A.F.R.

Court No. 1

Rerseved

ARMED FORCES TRIBUNAL, REGIONAL

BENCH,LUCKNOW

O.A. (A) No. 509 of 2021

Thursday, this the 20th day of April, 2023

***"*Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)"**
"Hon'ble Maj Gen Sanjay Singh, Member (A)"

No 6940898F Hav Anil Kumar Mishra, posted at Military Intelligence Unit, Centrala Command, Lucknow.

…….Applicant

Versus

Learned Counsel for the applicant. : **Shri V.A Singh**, **Advocate**

1. The Union of India, through Secretary Ministry of Defence, South Block, NewDelhi 110011.

2, The Chief of Army Staff, Integrated HQ of MoD (Army) DHQ PO, New Delhi -110011.

3. GOC in C, HQ Central Command PIN- 226002, C/o 56 APO.

4. Officer Incharge Records, Army Int Corps, PIN- 908793, C/o 56 APO

.....Respondents.

Learned Counsel for the Respondents**,** : **Shri Yogesh Kesarwani, Central Govt Counsel**

ORDER

Per Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)

1. The instant Original Application (A) has been filed under Section 15 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(i) *To quash or set aside the charge sheet dated 24 Dec 2010 and 01 Feb 2011- SCM Trial and pronouncement/ punishment dated 22 Feb 2011 and Rejection of Petition by COAS dated 03 Mar 2014.*

(ii) *To pass an suitable direction to respondents to consider appellant at par with his batch mates in terms of promotion and also to re-imburse all his monetary dues.*

(iii) *To pass orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.*

(iv) *Allow this appeal with cost exemplary cost of five lakh rupees for harassment, and suffering of an innocent combatant.*

2. Brief facts of the case are that appellant was proceeding on leave by Mumbai – Howrah Mail Train No 2322 in AC III Tier in

reserved Coach. Applicant was eating food in Coach No S-6 with Sep BK Singh. Maj AP Gupta was also travelling in same coach in civil dress without confirm ticket. Hot argument and physical fight took place between Maj AP Gupta and Sep BK Singh for berth. Maj AP Gupta reported the incident to Allahabad MCO on 25-26 Jan 2008. Appellant was also blamed for misbehaving with Maj AP Gupta. A Court of Inquiry (CoI) was ordered in September 2010. A summary of evidence (SoE) was recorded and charge sheet was served. Summary Court Martial (SCM) awarded punishment of (i) Reduction of rank (ii) Rigorous Imprisonment for 60 days in Military Custody. Plea of the applicant was rejected by Chief of the Army Staff. Being aggrieved, applicant has filed instant O.A. (A) with the prayer to quash the punishment of reduction to rank awarded by SCM.

3. Learned counsel for the appellant submitted that the appellant was enrolled in Army on 10.05.1998. He was posted to Military Intelligence Records in Pune. On 25.01.2008, appellant was proceeding on leave to his home town by Mumbai Howrah Mail in AC III Tier. One Sep BK Singh was also travelling in the same train in S-06 Coach seat No 31. At Jabalpur railway station, one Major A.P. Gupta in civil dress boarded the train without any valid reservation and travelled in a reserved class with a general class ticket. Some persons in civil cloth were sitting on berth of Sep BK

Singh, including Maj AP Gupta. Some heated arguments took place between Sep BK Singh and Maj AP Gupta. The seat was illegally occupied by the officer and he was reluctant to vacate the same. There was altercation for seat between Sep BK Singh and Maj AP Gupta which was intervene by other co-passengers. Maj AP Gupta lodged written complaint with MCO at Allahabad railway station to 2IC 4 Inf Div Pro Unit. Based on complaint, a Court of Inquiry (COI) was held on 10.10.2009. A Summary of Evidence (SOE) was recorded in September 2010. Summary Court Martial (SCM) was held and appellant was awarded punishment 'To be reduced to rank and to suffer rigorous imprisonment for two months by confinement in military custody'. The appellant filed an petition to COAS dated 05 Sep 2012 which was rejected. Then applicant filed writ petition No 1024 of 2014 before the Hon'ble High Court of Allahabad which was dismissed with directions to approach appropriate forum.

4. Learned counsel for the appellant further submitted that Sep BK Singh was also travelling by Mumbai Hawrah Mail. Sep BK Singh was main accused in this case. He boarded the train at Itarsi for Shankargarh with valid reserve ticket on II Class. His Berth number was 31 in S-6 coach. Hav AK Mishra was also travelling by the same train. Maj AP Gupta was also travelling the same train in civil dress and occupied berth in Coach No S-6. TTE was called

during the course of heated arguments. Maj AP Gupta occupied berth reserved for Sep BK Singh and declined to vacate the same. On hearing the noise one Colonel Mishra reached there and took Maj AP Gupta to his berth No 36 and asked the applicant to remain at his seat. Col Mishra got down at Satna railway station. At Manikpur railway station again some heated arguments took place between Sep BK Singh and Maj AP Gupta. One Dy Commandant BSF Mr Rajendar reached there to pacify both the sides. At about 09.30 hrs, the train halted at Shankargarh railway station, the destination of Sep BK Singh. Sep BK Singh along with 9- 10 persons, came and started beating Maj AP Gupta. On reaching Allahabad Railway Station, Maj AP Gupta lodged complaint against Sep BK Singh and Hav AK Mishra. SCM was held and Sep BK Singh was awarded punishment of dismissal from service. Sep BK Singh filed case before AFT, Lucknow vide O.A. No 302 of 2011 which was allowed vide order dated 04.12.2017 and punishment awarded to Sep BK Singh was set aside and Sep BK Singh was reinstated in service. Learned counsel for the appellant pleaded that since punishment of dismissal awarded by SCM to Sep BK Singh who was main accused in the case has been set aside, hence punishment awarded to Hav AK Mishra by SCM is also liable to be quashed. He submitted that appellant has already availed punishment of imprisonment in military custody and has been

promoted to the rank of Hav, punishment awarded to him should be quashed and appellant should be promoted as par with his batch mates.

5. On the other hand, learned counsel for the respondents submitted that Hav Anil Kumar Mishra was granted leave from 28.01.2008 to 06.02.2008 with permission to prefix 26 and 27 January 2008 being Sunday/Holiday. He was travelling in Mumbai-Howrah Mail Train No 2322 in AC III Tier. On 26 January 2008, between Manikpur and Shankargarh railway station, the applicant along with Sep BK Singh used criminal Force against Maj AP Gupta of 602 EME Bn, who was also travelling in the same train in coach number S-6. A Court of Inquiry was convened vide order dated 29.07.2009 to investigate the circumstances under which Sep BK Singh along with the appellant assaulted Maj AP Gupta. On the basis of findings of CoI proceedings, recommendation of Commander HQ MP C & A Sub Area and direction of General Officer Commanding MB Area, it was directed to initiate disciplinary action against the appellant. The appellant was attached with Ordinance Depot Fort Allahabad for initiation of necessary disciplinary action vide HQ MB Area letter dated 05.12.2009. Summary of Evidence was recorded and applicant was tried by SCM. Copies of S of E and Charge sheet dated 24.12.2010 were handed over to the appellant. The appellant was provided defence

witness vide order dated 04.01.2011. The friend of accused submitted UNFIT certificate of accused. Court assembled on 01.02.2011 at 1100 hrs. Final charge sheet dated 01.02. 2011 was handed over to appellant on 05.02.2011. The appellant was punished for his indiscipline act. Discipline is back bone of any army organization. The appellant was found guilty of charge under Army Act Section 40(a) read with Section 34 of the Indian Penal Code and he was awarded punishments to be reduced to rank and suffer rigorous imprisonment for two months in military custody. After three years ban on promotion, he has been promoted to the rank of Naik on 29.03.2014 and now already in the rank of Hav with effect from 01.01.2016. SCM was carried out as per laid down norms. Being aggrieved, the appellant had submitted a petition dated 02.03.2012 to COAS. His petition was examined and rejected as the same was devoid of merit. The appellant filed review petition dated 14.04.2014 against the order of Chief of army Staff which was also rejected. The appellant filed writ petition before Hon'ble High Court of Judicature at Allahabad which was dismissed vide order dated 02.01.2019 with direction to the appellant to approach Armed Forces Tribunal for redressal of his grievances. Now the applicant has filed instant appeal with the prayer to quash punishment awarded by SCM with all consequential benefits. The appellant was triable within the jurisdiction of SCM and there was no reason

to try the applicant by any other forum when the SCM had jurisdiction and adequate powers to deal with the case. The date of offence was 26.01.2008 and the cognizance of offence was taken on 27.10.2009. The SCM was well within time stipulation of three years from the date of cognizance of offence. The trail proceeded on amended Charge Sheet and not on two charge sheets for which sufficient time was given to the applicant. At the SCM and SoE, the appellant was asked to call defence witness which he refused. There was no intentional delay in finalizing the case. No injustice was done to the appellant. The punishment awarded was in accordance with Army Act Section 71. All essential witnesses were called and requirement of civilian witnesses were not felt necessary by officer recording the Summary of Evidence. Learned counsel for the respondents pleaded that appellant is not entitled for any relief and instant petition is liable to be dismissed.

6. We have heard Shri V.A. Singh, learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel representing the respondents and perused the record.

7. In the instant case, Hav Anil Kumar Mishra was proceeding on leave by Mumbai – Howrah Mail Train No 2322 in AC III Tier in reserved Coach. Applicant was eating food in Coach No S-6 with Sep BK Singh. Maj AP Gupta was also travelling in same coach but without confirm ticket. With regard to alleged occupancy of Seat of

Sep BK Singh by a person having no valid reservation ticket (Major A.P. Gupta), some heated arguments took place between Sep BK Singh and Maj AP Gupta. TTE was called during the course of heated arguments. It was alleged by Sep BK Singh that Major A.P. Gupta occupied the seat No. 31 reserved for him and declined to vacate the same. On hearing the noise when exchange of heated arguments was going on, one Colonel Mishra reached there. He took Major A.P. Gupta to his berth No. 36 and asked the appellant to remain at his seat. It is alleged that Col Mishra got down at Satna railway station. Thereafter, at Manikpur railway station, again some heated arguments took place between Sep BK Singh and Major A.P. Gupta. One Dy Commandant, BSF Mr. Rajendar reached there to pacify both the sides. At about 09-30 hrs, the train halted at Shankargarh railway station, the destination of Sep BK Singh and Hav A.K. Mishra, hence they alighted. It is alleged that soon thereafter, Sep BK Singh along with 9-10 persons, came to Major A.P. Gupta and started beating him and thus inflicted severe injuries on his head and body. His fore-head started bleeding and he is alleged to have become unconscious. It is further alleged that the culprits caught hold of Major A.P. Gupta by legs and started dragging him out, but anyhow he saved himself by holding the strings beneath the train berth. On reaching Allahabad, Major A.P. Gupta with the help of military police reported the matter to 2IC 4

Infantry Division Provost Unit and lodged complaint against Sep BK Singh and Hav Anil Kumar Mishra. Pursuant to the complaint made by Major A.P. Gupta, Hav Anil Kumar Mishra was subjected to SCM proceedings and was punished with 2 months Military Imprisonment and reduction of rank. However, in a separate trial on the same charges, Sep BK Singh was punished with dismissal from service. Sep BK Singh filed case in AFT, Lucknow which was allowed and Sep BK Singh was reinstated in service. The trial of the applicant was under Section 40(a) of the Army Act.

8. It is not disputed that Court of Inquiry (COI) was held and Summary of Evidence (SoE) was recorded against the appellant and charge-sheet was served under Section 40(a) of the Army Act read with Section 34 of the IPC for using criminal force to his superior officer. The SCM was held and appellant was awarded punishment of two month Military Imprisonment and reduce to rank to which the appellant submitted statutory appeal to COAS, which was rejected. For convenience, Section 40 of the Army Act and Section 34 of the IPC are reproduced as under:

> *"**40. Striking or threatening superior officers**.— Any person subject to this Act who commits any of the following offences, that is to say,—*
>
> > *(a) uses criminal force to or assaults his superior officer;or*
> > *(b) uses threatening language to such officer; or*
> > *(c) uses insubordinate language to such officer;*
> >
> > *shall, on conviction by court- martial,*

> *if such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and*
>
> *in other cases, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:*
>
> *Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years."*
>
> *"34.* ***Acts done by several persons in furtherance of common intention.****—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."*

9. So far as Section 34 of the IPC is concerned, the law over the subject is no more a *res integra.* The vicarious or constructive liability under Section 34 of the IPC can arise only where the two conditions stand fulfilled: i.e. (a) the mental element, called the intention to commit the criminal act conjointly with another or others; and (b) actual participation in one form or the other in the commission of the offence. The accused is not liable to be punished under Section 34 IPC, for what another or others have done by himself or themselves, but only for what he had done in furtherance of the common intention to commit the offence conjointly with another or others. Neither the entertaining of the common intention for the commission of the criminal act by itself,

nor the participation in the commission of the offence by itself, would render the accused liable to be punished under Section 34 IPC. To convict an accused under Section 34, it should be proved that the criminal act was done in concert, pursuant to the pre-arranged plan. In **Suresh versus State of U.P,** *(2001) 3 SCC 673,* the Hon‟ble Supreme Court observed:

> *“Thus to attract Section 34 IPC two postulates are indispensable: (1) The criminal act (consisting of a series of acts) should have been done, not by one person, but more than one person. (2) Doing of every such individual act cumulatively resulting in the commission of criminal offence should have been in furtherance of the common intention of all suchpersons.”*

10. Coming to Section 40(a) of the Army Act, the only injury suffered by complainant Major A.P. Gupta was a bruise on his fore-head. No Medical Officer was produced to establish the injury suffered by Major A.P. Gupta. There is also nothing on record which may indicate that non-production of Medical Officer was justified for any compelling reason. Oral statements of the witnesses on record indicate that both, the Sep BK Singh and the complainant, suffered injuries, but who was the aggressor is not ascertainable. Hav Anil Kumar Mishra did not suffer any injury. He tried to settled the case and requested Maj AP Gupta not to report the matter. The complainant was in civil dress; his identity was not known to Sep

BK Singh and Hav Anil Kumar Mishra at initial stage. Unless the identity of superior officer is known to a subordinate, that too, at civil places, no offence under Section 40(a) of the Army Act can be said to have been made out. As already observed, there is no evidence on record to establish that the appellant had intention to commit assault on the complainant or/and that the person to whom he was using criminal force or making assault was his superior officer.

11. Intention to assault knowingly, an officer of the Indian Army is a condition precedent to constitute an offence under Section 40(a) of the Army Act. In the absence of intention or *mens rea* to assault an officer of the Indian Army, no person can be convicted under Section 40(a) of the Act. Burden was on the respondents to establish that the appellant was having full knowledge about the complainant being Major of the Indian Army, in which they have failed. There is no evidence to show that initiallywhen the exchange of heated arguments had begun, both, Hav Anil Kumar Mishra and the complainant, were known to each other being members of the Indian Army. *Mens rea* or intention to assault an officer of the Indian Army is a condition precedent to convict a person. (Vide: **NNMY Momin versus State of Maharashtra,** *AIR 1971 SC 885*, **State of Uttar Pradesh versus Iftikhar Khan,** *AIR 1973 SC 863* and **Ethuba versus State of Gujarat,** AIR 1970 SC 1266.)

12. Submission of learned counsel for the applicant is that whole

trial of the applicant is vitiated because a person (Major A.P. Gupta), who was travelling without a valid ticket in the reserved compartment of train, tried to forcibly occupy seat of Sep BK Singh; he had not lodged any written complaint with Railway Police nor any FIR was registered at any police station. It has also been argued that during SoE, material witnesses were not called in spite of the request made by the appellant. Material witnesses were Col Mishra, Mr. Rajendar Dy Commandant BSF and two RPF constables, who had reached the spot during the course of heated arguments between the appellant and Sep BK Singh and Hav Anil Kumar Mishra and passengers. Medical certificate submitted by Major A.P. Gupta was not a credible one in terms of the date and place of injury. Additionally, no doctor was summoned to testify the said medical certificate and prove the injuries alleged to have been suffered by Major A.P. Gupta. It is further submitted that Sep BK Singh, who was charged for the same offence, was awarded punishment of dismissal from service for which he filed O.A. No 302 of 2011 in AFT, Lucknow which was allowed vide order dated 04.12.2017 and Sep BK Singh was reinstated in service with all consequential benefits. It is also submitted that Major A.P. Gupta entered the compartment in civilian dress and it took considerable time before identify of Major A.P. Gupta was disclosed.

13. Maj AP Gupta, was travelling in reservation compartment

without valid ticket. Under Section 137 of the Railways Act, 1987, travelling without proper ticket is an offence. Under Section 138 of the said Act, Railway has got powers to levy excess charge and fare. Such person can be removed by a railway servant authorised in this behalf in pursuance to powers conferred under Section 139 and for that, he may call security personnel. Under Section 140 of the Act, it is expected that passengers shall maintain good behaviour and any attempt to commit offence shall be punishable. For convenience, Sections 137 to 140 of the Railways Act are reproduced as under:

> ***"137. Fraudulently travelling or attempting to travel without proper pass or ticket.***—*(1) If any person, with intent to defraud a railway administration,—*
>
> > *(a) enters or remains in any carriage on a railway or travels in a train in contravention of section 55, or*
> >
> > *(b) uses or attempts to use a single pass or a single ticket which has already been used on a previous journey, or in the case of a return ticket, a half thereof which has already been so used,*
>
> *he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:*
>
> *Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than a fine of five hundred rupees.*
>
> *(2) The person referred to in sub-section (1)*

shall also be liable to pay the excess charge mentioned in sub-section (3) in addition to the ordinary single fare for the distance which he has travelled, or where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were so examined or, in case of their having been examined more than once, were last examined.

(3) The excess charge referred to in sub-section (2) shall be a sum equal to the ordinary single fare referred to in that sub-section or [two hundred and fifty rupees], whichever is more.

(4) Notwithstanding anything contained in section 65 of the Indian Penal Code (45 of 1960), the court convicting an offender may direct that the person in default of payment of any fine inflicted by the court shall suffer imprisonment for a term which may extend to six months.

138. Levy of excess charge and fare for travelling without proper pass or ticket or beyond authorised distance.—

(1) If any passenger,—

(a) being in or having alighted from a train, fails or refuses to present for examination or to deliver up his pass or ticket immediately on a demand being made therefor under section 54, or

(b) travels in a train in contravention of the provisions of section 55, he shall be liable to pay, on the demand of any railway servant authorised in this behalf, the excess charge mentioned in sub- section (3) in addition to the ordinary single fare for the distance which he has travelled or, where there is

any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or, if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were so examined or in the case of their having been examined more than once, were last examined.

(2) If any passenger,—

(a) travels or attempts to travel in or on a carriage, or by a train, of a higher class than that for which he has obtained a pass or purchased a ticket; or

(b) travels in or on a carriage beyond the place authorised by his pass or ticket,

he shall be liable to pay, on the demand of any railway servant authorised in this behalf, any difference between the fare paid by him and the fare payable in respect of the journey he has made and the excess charge referred to in sub-section (3).

(3) The excess charge shall be a sum equal to the amount payable under sub-section (1) or sub-section (2), as the case may be, or [two hundred and fifty rupees], whichever is more:

Provided that if the passenger has with him a certificate granted under sub-section (2) of section 55, no excess charge shall be payable.

(4) If any passenger liable to pay the excess charge and the fare mentioned in sub-section (1), or the excess charge and any difference of fare mentioned in sub-section (2), fails or refuses to pay the same on a demand being made therefore under one or other of these sub-sections, as the case may be, any railway servant authorised by the railway administration in this behalf may apply to any Metropolitan Magistrate or a Judicial Magistrate of

the first or second class, as the case may be, for the recovery of the sum payable as if it were a fine, and the Magistrate if satisfied that the sum is payable shall order it to be so recovered, and may order that the person liable for the payment shall in default of payment suffer imprisonment of either description for a term which may extend to one month but not less than ten days.

(5) Any sum recovered under sub-section (4) shall, as and when it is recovered, be paid to the railway administration.

139. Power to remove persons.—*Any person failing or refusing to pay the fare and the excess charge referred to in section 138 may be removed by any railway servant authorised in this behalf who may call to his aid any other person to effect such removal:*

Provided that nothing in this section shall be deemed to preclude a person removed from a carriage of a higher class from continuing his journey in a carriage of a class for which he holds a pass or ticket:

Provided further that a woman or a child if unaccompanied by a male passenger, shall not be so removed except either at the station from where she or he commences her or his journey or at a junction or terminal station or station at the headquarters of a civil district and such removal shall be made only during the day.

140. Security for good behaviour in certain cases.—*(1) When a court convicting a person of an offence under section 137 or section 138 finds that he has been habitually committing or attempting to commit that offence and the court is of the opinion that it is necessary or desirable to require that person to execute a bond for good behaviour, such court may, at the time of passing the sentence on the person, order him to execute a bond with or*

without sureties, for such amount and for such period not exceeding three years as it deems fit.

(2) An order under sub-section (1) may also be made by an appellate court or by the High Court when exercising its powers of revision."

14. In the present case, it is not disputed that TTE was called. He reached the spot and tried to pacify both sides but he failed to discharge his statutory obligations as envisaged under Sections 137, 138, 139 and 140 of the Railways Act (supra). Further, it is also an admitted fact that two constables of RPF and BSF Commandant besides Colonel Mishra of Indian Army reached the Spot. Colonel Mishra, like an elder brother, pacified both, the applicant as well as Major A.P. Gupta, and took Major A.P. Gupta to his seat. This fact establishes that the complainant occupied the applicant's seat. There appears to be failure on the part of Railway machinery to interfere and maintain the rule of law in the coach.

15. Major A.P. Gupta, being without a lawful ticket, was in no way authorised to occupy the seat validly allotted to another person in a reserved coach. It is also very clear that on objection by Sep BK Singh to unauthorised travel of Maj AP Gupta on a reserved seat, he misused the requirements of Army discipline and converted the situation into a conversation about how a jawan should behave with an officer. It is always expected from a person holding the rank of a Major in the Indian Army that he shall be disciplined, uphold the

maturity expected from an Army officer in dealing with a subordinate and will not do anything which is unlawful. Later on, when Major A.P. Gupta came to know that the applicant was a Jawan in Army, he apparently has tried to justify his illegal presence in a reserved compartment by getting into avoidable discussions about how a Jawan should behave with an Officer and give him respect.

16. There is a Latin maxim, *"Jure naturae aequum est neminem cum alterius detriment et injuria fiery locupletiorem"*, which means- It is a law of nature that one should not be enriched by the loss or injury to another. Major A.P. Gupta could not be permitted to raise grievance against Sep BK Singh and Hav Anil Kumar Mishra to validate his unlawful entry in the coach and occupy the seat of the applicant to reach his destination.

17. It is further well settled that *"Id possumus quod de jure possumus"* (a person can do that which one can do lawfully). Why the Indian Army, in spite of the fact that Major A.P. Gupta was travelling without valid ticket in a reserved IInd Class Compartment, has not taken action against him for his unlawful entry in the said coach, is not understandable. Further, the Railway authorities should have interfered in the matter and proceeded against Major A.P. Gupta under Section 137 of the Railways Act instead of accommodating him in a reserved coach. A person, who himself is

guilty for breach of law, must be cautious before entering into a scuffle with anyone or making a hue and cry for no valid cause. Passengers have right to assert for the possession of their seats. From the material on record also, it does not appear that the TTE had charged any additional amount or issued a ticket to Major A.P. Gupta for travelling in reserved coach, as required under Section 138 of the Railways Act. Hence the contention of Major AP Gupta that he was permitted by the TTE to travel in a reserved compartment without valid ticket and reservation, cannot be accepted at face value and has no legal basis.

18. One of the arguments advanced by learned counsel for the appellant is that since the alleged offence was committed while travelling in the train, FIR should have been lodged under Sections 145, 154, 155 and 175 of the Railways Act read with IPC. For convenience, these provisions are produced as under:

> *"**145. Drunkenness or nuisance.—**If any person in any railway carriage or upon any part of a railway—*
>
> *(a) is in a state of intoxication; or*
>
> *(b) commits any nuisance or act of indecency or uses abusive or obscene language; or*
>
> *(c) wilfully or without excuse interferes with any amenity provided by the railway administration so as to affect the comfortable travel of any passenger,*
>
> *he may be removed from the railway by any railway servant and shall, in addition to the forfeiture*

of his pass or ticket, be punishable with imprisonment which may extend to six months and with fine which may extend to five hundred rupees:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than—

(a) a fine of one hundred rupees in the case of conviction for the first offence; and

(b) imprisonment of one month and a fine of two hundred and fifty rupees, in the case of conviction for second or subsequent offence."

*"**154. Endangering safety of persons travelling by railway by rash or negligent act or omission.—** If any person in a rash and negligent manner does any act, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon any railway, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.*

***155. Entering into a compartment reserved or resisting entry into a compartment not reserved.—** (1) If any passenger.—*

(a) having entered a compartment wherein no berth or seat has been reserved by a railway administration for his use, or

(b) having unauthorisedly occupied a berth or seat reserved by a railway administration for the use of another passenger,

refuses to leave it when required to do so by any railway servant authorised in this behalf, such railway servant may remove him or cause him to be removed, with the aid of any other person, from the compartment, berth or seat, as the case may be, and he shall also be punishable with fine which may

extend to five hundred rupees.

(2) If any passenger resists the lawful entry of another passenger into a compartment not reserved for the use of the passenger resisting, he shall be punishable with fine which may extend to two hundred rupees."

*"**175. Endangering the safety of persons.—**If any railway servant, when on duty, endangers the safety of any person—*

(a) by disobeying any rule made under this Act; or

(b) by disobeying any instruction, direction or order under this Act or the rules made thereunder; or

(c) by any rash or negligent act or omission,

he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to onethousand rupees, or with both."

19. Hon'ble Supreme Court from time to time repeatedly reiterated interpretative jurisdiction and observed that while considering statutory provision, the provision should be considered section by section, word by word, line by line along with punctuation in reference to context for which of the provision. In the case reported in ***Vipulbhai M. Chaudhary vs. Gujarat Coop. Milk Mktg. Federation Ltd.*** (2015) 8 SCCC 1 the Hon'ble Supreme Court has held:-

"In the background of the constitutional mandate, the question is not what the statute does say but what the statute must say. If the Act or the Rules or the bye-laws do not say what they should say in terms of the

Constitution, it is the duty of the court to read the constitutional spirit and concept into the Acts."

20. Further, in the case of ***Deevan Singh vs. Rajendra Prasad Ardevi,*** reported in *2007 (10) SCC 28*, Hon'ble the Supreme Court held that while interpreting Statute the entire statute must be read as a whole, then section by section, clause by clause, phrase by phrase and word by word.

21. The Legislature, in its wisdom, in Section 145 of the Railways Act has used the phrase "*aid of any other person*". It means, the employees of the Railways may take the assistance of passengers, who are statutorily bound to help the Railways to remove any person who does not have a valid ticket. Accordingly, it was incumbent on the TTE to remove Major A.P. Gupta with the help of passengers including the applicant from berth No. 31 in case he was unauthorizedly occupying the same, but the TTE or RPF or BSF personnel do not appear to have discharged their duty. In such a situation, in case the complainant Major A.P. Gupta was in occupation of the berth of Sep BK Singh, then it was open to Sep BK Singh to assert his right and call the TTE or other Railway authorities in order to occupy his seat.

22. For offences committed under the Railways Act (supra), specific provision has been made by the Parliament in the

Railways Act as envisaged under Sections 180 to 182. Under Section 180F, the courts have been debarred from taking cognizance of an offence under the Act excepton a complaint made by the officer authorised. In case any incident or scuffle had taken place in the coach, there was no option for the respondents except to proceed in accordance to the provisions contained in Sections 180, 181 and 182 of the Railways Act and not otherwise. Such offender could have been arrested under Section 179 of the Railways Act also. For convenience, Sections 180F, 180G, 181 and 182 of the Railways Act are reproduced as under:

> ***"180F. Cognizance by Court on a complaint made by officer authorised.—****No court shall take cognizance of an offence mentioned in sub-section (2) of section 179 except on a complaint made by the officer authorised.*
>
> ***180G. Punishment for certain offences in relation to inquiry.—****Whoever intentionally insults or causes any interruption in the inquiry proceedings or deliberately makes a false statement before the inquiring officer shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.*
>
> ***181. Magistrate having jurisdiction under the Act.—****Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try an offence under this Act.*
>
> ***182. Place of trial.—****(1) Any person committing an offence under this Act or any rule*

made thereunder shall be triable for such offence in any place in which he may be or which the State Government may notify in this behalf, as well as in any other place in which he is liable to be tried under any law for the time being in force.

(2) Every notification under sub-section (1) shall be published in the Official Gazette, and a copy thereof shall be exhibited for the information of the public in some conspicuous place at such railway stations as the State Government may direct."

23. The provisions contained in the Railways Act are statutory in nature, under which action could have been taken against the applicant as well as Major A.P. Gupta for creation of unruly atmosphere in the Railway coach. Trial of such offence, to the extent it is made out under the provisions contained in Sections 145, 154, 155, 175, etc of the Railway Act should have been done in pursuance to power conferred by Sections 180 to 182 of the said Act on the complaint filed by the Railways. The Railways Act and the Army Act both are special laws. The Railways Act covers the field of offences committed under the Railways Act whereas the Army Act covers the offences committed by the Army personnel under the Army Act. Since the appellant as well as the complainant Major A.P. Gupta were not on active duty; they were in civil dress and travelling like ordinary citizens, at the first instance, they should have been tried under the Railways Act and not under the Army Act. FIR should have been lodged and during course of trial, it was open to Army to make a request to the

magistrate concerned for trial of offenders by Court Martial under the Army Act. Unless provided by Army Act itself, it was not open for the respondents to proceed for trial, if any, of the appellant for an offence committed under the Railways Act. Thus, the trial of the appellant seems to suffer for want of jurisdiction. Special law, like the Railways Act, should be dealt with according to the provisions contained therein and not by the general law. (Vide: *AIR 1961 SC 1170* **J.K.Cotton Spinning & Weaving Mills Co. Versus State of U.P.**, *(1981) SCC 315* **L.I.C versus.J. Bahadur**, *(1990) 2 SCC 562* **Vijay Kumar Sharma versus State of Karnataka**, *(1984) 3 SCC 127* **Ajoy Kumar Benerjee versus Union of India,** *(1990) 4 SCC 438* **Ashoka Marketing Ltd versus Punjab National Bank**, *(2001) 8 SCC 289* **Jasbeer Singh versus Vipin Kumar Jaggi** and *(2001) 7 SCC 728*, **State of Karnataka versus B. Suverna Malini.)**

24. In view of above, the appellant could not have been punished through SCM unless some order was passed by a Magistrate authorised under the Railways Act. It is a well settled proposition of law that a thing should be done in the manner provided by the Act or the statute and not otherwise vide ***Nazir Ahmed vs. King Emperor,*** AIR 1936 PC 253; ***Deep Chand vs. State of Rajasthan,*** AIR 1961 SC 1527***, Patna Improvement Trust vs. Smt. Lakshmi Devi and ors,*** AIR 1963 SC 1077; ***State of U.P. vs. Singhara Singh and others,*** AIR 1964 SC 358; ***Barium Chemicals Ltd vs.***

Company Law Board, AIR 1967 SC 295; ***Chandra Kishore Jha vs. Mahavir Prasad and others,*** 1999 (8) SCC 266; ***Delhi Administration vs.Gurdip Singh Uban and others,*** 2000 (7) SCC 296; ***Dhananjay Reddy vs. State of Karnataka,*** AIR 2001 SC 1512; ***Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala and others,*** 2002 (1) SCC 633; ***Prabha Shankar Dubey vs. State of M.P.,*** AIR 2004 SC 486 and ***Ramphal Kundu vs. Kamal Sharma,*** AIR 2004 SC 1657.

25. Now, it is a settled proposition of law that in case of commission of any cognizable offence, registration of FIR is mandatory. In this regard, a Constitution Bench of Hon„ble Supreme Court in a case reported in *(2014) 2 SCC 1* **Lalita Kumari vs. Government of Uttar Pradesh and others** held that in case the cognizable office is made out then in such situation the registration of F.I.R. is mandatory. For convenience Para-119 from the judgment of **Lalita Kumari** (supra) is reproduced as under:-

> *"119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry*

for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

26. In the case of **Lalita Kumari** (supra), Hon„ble Supreme Court in Para- 120 concluded with their finding with regard to registration of F.I.R. and variety of cases dealing with different circumstances. For convenience, Para-120 to 120.8 are reproduced as under :-

"120. In view of the aforesaid discussion, we hold :

The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases when preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must

disclose reasons in brief for closing the complaint and not proceeding further.

The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under: (a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/latches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time- bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an

inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also bereflected, as mentioned above."

27. The principles flowing from the judgment of Lalita Kumari (supra) have been reiterated by Hon'ble Supreme Court in *(2015) 6 SCC 287,* **Priyanka Srivastava and another vs. State of U.P.** and (*2017) 2 SCC 779,* **State of Telangana vs. Habib AbdullahJeelani and others.**

28. Registration of FIR also appears to be mandatory to determine the question as to whether the case should be tried by Court Martial or by a civil court. Sections 124, 125 and 126 of the Army Act deal with the trial by criminal court or court martial. For convenience, these provisions are reproduced as under:

> ***"124. Place of trial.-*** *Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.*
>
> ***125. Choice between criminal court and court martial****.*
>
> *When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division orindependent brigade in which the accused person is serving orsuch other officer as may be prescribed to decide before which court the proceedings shall be instituted, and if that officerdecides that they should be instituted before a court martial, todirect that the accused person shall be detained in military custody.*
>
> ***126. Power of criminal court to require delivery of offender****. — (1) When a*

> *criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 125 at his option, either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.*
>
> *(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be final."*

29. It was, therefore, necessary to lodge an FIR to ascertain as to whetherthe trial should be done by court martial or by criminal court. Moreover, as we have already seen, the Railways Act debars other courts to proceed with the trial of such offences except on a complaint lodged by railway authorities. To deal with such offences, the Railways have their own Magistrates for trial of offenders and punishment. It may be noted that the alleged offence committed by the appellant did not occur when both, the appellant and Major A.P. Gupta, were on active army duty, hence also it was necessary that FIR should have been lodged so that the authorities concerned could have exercised their power by application of judicial mind. A Division Bench of Hon'ble Delhi High Court in the case of **Ranjit**

Singh, Ex Sepoy versus Union of India, decided on 18.05.2002, has dealt with a question with regard to trial by court martial or criminal court as under:

> *"35. Section 125 of the Act speaks of a decision. Such a decision to the effect that the proceedings should be instituted before a Court Martial must be in writing. Only by reason of an order in writing, a direction can be issued by the competent authority that the accused person shall be detained in military custody. An ordinary court has the jurisdiction to initiate the trial of a criminal case. Sections 69 and 70 of the Act curb out an exception thereto. The jurisdiction of the criminal court and the Court Martial being coordinate it was obligatory on the part of the respondents is strictly comply with the provisions of Section 125 of the Act. Exercise of discretion in terms of Section 125 of the Act would require application of mind on the part of the Competent Authority and while applying mind in that behalf, the said authority must take into consideration all aspects of the matter including respective advantages and disadvantages of getting the accused tried by a criminal court vis-a-vis in a Court Martial. A discretion conferred upon the appropriate authority cannot be exercised arbitrarily or whimsically. The Apex Court while upholding the constitutionality of Section 125 of the Act in Ram Sarup's case (Supra) held:-*
>
> > *"22. In short, it is clear that there could be a variety of circumstances which may influence the decision as to whether the offender be tried by a Court-Martial or by an ordinary Criminal Court, and therefore it becomes inevitable that the discretion to make the choice as to which Court should try the accused be left to responsible military officers under whom the accused be serving. Those officers are to be*

> *guided by considerations of the exigencies of the service, maintenance of discipline in the army, speedier trial, the nature of the offence and the person against whom the offence is committed.*
>
> *23. Lastly, it may be mentioned that the decision of the relevant military officer does not decide the matter finally. Section 126 empowers a criminal court having jurisdiction to try an offender to require the relevant military officer to deliver the offender to the Magistrate to be proceeded against according to law or to postpone proceedings pending reference to the Central Government, if that Criminal Court be of opinion that proceedings be instituted before itself in respect of that offence. When such a request is made, the military officer has either to comply with it or to make a reference to the Central Government whose orders would be final with respect to the venue of the trial. The discretion exercised by the military officer is therefore subject to the controlof the Central Government."*
>
> *It was held that Section 125 does not contain any guideline. The Apex Court, however, held that the nature of offence, the person accused, by whom the offence is committed, discipline in the Army and exigency of service are the relevant criteria."*

30. In view of above, since the respondents did not lodge any FIR, hence they have failed to comply with the statutory provisions contained in the Railways Act (supra) read with Section 154 of the Cr.P.C, which vitiates the trial. By no stretch of imagination, it may be held that any effort was made for compliance with the statutory provisions of the Army Act (supra).

31. Court of Inquiry has opined that Sep BK Singh has used criminal force to another person benefit of doubt is to be given to him that he did not know or was not sure of the officer's identity in a civil area in the moving train. Hav Anil Kumar Mishra has intervened in the matter, hence similar benefit of doubt is to be given to him also.

32. It is trite law that non-compliance of Army Rule 180 vitiates the trial. As observed above, the applicant at no stage was permitted to lead evidence in defence or cross-examine the witnesses in CoI in compliance of Rule 180 of the Army Rules, which is mandatory in view of law settled by Hon'ble the Supreme Court in the case reported in`` *Military Law Journal 2013 SC 1* **Union of India vs. Sanjay Jethi & Anr.** Essential witnesses were not called in the Court of Inquiry hence, applicant could not cross examine the witnesses. A finding has been recorded against the appellant's conduct which affects his reputation. Accordingly, the finding recorded in CoI on account of non-compliance of statutory mandates vitiates and deserves to be set aside. In view of above, an inference may be drawn that the provision contained in Army Rule 180 has not been complied with, which vitiates the trial.

33. It is vehemently argued by learned counsel for the appellant that material witnesses were not produced, which seems to be correct, for the reason that an officer of the Indian Army of the rank

of Colonel i.e. Col Mishra, two constables of RPF, Mr Rajinder Dy Comdt BSF, TTE and some civilians were very well available to be produced, but why the respondents have not called them during SoE and SCM is not understandable. Conducting a court of Inquiry, Summary of evidence and subsequent SCM on the primary evidence of only one officer as prosecution witness who himself has put allegations and charges against the appellant and his colleague, without giving any credibility to the evidence of appellant and his colleague and not making any attempt to get independent witnesses, does not meet the requirements of Principles of natural justice. Even the doctor, who examined the complainant, was not examined to prove injury report with liberty to the appellant to cross-examine the witnesses in compliance with the principles of natural justice. Non- production of material witnesses and material documents makes the trial arbitrary and violative of principles of natural justice, vide **Ramaswamy vs. Muthu** *{Madras High Court 1976-MAD LJ-1-282} Para-5 and 8*, Supreme Court in **State of U.P. vs. Jaggo** (*1971-AIR(SC)-0-158* and Supreme Court in **Ishwar Singh vs. State of U.P.** (*AIR 1976 SC 2423*), Para-6. The applicant seems to have been prejudiced on account of non-production of material witnesses during SoE and SCM, which vitiates the trial.

34. In the present case, the respondents did not apply mind to the

provisions of the Railway Act and to the fact that the incident had taken place in the train compartment where Major A.P. Gupta was in civil dress and initially he was not known to the appellant and that he being an officer of Indian Army, no conscious decision had been taken with regard to lodging of FIR. