**A.F.R.**
**Court No. 1**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**T.A. No. 42 of 2017**

Friday, the 08th day of December, 2017

**Hon'ble Mr. Justice D.P. Singh, Member (J)**
**Hon'ble Air Marshal BBP Sinha, Member (A)**

Col Mukul Singhal Col (OS) presently posted at HQ Bengal Area, Kolkata.

…. Applicant

Ld. Counsel for the Applicant : **Shri Mohan Kumar, Advocate and Shri R. Chandra, Advocate**

Verses

1. Union of India through its Secretary, Ministry of Defence, South Block, DHQ, PO New Delhi-110011.
2. Chief of Army Staff, Integrated HQ of MoD (Army), South Block, DHQ, PO New Delhi-110011.
3. Military Secretary's Branch, Integrated HQ of MoD (Army), South Block, DHQ, PO New Delhi-110011.

…Respondents

**Ld. Counsel for the Respondents** : **Dr. Chet Narain Singh, Advocate,** Assisted by Maj Salen Xaxa, OIC Legal Cell.

**ORDER (Oral)**

1. The present application was filed in Armed Forces Tribunal, Kolkata under Section 14 of the Armed Forces Tribunal Act, 2007, which was numbered as O.A. No.4 of 2016 and received by way of transfer to Armed Forces Tribunal, Regional Bench Lucknow and re-numbered as T.A. No. 42 of 2017.

2. We have heard Shri Mohan Kumar, Ld. Counsel for the applicant and Dr. Chet Narain Singh, Ld. Counsel for the respondents, assisted by Maj Salen Xaxa, OIC Legal Cell and perused the records.

3. The petition has been preferred by the applicant against impugned order of punishment of 'Severe Reprimand' along with forfeiture of his three years of service for pensionary benefits.

4. The brief facts of the case are that the applicant joined the Army as commissioned officer on 08.06.1985. Later on, he was promoted to the rank of Col. In June 2009 the applicant was posted to Central Ordnance Depot (COD) Agra as Senior Provision Officer (SPO). With effect from 27.12.2010 he was promoted to the post of Deputy Commandant (Dy Comdt) in the same unit i.e. COD Agra.

5. In pursuance to movement order dated 16.04.2011, the applicant left the COD Agra on 17.04.2011 (AN) to join for temporary duty at Central Ammunition Depot (CAD) Pulgaon (Maharashtra). There he remained up to 20.04.2011 and came back on 21.04.2011. As per prosecution story, in the absence of the applicant, a military dealer namely Pawan Kumar Jain lifted salvage stores from Salvage Sub Depot of COD Agra on 18.04.2011 in pursuance to an auction. However, when the vehicles were impounded outside the COD by a team of Army Intelligence unit, they found the vehicles carrying more than auctioned weight. Later on, it was found that about 41 tons of salvage over and above authorised quantity was taken out by aforesaid dealer Pawan Kumar Jain. A court of inquiry was held from 30.06.2011 to 13.08.2011 in which during court of inquiry applicant appeared as witness No 1. Statement of total 30 witnesses were recorded during court of inquiry. However, after recording the statements of witnesses, the

applicant and other charged officers were called for compliance of Army Rule 180. Applicant appeared as witness No 19 to cross examine the prosecution witnesses. Others were also given same opportunity to cross examine the prosecution witnesses. However, according to Ld. Counsel for the respondents, Dr. Chet Narain Singh, adequate opportunity was given for due compliance of Army Rule 180 which is mandatory.

6. After the court of inquiry, summary of evidence was recorded and it is not disputed that the applicant has participated in the summary of evidence in accordance to Army Rules. The Ld. Counsel for the applicant has not pointed out to any procedural flaw in the summary of evidence. However, he staked claim to the non-compliance of Army Rule 180.

7. After summary of evidence, GCM was held in pursuance to provisions contained in Army Rule 37. A total of six charges were framed against the applicant and the sixth charge of the applicant was for an offence under Section 63 read with Section 34 of the IPC. For convenience sake Section 63 is reproduced as under:-

> "***63. Violation of good order and discipline****. Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned."*

8. However, after GCM proceedings the applicant was not convicted for the first four charges but convicted for fifth and sixth charge. However the Chief of Army Staff set aside the conviction of fifth charge and confirmed him guilty of sixth charge only. Being aggrieved with the punishment awarded to him of severe reprimand along with forfeiture of three years' service for the purpose of pension, applicant initially approached Armed Forces Tribunal, Kolkata under Section 14 of the Armed Forces Tribunal Act, 2007 by filing

