RESERVED

COURT NO.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 248 of 2011

Thursday, this the 18th day of January, 2018

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

Mohammad Arif (736957-F Ex – Sg) House No. – 538/442-I
Tulsipuram, Triveni Nagar First
Lucknow – 226020 (UP)
Cell NO. 9935802408/9808417471
.... Applicant in person

Ld. Counsel for the Applicant :Shri Shailendra Kumar Singh, Advocate

Versus

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

2. The Chief of the Air Staff, Air HQ (VB), New Delhi – 11

3. Air Officer Commanding Air Force Record Office, Subroto Park New Delhi - 10

4. Air Officer Commanding 15 Wing, AF C/O 56 APO.

5. 738958 B Sunil Nair Through AOC, AFRO Subroto Parkf New Delhi - 10 **------------ Respondents**

Ld. Counsel for the Respondents. :**Mrs. Amrita Chakraborty, ,** Advocate.Addl Central Government Standing Counsel

Assisted by : Wing Cdr Sardul Singh, OIC Legal Cell

ORDER

“ Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. In the instant case, I am constrained to write my separate judgment as my view differed from the view of my learned brother on the end result of the O.A.

2. The Present Application under section 14 of the Armed Forces Tribunal Act, 2007 has been preferred for the following reliefs.

“(a) Set aside the impugned order No Air HQ/C 40698/4/PA (CPC) dated 18 Feb 2011 passed by the respondent no 2 and direct the respondent No. 2 to fix the seniority of the applicant and consider his case for Substantive Sgt on 30 Jul 99 and thereafter Substantive JWO promotion in accordance with law.

(b) Set aside policy circular Air HQ/C40651/3/PA (CPC) dated 23 Sep 2002 and Air HQ/C40651/3/PA (CPC) dated 15 May 2007 (as amended from time to time) as the same have been issued by the respondent no 2 in contravention to the AFI and Regulation for the IAF issued by the respondent No.1.

(c) Direct the respondent No 1 and 2 to grant notional promotion to the applicant to the Rank of substantive Sergeant w.e.f 30 Jul 1999 and to the Rank of Substantive JWO w.e.f 30 Jul 2006 or from the date on which airmen junior to the petitioner get promoted with all attending benefits including pension.

(d) Direct respondents to pay the applicant an amount of R 2,00,000/- as compensation for keeping the applicant in a state of quandary shock, anxiety, distress and humiliation.

(e) Direct respondent to pay the costs of litigation to the tune of Rupees 20,000/- and

(f) To pass any other orders as deemed fit in the circumstances of the case as well as the interest of justice."

3. The facts draped in brevity are that the Applicant was enrolled in the Indian Air Force on 23.07.1990 and was discharged from service on 31.07.2010 under the provisions of Air Force Rules 1969 Chapter-III Rule 15 Clause 2 (B) on fulfilling the conditions of his enrolment with two years of reserve liability vide order dated 06.04.2009 on completion of his initial terms of engagement.

4. I have heard learned counsel for the parties and perused the materials on record.

5. The facts narrated by the Applicant are that after attestation in the Air Force, he was reclassified to LAC having passed the test with 70% marks on 01.10.1992. on 30.07.1995, he was promoted to the rank of Corporal. In Oct 1995, he passed the examination of Bachelor of Arts

(B.A). On 30.07.1996, he became eligible for promotion to the rank of Acting paid rank of Sgt but he was neither considered nor appointed to Substantive rank of Sgt. In August 1996, he appeared and passed the SPE Pt-II (Sgt Trade Test) conducted by No 2 TEB. Between October 1997 to March 1998, he appeared in Sgt Promotion Examination Pt-III (GEB) and declared passed with 60% marks. On 22.07.1998, the Applicant completed eight years of total service. On 30.07.1999, the applicant completed four years of service in the rank of substantive Corporal and became eligible for promotion to the rank of Substantive Sgt but he was neither considered nor promoted to the substantive rank of Sgt. In the year 1999, the applicant acquired the degree of LLB from Mumbai University. On 01.02.2004, the applicant was appointed to the Acting paid rank of Sgt. Between January to June 2006, the applicant appeared and passed the examination for promotion of Junior Warrant Officer conducted by Regional examination Board (West) in which he scored 78% of marks in General, 50% in System and 66% In Practical and Viva. In the year 2006-2007 the applicant was appointed as SNCO IC Legal Cell at 51 ASP and he also looked after 19 wing legal Cell and dealt with cases

