. Reason is the soul of fundamental right conferred by Article 14 of the Constitution. While deciding a case i.e. T.A. No. 31 of 2012 **2Lt S.S. Chauhan vs. Union of India**, vide judgment and order dated 19.01.2017 we have held that the additional summary of evidence is an exception and may be recorded on compelling grounds and after assigning the reasons by the competent authority. In the present case, no order has been brought on record that additional summary of evidence was recorded on the order

passed by the competent officer or an authority competent to pass an order under the Army Rules. Such an action shows nothing else but an arbitrary exercise of power.

22. In view of above and also keeping the fact in mind that the petitioner has been deprived from his promotional avenues and was not paid salary for the period he discharged duty as Acting Subedar Major and also has been divested from the rank by arbitrary exercise of power, it seems to be a fit case where the respondents may be saddled with an exemplary cost for the mental pain and agony suffered by petitioner on account of arbitrary exercise of power by the respondents, who ultimately being fed up with the system applied for voluntary retirement, which was readily accepted by the authorities. It is not the question of power but the question as to how and in what manner the power is exercised by the authorities while punishing a member of Indian Army. Rule of law is the soul of the Indian Constitution and no person can be deprived of equal protection of the law and is required to be defended by Courts or the Tribunal at all costs keeping in view the constitutional ethos. We feel that great injustice has been done to the petitioner.

23. In view of above, T.A. deserves to be allowed and is accordingly **allowed**.

ORDER

24. Petition is **allowed**. Order dated 28.02.2002 punishing the petitioner with severe reprimand and depriving him from further

promotion is set aside with all consequential benefits. Petitioner shall be deemed to have been retired from the rank of Sub Maj and shall be entitled for all retiral benefits, including pension of the rank of Sub Maj as revised in accordance with rules. Since the petitioner has worked in the rank of Sub Maj, he shall be paid salary for the rank with effect from 01.08.2000 to 31.08.2002 including arrears thereon.

Let Part II order be published and other consequential benefits be provided accordingly. Cost is quantified to Rs 25,000/- (Rupees twenty five thousand only) which shall be deposited in the Tribunal within a period of three months and shall be released by the Registry through cheque in favour of the petitioner. Let all consequential benefits (supra) be provided to the petitioner expeditiously, say, within a period of six months from today. Appropriate sanction shall be granted by the Government within two months. Record office shall discharge its obligation within next one month. PCDA (P) Allahabad shall issue appropriate order within one month thereafter and bank authorities shall release all the dues to the petitioner within one month on receipt of communication.

(Air Marshal Anil Chopra)
Member (A)

Dated: April 06,2017

JPT

(Justice Devi Prasad Singh)
Member (J)