O.A. which was numbered as O.A. No. 4 of 2016, which has been subsequently transferred to this Tribunal. For convenience sake, the charge No. 6 for which the applicant has been punished along with the decision for punishment on account of guilty is reproduced as under:-

| | |
|---|---|
| *"Sixth Charge AND Army Act SECTION Section 63 read With Section 34 of The Indian Penal Code (against Accused No 1,2 & 3 only)* | *AN ACT PREJUDICIAL TO GOOD ORDER MILITARY DISCIPLINE, READ WITH 34 OF THE INDIAN PENAL CODE.* |

*in that they together,*

*at Agra, during Apr-Aug 2011, while being Commandant, Deputy Commandant and Officer-in-Charge Salvage Section/Group III respectively, of the Central Ordnance Depot, Agra, tutored, coerced and intimidated their subordinates into making false statement at the Court of Inquiry held on the subject, to the effect that thirteen lots based on three issues vouchers were lifted by M/S Pawan Kumar Jain & Co from Central Ordnance Depot, Agra, on 18 Apr 2011."*

9. While assailing the impugned order of punishment on charge No. 6, Ld. Counsel for the applicant mainly raised four-fold arguments, besides other. First, the provision contained in Army Rule 180 has not been complied with as the applicant was not permitted to be present during the court of inquiry throughout. Requiring the applicant to cross examine witness at the end of recording the examination in Chief of witnesses behind back does not amount to full compliance of Army Rule 180. The second submission of Ld. Counsel for the applicant is that it is a case of no evidence as none of the witnesses has made a statement against the applicant. The next submission of Ld. Counsel for the applicant is that the conference was held on 23 May 2011 consisting of all three accused and two officers i.e. one Brigadier Gopal

Bhandari, one Colonel Manish Singh and three subordinate officers who appeared as witness No 7, 15 and 21. Submission is that during course of conference on 23 May 2011 the applicant was not present throughout but came late and left the meeting several times lodging protest against the holding of conference. The third limb of argument of Ld. Counsel for the applicant is that it is a case of no evidence and accordingly conviction and punishment suffer from extreme perversity and is not sustainable. The fourth submission of the Ld. Counsel for the applicant is that the charges are vague, capricious and arbitrary and based on unfounded grounds. No punishment could have been inflicted against the applicant, since the charges did not contain date, time and place when the applicant has allegedly intimidated, tutored and coerced the witnesses during the period from April 2001 to August 2011.

10. On the other hand, Ld. Counsel for the respondents, Dr. Chet Narain Singh invited our attention to judgments reported in [2013] 2 SCR 881, ***Mookkiah vs. State, Represented By The Inspector of Police, Tamil Nadu*** and Judgment of Hon'ble Supreme Court of India in ***Union of India and others vs. Major A. Hussain***, Ic-14827 dated 08.12.1997 and submits that the applicant has been charged under Section 63 of the Army Act, being an officer of sub-standard conduct while serving Indian Army. It has further been submitted by him that the punishment is minor one and calls for no interference. It is also argued that reappreciation of punishment is not required to be done at this stage keeping in view the minor punishment awarded to the applicant. He has also defended the court of inquiry proceedings as well as sentence and conviction to the applicant through GCM.

11. We have considered the arguments advanced by Ld. Counsel for the parties and gone through the records. Coming to first limb of argument with regard to conference held on 23 May 2011, Ld. Counsel for the applicant has vehemently relied upon the statement of PW-7 Sub KK Sharma who made a statement that the applicant attended the conference belatedly which was chaired by accused No 1 i.e. the Commandant and he left the conference three or four times after its commencement. For convenience sake, the relevant portion of statement recorded during GCM is reproduced as under: -

> *"It is correct to say that Accused No 2 entered the conference hall on 23/24 May 2011, conference at Crumby Hall being chaired by Accused No 1 a little late having been called for 3-4 times after 15-20 minutes of commencement of conference. However, I cannot say exactly as to when Accused No 2 entered the conference hall or whether at that point of time Nk Heera Singh was being briefed. During the course of conference Accused No 2 left the conference 3-4 occasions and came back on being called. On the last occasion, Accused No 2 left the conference hall remarking that "I am not in agreement with this" and excused himself and did not return thereafter. Thereafter the conference continued in absence of Accused No 2."*

12. The other statement relied upon by Ld. Counsel for the applicant is of PW-21 Hav Saheb Singh, during course of GCM he also repeated the statement as given by PW-7 (supra) stating that the applicant left the conference hall at 3-4 occasions and objected against its holding to accused No 1. Relevant portion of statement of PW-21 is reproduced as under:-

> *"During the conference, Lt Col Manish Singh who had accompanied the Accused No 1 did not say anything. However, Accused No 2 had joined the conference a little later and also left the Conference Hall in between on 3-4 occasions. During the conference, Accused No 2 did not say anything. Before the conference finished, Accused No 2 left the Conference hall after remarking that the instructions being passed by Accused No 1 during the conference were not correct and that Accused No 1 was not doing the right thing."*

13. Keeping in view the statement of two witnesses referred to hereinabove and having no other contradictory evidence to the statement made by PW-7 and PW-21 we feel that it is incorrect to doubt the conduct of the applicant during course of conference with regard to intimidation, tutoring and coercion of the witnesses. However, there appears to be no room for doubt that the conference was conducted under the chair of Commandant (accused No 1), who was chairperson during the course of conference. Accordingly, we hold that the applicant cannot be attributed to have committed any illegality or irregularity by attending the conference or during the course of conference as recorded in GCM proceedings while punishing the applicant.

14. Coming to next limb of argument with regard to compliance of Rule 180, it is not disputed by the respondents that the applicant had participated in the Court of Inquiry but the manner in which the applicant was called on in the inquiry i.e. by recalling the witnesses and permitting them to be cross-examined at the fag end of Court of Inquiry is not sustainable in the eyes of law. Rule 180 of the Army Rules is reproduced as under :-

> *"**180.Procedure when character of a person subject to the Act is involved.** - Save in the case of a prisoner of war who is still absent whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation. The presiding officer of the court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights, under this rule."*

15. A plain reading of Army Rule 180 shows that the charged officer has a right to be present continuously during the inquiry. The purpose of Legislature to enact Army Rule 180 is to make system transparent. It means the charged officer should remain present during the Court of Inquiry with liberty to cross examine the witnesses. There is other reason also to ensure compliance of Rule 180 whether the examination-in-chief is fair or not. Thus, submission of the learned counsel for the applicant carries weight. Presence of officer or charged member of the Indian Army from very beginning of the court of inquiry right from examination-in-chief increases the credibility of proceeding and to rule out any possibility to record statement-in- chief by coercion or intimidation or any other interference. Mere recalling to cross examine the witnesses whose examination-in-chief has already been done behind the back, does not satisfy the requirement of Army Rule 180.

16. It is well settled proposition of law that the provisions contained in Rule 180 must be complied with during Court of Inquiry. In ***Maj. Gen. Inderjit Kumar Vs. UOI & Ors.*** (1997) 9 SCC 1 Hon'ble Supreme Court reiterated that Army **Rule 180** gave adequate protection to the person affected even at the stage of Court of Inquiry. In 2008(3) SLR in the matter of ***Surendra Kumar Sahni Vs Chief of Army Staff*** (Delhi) a division bench of Hon'ble High Court maintained that compliance to the requirements of Rule 180 is mandatory. In view of above we are of the view that Army Rule 180 has not been complied with in letter and spirit.

17. Now we come to third limb of argument that it is a case of no evidence. In this regard, as we have held that during conference the applicant has protested to the Commandant regarding holding of such conference. In the absence of any contrary evidence we may rely upon the statement of PW-7

and PW-21 and would fairly draw an inference that the applicant objected to the holding of conference (supra) convened by the Commandant. Such action on the part of applicant reflects an officer of the Indian Army who is committed to his duties. It was for the Commandant to listen to the voice of the applicant which seems to have not been done. Accordingly, the allegation that the applicant had intimidated the witness during the course of conference seems to have no weightage and is based on unfounded grounds.

18. Apart from above, charge No 6 relates to a long period i.e. from April to August 2011. The star witness of the respondent is PW-19, who appeared during course of GCM. He was cross examined by the applicant as accused No 2. Relevant portion of the statement of PW-19 is reproduced as under:-

> *"I was not informed of any agenda point of the conference, when informed by Sub KK Sharma on 23 May. I was not present throughout in the Crumby Hall on 23 May 2011 and had left the conference hall once asked to proceed on leave by Accused No 1.*
>
> *It is correct to say that Accused No 2 did not ask me to state at the court of inquiry that 13 lots weighing 44 tons against 3 issues vouchers were lifted on 18 Apr 2011 and Accused No 2 never threatened, coerced, intimidated or influenced me in any manner with regard to lot lifting on 18 Apr 2011. It is correct to say that I have not given any statement in the Court of Inquiry.*
>
> *It is correct to suggest that in my statement at the Summary of Evidence, I did not state that Accused No 2 also mentioned that "it was not a big issue for accepting 13 lots", as stated before this court."*

19. At the face of record PW-19 Hav Saheb Singh has not given any statement against the applicant with regard to intimidation of witnesses. Our attention has not been invited by Ld. Counsel for the respondents to any other material on record which may establish that the applicant has intimidated or coerced or tutored the witnesses to make statement in favour of the accused.

Accordingly finding of the court of inquiry appears to be perverse and applicant could not have been convicted on the basis of extreme perversity.

20. Hon'ble Supreme Court ***in Gaya Din (dead) thr. Lrs. & Ors. Vs. Hanuman Prasad (dead) thr. Lrs. & Ors***. AIR 2001 SC 386, held that the order passed in pursuance to the material which suffers from procedural irregularity or illegality does not stand. It has further been held by Hon'ble Supreme Court in ***M/s. Triveni Rubber & Plastics Vs. Collector of Central Excise, Cochin,*** AIR 1994 SC 1341, if no reasonable conclusion may arrive on the finding recorded by the authority then such finding shall be perverse finding and cannot be relied upon and it vitiates order. A perverse finding cannot be made the back bone of the punitive order which curtails the human rights of livelihood and erodes the dignity and status of a person. Accordingly, we are of the view that the finding being based on unfounded grounds with regard to charge No 6, it cannot be relied upon to punish the applicant.

21. Now we are coming to last limb of argument that the charges are not correctly framed. In this regard we may add that as is evident from charge No 6 the allegation of intimidation, coercion and tutoring spread in wide range of period from April 2011 to August 2011, it was August 2011 when the court of inquiry came to an end. The charges seem to have been framed randomly without specifying the date and time when the applicant has tutored, coerced or intimidated the witnesses to make the false statement in his favour during court of inquiry. How a person can defend himself on such vague charges is not understandable. It is trite law that the charges must be specific and clear so that the accused may understand the genuineness of charges and set up his defence to defend himself. No man of ordinary prudence can defend himself on the basis of charges framed against the applicant i.e. charge No 6 which ranges to a period of almost four months without specifying the incident.

22. So far as conference is concerned, we have already held that the applicant played no role and has done nothing which may be treated as a misconduct but so far remaining period of four months is concerned, nothing has been brought on record that at any time during this period the applicant had tutored the witnesses asking them to make false statement.

23. Attention has not been invited by the respondents to any other evidence or material on record which may indicate that except after 23 April 2011 i.e. the date of conference, the witnesses were called for the purpose of intimidation or coercion or tutoring them to make false statement. No material appears to be on record. Following the judgment of Hon'ble the Supreme Court, the purpose of framing of charges and its contents have been decided by a Bench of Kolkata Armed Forces Tribunal vide its order dated 13.07.2015 in O.A. No. 45 of 2015 ***Rifleman Surinder Kumar vs. Union of India & others***, which has been followed in another O.A. decided by Armed Forces Tribunal, Kolkata in O.A. No. 30 of 2013, vide order dated 21.08.2015 ***Commander Harneet Singh vs. The Union of India & others***. The relevant portion from O.A. No.45 of 2013 is reproduced as under:-

> ***"Purpose of charge-sheet***
>
> *40. Purpose of charge-sheet is to specify the accusation for which the accused has been charged and required to meet during the course of trial. It is the first notice to an accused of the matter where of he/she is accused and it must convey to him with sufficient clearness and certainty that the prosecution intends to prove against him and of which he would have to clear mind. Object of the framing of charge is to enable the accused of the case he is required to answer during trial. Charges must be properly framed and evidences tendered must relate to matters stated in the charge. It has been settled by the Hon'ble Supreme Court that charge is not an accusation in abstract but a concrete accusation of an offence alleged to have been committed by the accused. Further the accused is entitled to know with the greatest precision and particularity the acts said to have been committed and section of the penal law infringed; otherwise he must be seriously prejudiced in his defence vide* ***AIR***

***1958 SC Page 672- Srikantiah B.N. v. State of Mysore; AIR 1948 Sind 40, 48 : (1948) 49 Cr.L.J. 72 – Waroo v. Emperor & AIR 1963 SC 1120 – Birichh Bhuian v. State of Bihar.***

*41. To specify a definite criminal offence is the essence of Criminal Jurisprudence which is in tune with Article 14 of the Constitution of India and part and parcel of Principle of Natural Justice. Offence whatever may be, no trial may proceed without 29 framing of charges. Section 211 of Cr. P. C. deals with the contents of charges. Section 212 of Cr. P. C. provides that the charge shall indicate the particulars, place and person, the time and place of the office and Section 213 of Cr. P. C. provides that when manner of committing offence must be stated. Section 215 of the Cr. P. C. deals with the effect of errors for framing of charges.*

*42. It is further well settled that even if there are irregularity in framing of charges it may not be fatal unless irregularity and omission has misled and caused prejudice to the accused and occasioned a failure of justice itself not vitiates the trial. Failure to specify the manner and mode of offence makes a charge vague but where particulars are on record there could not have been any prejudice to the accused. Section 221 of the Cr.P.C. like Section 113 of the Army Rules, 1954 takes care of the situation and provides safeguard empowering the Criminal Court or the SCM to convict the accused for an offence with which he is not charged although on facts found in evidence, he could have been charged for such offence along with other offences to which charges are framed. Further merely because of an inapplicable provision has been mentioned in the charge, trial may not be invalidated vide* ***3950 (3976) (SC) : AIR 2005 SC 3820 : 2005(3) – State ( NCT of Delhi) v Navjot Sandhu, 2005Cr.LJ.; (1995) 4 SCC 181- State of J&K v. Sudershan Chakkar; (2001) 4 SCC 38- Omvati v. State (Delhi Admn.); AIR 2011 SC 3114- Rafiq Ahmed @ Rafi v. State of U.P.; AIR 2012 SC 1485- Rattiram v. 30 State of M.P.; AIR 2012 SC 3026- Bhimanna v. State of Karnataka; AIR 2013 SC 840- Darbara Singh v. State of Punjab;***

*43. However, in the present case at the face of record charges were not framed and hence the omission appears to be fatal. In a case reported in* ***1979 Vol.1 SCC Page 87- Bhupesh Deb Gupta v. State of Tripura,*** *Hon'ble Supreme Court has set aside the conviction since charges were framed entirely indicating different factual aspects which has no co-relation with the offence for which the accused was charged. Hence it was held that it caused prejudice to the accused. Relevant portion of the judgment is reproduced as under :-*

> *"12. The wording of the charge framed by the Special Judge is that the money was remitted by Nikhil Chakraborty for showing, in exercise of official function a favour to the said Schindra Dey on the plea of securing service for the said Sachindra Dey. The High Court understood the charge as*

*meaning that the money was sent by Nikhil Chakraborty on behalf of Sachindra Dey as a gratification for securing service for the said Sachindra Dey. It appears from the charge and from the judgment of the courts below that the courts proceeded on the basis that the gratification was received by the accused for showing favour as a public servant. As the basis of the charge is entirely different from what is sought to be made out now i.e. the gratification was paid to the accused for influencing a public servant, it cannot be said that the accused was not prejudiced by the frame of the charge. It would have been open to the prosecution to rely on the presumption if the charge was properly framed and the accused was given an opportunity to meet the charge which the prosecution was trying to make out against the accused. On a careful scrutiny of the facts of the case, we are unable to reject the contentions of the learned counsel for the accused that he was prejudiced by the defect in the charge and that he had no opportunity to meet the case that is put forward against him."*

*44. Framing of charges is the part and parcel of Article 14 of the Constitution of India. That is why it has been held by Hon'ble Supreme Court in the case of* ***Roop Singh Negi*** *(supra) that the 31 Enquiry Officer is not permitted to travel beyond the charges and any punishment imposed on the basis of the finding which was not the subject-matter of charges is illegal.*

*Principle of Natural Justice is equally applicable to the Armed Forces personnel. In the case of* ***Sheel Kr. Roy*** *(supra) Hon'ble Supreme Court held that it is well settled legal principle accepted throughout the world that a person merely by joining Armed Forces does not cease to be a citizen or be deprived of his human or constitutional right."*

24. From what has been stated above, we are of the considered opinion that charges framed against the applicant and served, do not contain the actual facts, material and allegations on record, which vitiate all subsequent actions, including punishment.

25. In view of above, we feel that the conviction and sentence of the applicant is not only perverse, illegal and based on unfounded facts but also it is a case of non-application of mind to the material on record before convicting the applicant on the basis of evidence available to the Presiding Officer of the GCM.

26. While parting with the case, we may not restrain ourselves to give our thoughtful consideration to the fact that from 17 April 2011 to 18 April 2011, when the goods were lifted and 41 tons salvage was taken away, the applicant was outside the station and was not present. This fact prima facie was enough not to charge the applicant with regard to related offence. A person who is not on duty during course of crime, how he or she can be held to be responsible, more so when the crime relates to an incident occurred relating to excess lifting of salvage more than auctioned amount. It is not a case of circumstantial evidence where the applicant was found to have been involved under criminal conspiracy but it is a case of lifting of excess salvage by its contractor under the nose of Commandant (not the applicant). In such cases the evidence must be direct with trustworthy material. It is often noticed that when one is involved others also are trapped in with criminal element of mind to find out a defence or shift the burden. It is for the court to separate the grain from the chaff and we are of the view that the applicant does not seem to be involved in the present controversy.

27. Definition of Tutoring, intimidation and coercion have been defined in the Black's Law Dictionary as under:-

> **"Tutor**-One who teaches; esp., a private instructor.
>
> **Intimidation**-Unlawful coercion; extortion.
>
> **Coercion**-Compulsion by physical force or threat of physical force. An act that must be voluntary, such as signing a will, is not legally valid if done under coercion. And since a valid marriage requires voluntary consent, coercion or duress is grounds for invalidating a marriage."

28. The dictionary meaning of these words for which applicant has been charged requires proof like other evidence. In the absence of specified proof for intimidation, tutoring and coercion, a person may not be convicted or

punished. There is no room of doubt that in the matter of Armed Forces law should be applied strictly giving no way to guilty unpunished but it is also the duty that innocent should not be punished, more so when a person is serving in the Indian Army. Honour, prestige and dignity of the Armed Forces personnel stand on higher pedestal than an ordinary citizen and Army should be cautious at the stage of framing of charges against the officer/staff so that at the end of the day it may not be a case where a charged person may be found not guilty or a finding may be recorded with regard to harassment or the charges suffering from perversities.

29. In view of the above, O.A. deserves to be allowed. Further we feel that the applicant has suffered mental pain and agony on account of uncalled for proceedings against him for no fault of his as discussed herein above. The Hon'ble Supreme Court, in the case of ***Ramrameshwari Devi and others V. Nirmala Devi and others,*** (2011) 8 SCC 249, has given emphasis to compensate the litigants, who have been forced to enter into unnecessary litigation. This view has been fortified by Hon'ble Supreme Court in the case of ***A. Shanmugam V. Ariya Kshetriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President and others,*** (2012) 6 SCC 430. In the case of A***. Shanmugam*** (supra) Hon'ble the Supreme considered a catena of earlier judgments for forming opinion with regard to payment of cost; these are:

1. ***Indian Council for Enviro-Legal Action V. Union of India,*** *(2011) 8 SCC 161;*
2. ***Ram Krishna Verma V. State of U.P***., (1992) 2 SCC 620;
3. ***Kavita Trehan V. Balsara Hygiene Products Ltd***. (1994) 5 SCC 380;
4. ***Marshall Sons & CO. (I) Ltd. V. Sahi Oretrans (P) Ltd.,*** (1999) 2 SCC 325;
5. ***Padmawati V. Harijan Sewak Sangh,*** (2008) 154 DLT 411;
6. ***South Eastern Coalfields Ltd. V. State of M.P.,*** (2003) 8 SCC 648;
7. ***Safar Khan V. Board of Revenue***, 1984 (supp) SCC 505;

8. ***Ramrameshwari Devi and others*** (supra).

30. In the case of ***South Eastern Coalfields Ltd*** (supra), the apex Court while dealing with the question held as under:

> *"28. ...Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation".*

In view of aforesaid proposition of law the applicant deserves to be paid exemplary cost, which we quantify to Rs 50,000/-.

## ORDER

31. In view of above, O.A. is **allowed**. Impugned order dated 05.09.2014 is set aside with all consequential benefits including pay, promotion, seniority and other benefits. Applicant shall be entitled for cost of Rs 50,000/- which shall be deposited by the respondents within one month from today and shall be released in favour of the applicant by the Registry through cheque. Ld. Counsel for the applicant makes statement at Bar that out of Rs 50,000/- an amount of Rs 25,000/- may be transferred to AFT Bar Association, Regional Bench Lucknow. Registry may proceed accordingly.

**(Air Marshal BBP Sinha)**
**Member (A)**

**(Justice Devi Prasad Singh)**
**Member (J)**

Dated: 08, December 2017

JPT