related to Gauhati High Court and other subordinate courts at Gauhati. In the year 2007, he acquired the degree of LLM from RTM's Nagpur University. In the year 2008, he acquired Civil qualification of PG Diploma in Materials Management from Annamalai University. In 2008 itself, he cleared Open MAT and was enrolled in MBA from IGNOU. In June 2008, the applicant was not considered for promotion to the substantive rank of Junior Warrant Officer and those junior to him were empanelled in the panel of 2008-09. Again in June 2009 and 2010, the applicant was not considered for substantive JWO and arbitrarily empanelled the junior cadre airmen in panel of 2009-10 and 2010-11. Aggrieved, the Applicant submitted ROG Application under section 26 of the Air Force Act 1950 and para 621 of the regulation. He was discharged from Air Force on 31.07.2010 after rendering 20 years and 9 days of service. The impugned order dated 18.02.2011 rejecting his application for promotion was communicated to the applicant on 28.02.2011. It is in this backdrop that the Applicant filed in the instant O.A.

6. On the other hand, the contentions of the learned counsel for the respondents as contained in the counter affidavit are that the Applicant is basically questioning the

complete concept of merit cum seniority based promotion policy of 2002 amended by 2007 and demanding promotion on time scale basis by misquoting the provisions of AFI dated 12.05.1948. He was considered for promotion in the next rank of Junior Warrant officer on three occasions in terms of existing policy contained in the promotion policy of 2002. However as per the respondents, as mentioned in para 5 of the counter affidavit, the petitioner did not pass muster for promotion.

7. As shown above, the Applicant could not make merit within the available vacancies and trade, rank and grade and ultimately he was discharged on fulfilling the conditions of his enrolment with two years of reserve liability on completion of his initial terms of engagement. The promotion was authorized in terms of the existing promotion policy issued vide Air HQ Letter No AIR HQ/C 40651/3/PA (CPC) dated 23.09.2002. The learned counsel for the respondents refers to policy as contained in AFI 12/S/48 which expressly postulates that substantive promotion to the rank of Sgt, JWO and WO shall be made by selection within the authorized establishment. Substantive promotions are authorized considering the acting promotion, seniority, eligibility date and availability

of vacancy. It is further contended that the Applicant was promoted to the rank of Sgt Acting Paid on 01.02.2004 and to the substantive Sgt on 05.04.2009 alongwith his contemporaries on accrual of establishment vacancies in the order of seniority. It is submitted that this policy has been adopted across the board and aims at reducing the age profile of warrant officers in view of the Kargil Review Committee recommendations and the applicant was not an exception. It was further submitted that this policy in no case has done any injustice to the applicant. On the other hand, this policy has enhanced organisational interests and given due importance to merit alongwith the importance to seniority. It is further contended that policy contained in AFI 12/S/48 postulates minimum time frame and it does not postulate that on completion of minimum time frame individual would be automatically promoted irrespective of vacancies. It is further contended that promoting every AIR Warrior after completion of minimum time frame as given in AFI 12/S/48 provides only broad guidelines and does not provide the procedure, mechanism or criteria for carrying out the selection for authorizing promotions. Therefore, the Chief of Air Staff issued promotion policies to provide a mechanism for selection

among deserving air warriors. The existing merit cum seniority as contained in letter dated 23.09.2002 aforesaid is well within the frame work of AFI 12/S/48, existing regulations on the subject and the powers vested in the Chief of Air Staff in terms of para 917 of Regulations for the Air Force 1964. Additionally, Government of India, MoD letter no 10 (8) 2001-D (Air-iii) dated 14.08.2001 authorises delegation to Chief of Air Staff to formulate promotion policy of all IAF personnel upto the rank of Group Captain.

8. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service (vide P.U. Joshi vs Accountant General, (2003) 2 SCC 632. Para 10 being relevant is quoted below.

> *"We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a*

particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

9. Normally it is not for the court to consider the wisdom or appropriateness of a particular policy, particularly in cases where expert knowledge was required in the formulation of the policy and considering the appropriateness of the policy. Once a policy is settled the

government is bound to follow that policy and that,if the policy had to be changed, this could be done only on a proper consideration of the relevant material and could not be resorted to for ulterior purposes or malafides nor could the policy be changed arbitrarily vide judgment in Union of India vs S.L.Dutta (1991) 1 SCC 505. Para 9 to 16 of the said decision being relevant are quoted below.

> *"9. In Vincent Panikurlangara v. Union of India **1987 2 SCC 165, 173, 175** a writ petition was filed as in public interest regarding the maintenance of approved standards of drugs and banning of injurious and harmful drugs. A Division Bench of this Court presided over by Ranganath Misra, J. (as he then was) considered the scope of judicial review in matters of this kind. It was observed by the Court that: (**SCC p. 173**, para 15)*
>
> *"Having regard to the magnitude, complexity and technical nature of the enquiry involved in the matter and keeping in view the far-reaching implications of the total ban of certain medicines for which the petitioner has prayed, we must at the outset clearly indicate that a judicial proceeding of the nature initiated is not an appropriate one for determination of such matters."*
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> *10. The Division Bench went on to observe as follows: (**SCC p. 175**, para 17)*
>
> *"The technical aspects which arise for consideration in a matter of this type cannot be effectively handled by a court. Similarly the question of policy which is involved in the matter is also one for the Union Government — keeping the best of interests of citizens in view to decide. No final say in regard to such aspects come under the purview of the court."*

*11. In **Liberty Oil Mills v. Union of India 1984 3 SCC 465, 478** certain questions were raised before this Court regarding the import and export policy followed in India. Chinnappa Reddy, J., speaking for the Court observed as follows: (**SCC p. 478**, para 6)*

*"There must also be a considerable number of other factors which go into the making of an import policy. Expertise in public and political, national and international economy is necessary before one may engage in the making or in the criticism of an import policy. Obviously courts do not possess the expertise and **are** consequently incompetent to pass judgment on the appropriateness or the adequacy of a particular import policy."*

*12. In Shri Sitaram Sugar Co. Ltd. v. Union of India **1990 3 SCC 223, 255** the validity of certain notifications fixing prices of various grades of sugar with reference to geographical-cum-agro-economic considerations and average cost profiles of factories located in respective zones were impugned before this Court. The Constitution Bench of this Court which decided the case held as follows: (SCC p. 255, para 56)*

*"The court has neither the means nor the knowledge to re-evaluate the factual basis of the impugned orders. The court, in exercise of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders **are**made so long as those findings **are** reasonably supported by evidence."*

*13. In the said judgment the court cited with approval the following observations of Justice Frankfurter of the U.S Supreme Court in **Railroad Commission of Texas v. Rowan and Nichols Oil Company** 311 US 570-77:*

*"Nothing in the Constitution warrants a rejection of these expert conclusions. Nor, on the basis of intrinsic skills and equipment,**are** the federal courts qualified to set their*

independent judgment on such matters against that of the chosen State authorities…. When we consider the limiting conditions of litigation the adaptability of the judicial process only to issues definitely circumscribed and susceptible of being judged by the techniques and criteria within the special competence of lawyers it is clear that the Due Process Clause does not require the feel of the expert to be supplanted by an independent view of judges on the conflicting testimony and prophecies and impressions of expert witnesses."

14. In connection with the question as to whether the conditions of service of respondent 1 could be said to be adversely affected by the change in the promotional policy, our attention was drawn by learned Additional Solicitor General to the decision of this Court in State of Maharashtra v. Chandrakant Anant Kulkarni 1981 4 SCC 130. There it was held by a bench comprising three learned Judges of this Court that mere chances of promotion ***are*** *not conditions of service, and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, chances of promotion* ***are*** *not. (See* ***SCC p. 141****, para 16.) Reference was also made to the decision of this Court in K. Jagadeesan v. Union of India 1990 2 SCC 228 where the decision of this Court in State of Maharashtra v. Chandrakant Anant Kulkarni was followed.*

15. Additional Solicitor General also drew our attention to the decision of this Court in Col. A.S Sangwan v. Union of India ***1980 Supp SCC 559, 561****. In that case the court was concerned with the competing claims of the petitioner, Col. Sangwan, and respondent 3, namely, Col. A.S Sekhon to be promoted as Brigadiers in the Directorate of Military Farms. A submission was made*

that once a policy had been made in exercise of the general executive power of the Union of India and made known and acted upon, it would be arbitrary to depart from it overnight by making a fresh selection without an antecedent reformulation of policy and making that policy known to the concerned sector in the army.

*It was held: (**SCC p. 561**, para 4)*

*"The executive power of the Union of India, when it is not trammelled by any statute or rule, is wide and pursuant to its power it can make executive policy. Indeed, in the strategic and sensitive **are**a of Defence, courts should be cautious although courts**are** not powerless. The Union of India having framed a policy relieved itself of the charge of acting capriciously or arbitrarily or in response to any ulterior considerations so long as it pursued a consistent policy."*

16. Mr Datar, learned counsel for respondent 1 did not dispute that, normally, it was not for the court to consider the wisdom or appropriateness of a particular policy, particularly in cases where expert knowledge was required in the formulation of the policy and considering the appropriateness of the policy. It was, however, submitted by him that once a policy was settled the government was bound to follow that policy and that, if the policy had to be changed, this could be done only on a proper consideration of the relevant material and could not be resorted to for ulterior purposes or mala fide nor could the policy be changed arbitrarily. He placed reliance on the judgment of this Court in case of A.S Sangwan, discussed earlier. What is, however, significant is that in that very judgment this Court held (see para 4 of the aforesaid report) that a policy once formulated is not good for ever; it is perfectly within the competence of the Union of India to change it, rechange it, adjust it and readjust it according to the compulsions

of circumstances and the imperatives of national considerations. That judgment, therefore, is of no avail to the appellant."

10. In order that such executive instructions have the force of statutory rules, it must be shown that they have been issued either under the authority conferred on the Central Government or the State Government by some statute or under some provision of the Constitution providing therefor. Therefore, even if there has been any breach of such executive instructions that does not confer any right vide judgment in Chief Commercial Manager South Central Railway v. G.Ratnam, (2007) 8SCC 212. Para 19 and 20 being relevant are quoted below.

19. We are not inclined to agree that the non-adherence of the mandatory Instructions and Guidelines contained in paragraphs 704 and 705 of the Vigilance Manual has vitiated the departmental proceedings initiated against the respondents by the Railway Authority. In our view, such finding and reasoning are wholly unjustified and cannot be sustained.

20. We have carefully gone through the contents of various chapters of the Vigilance Manual. Chapters II, III, VIII, IX and Chapter XIII deal with Railway Vigilance organization and its role, Central Vigilance Commission, Central Bureau of Investigation, Investigation of Complaints by Railway Vigilance, processing of vigilance cases in Railway Board,

suspension and relevant aspects of Railway Servants (Discipline and Appeal) Rules, 1968 as relevant to vigilance work etc. Paragraphs 704 and 705, as noticed earlier, cover the procedures and guidelines to be followed by the investigating officers, who are entrusted with the task of investigation of trap cases and departmental trap cases against the railway officials. Broadly speaking, the administrative rules, regulations and instructions, which have no statutory force, do not give rise to any legal right in favour of the aggrieved party and cannot be enforced in a court of law against the administration. The executive orders appropriately so-called do not confer any legally enforceable rights on any persons and impose no legal obligation on the subordinate authorities for whose guidance they are issued. Such an order would confer no legal and enforceable rights on the delinquent even if any of the directions is ignored, no right would lie. Their breach may expose the subordinate authorities to disciplinary or other appropriate action, but they cannot be said to be in the nature of statutory rules having the force of law, subject to the jurisdiction of certiorari."

11. The promotion policy which has been assailed by the Applicant has been discussed at length by Delhi High Court in Writ Petition (C) No 6943 of 2003 and CM Application No 12067 of 2003 JWO **A.K.Singh and others vs Union of India and others delivered on June 2,2008**. The para 32 of the said decision being relevant is quoted below.

> *"32. It is, thus, obvious that about 1,47,000 AF personnel have been considered in accordance with the impugned policy, out of whom, around 17,000 have been promoted as well. There we agree that any interference with this settled policy at this stage is bound to create an upheaval in a combatant and disciplined force like the Indian Air Force and will disturb the existing placement and postings of personnel, who have been promoted in accordance with the laid down instructions. It is bound to create a lot of uncertainty and confusion in the middle level functionaries, who are backbone of the IAF. The reverberations are being felt. This all will adversely affect the operational preparedness and state of disciplines in the IAF. There cannot be any policy which can satisfy the aspirations of each and every employee. Some are bound to feel dissatisfied. However, the policy does good to the majority if it has subserved its purpose."*

12. The aforesaid policy also came under challenge before the Rajasthan High Court in the case of **JWO S.K.Karfa V Union of India & Ors which was dismissed vide judgment dated 17.05.2004.** The self

same policy was also challenged in the **Guahati High Court in the case of Parath Singh Gaur SMQ No 59/2 V Union of India & Ors** which was dismissed vide judgment dated 13.03.2008. Para 9 to 11 being relevant are quoted below.

> *"9. The rival cases as set out above have received the due and anxious consideration of the Court. From the Air Force Regulations framed in the year 1964 as made available to the Court it appears that the said Regulations have been issued by the government of India in supersession of the earlier Regulations holding the field, i.e. 'Regulations for the royal India Air Force' and 'Regulations for the Indian Air Force-Instructions by His Excellency the Commander-in-Chief of India'. The preamble to the said Regulations does not state that the same have been issued under section 190 of the Air Force Act, 1950. Chapter XVII, Section 7, Regulation 915 prescribes that all Government of India Orders of general nature or those that affect an appreciable number of units, individuals or classes of individuals are to be published as Air Force Instructions. Air Force Instructions 12/S/1948, therefore, appears to have been issued under the aforesaid provisions of the Regulations and are not statutory in character, as contended by the petitioner. The projections and Air Force Instructions 12/S/1948 are non-est in law and*

the promotions made on that basis are illegal, therefore, will have no legal force.

10. Regardless of what has been held above, there is no denial to the fact that the Regulations and the Air Force Instructions lay down norms including norms for promotion which must be adhered to by the respondents while performing their duties and exercising their powers. Departures from the existing norms, though permissible, will have to be judged on the touchstone of the proximity or relevant of such departures to the needs of the institution as well as to the needs of reasonableness, fairness and rationality.

11. In the present case, as already noticed, both under the 1964 Regulations and the Air Force Instructions 12/S/1948, promotion to the rank of Junior Warrant Officer is required to be made by selection. The detailed parameters by which selection is required to be made are not laid down either in the Regulations or in the Air force Instructions. The stand taken by the respondents in the affidavit filed in that to keep pace with the changing times and to make the Indian Air Force more responsive to the needs of time, it was felt necessary that merit which had earlier played a less prominent role should now come to the forefront for deciding the fitness for promotions. At the same time, some role to seniority should also be assigned. It is the above conceptualisation that has found manifestation n the circular dated 23.09.2002. If that be so and in a

situation where the circular dated 23.09.2002, is not in conflict with any statutory prescription, the same must be understood by the Court to be in the realm of policy which the decision taker is always competent to take even by altering the existing policy. The reasons for change in the policy, in view of the grounds assigned in the affidavit, cannot be understood by the Court to be wholly unconnected with the institutional needs of the Air Force keeping in mind the ever increasing challenges that the Air Force is required to meet. The materials on record also indicate that the case of the petitioner was successively considered for promotion to the rank of Junior Warrant Officer but on such consideration he was found not to possess the requisite merit in comparison to his juniors to earn the promotion in question. Accordingly, the same has been refused to him. Such refusal, in the backdrop of the facts noticed above, appears to the Court to be justified. The petitioner, as the respondents have stated, will continue to be considered in eachg successive promotions in the future. He must, therefore, make an endeavour to improve his performance if he is inclined to continue in service and to earn promotion on the basis of the wholesome principle of merit."

13. The aforesaid three decisions of the High Courts have attained finality as they have not been taken in challenge before the Apex Court. From the aforesaid decisions, it would crystallize that the validity of the

policy in question has been upheld by the three successive High Courts and hence it is not open for us to further examine the validity therefore.

14. Learned counsel for the Applicant to vindicate his stand on the point has pressed into service certain decisions which are Capt Virendra Kumar Vs Union of India AIR 1981 SC 947 and Capt Rachpal Singh Vs Union of India AIR 1987 SC 212. We have gone through both the cases. In the first decision i.e Capt Virendra Kumar (supra), para 3 being relevant is quoted below.

> "*3. Going to back to the facts, constitutive of the grievances of the appellant, we may state that the Army Act and the rules and regulations and instructions thereunder govern the fate of commissioned officers including those on emergency commissions like the appellant. When in emergency commissioned officer has to be released on grounds which are proved for Army Instruction 9/5/62 dated November 24, 1962 applies.* ***This Instruction, according to the appellant, does not have statutory status and, therefore, does not bind him. We do not agree****. On the other hand, the technical gloss put by the appellant legalistic and does not appeal to us and we concur with the High Court in the view taken that the said instruction governs Emergency Commissioned Officers. Sections 21, 23, 27, and 191 to 193 together with the residuary executive power cannot be done by technical trunextlon of the sense and sweep of the rules. That, indeed, is the submission made by Shri Francis, appearing for the Union of India and we*

accept it. On that footing, paragraph 15 of the said Instructions is attracted."

The only discussion in the aforesaid decision made on the point is highlighted. Besides the said decision has been rendered in different set of facts and circumstances and as such cannot be imported for application to the facts of the present case.

Likewise in the case of Capt Rachpal Singh Vs Union of India, para 8 being relevant is quoted below.

"8. The Army Act, the Rules & Regulations and Instructions there under govern the service conditions of the commissioned officers including those on Emergency Commission, like the appellant before us. Termination of Emergency commission is provided in Rule 15 of the Army instruction. A contention was raised in Virendra Kumar's case that the Army instruction did not have any statutory status and could not therefore bind the service conditions of the Emergency Commissioned officer. This contention was repelled by this Court. We respectfully agree."

Again in the aforesaid case, the observation has been rendered in different set of facts and circumstances and cannot be imported for application to the facts and circumstances of the present case. Besides, the observations made in the aforesaid two

cases cited by learned counsel for the respondents have the complexion of obiter dicta.

15. In connection with the above, our attention was called to the decision of the Apex Court in Union of India Vs Mahesh Kumar Nag and Ors (2001) 3 SCC 96 in which passing reference was made to AFI 12/S/1948. I have gone through the above decision of the Apex Court and in my view, the reference to AFI 12/S/1948 is a passing and cannot be said to be an authoritative pronouncement on the point.

16. In the matter of ratio decidendi, it is the solemn duty of all Courts within the territory of India to follow the judgements of the Hon'ble Supreme Court as they amount to declaration of the law under Article 141 of the Constitution. It is the ratio decidendi, namely, the reasons assigned in support of its conclusion by the Supreme Court which are binding in nature. Per contra, an **obiter dicta** is the expression of view by a Court on a question of law though raised before it but did not arise for consideration in such a manner that the case could not have been decided unless such question was also answered. It is thus

an incidental statement made in a Court that was not required for deciding the case and is not binding.

17. Thus in my considered view, the O.A is devoid of merit and is accordingly dismissed as having no merit.

(Air Marshal BBP Sinha)
Member (A)

Dated: 18 January, 2018
MH/-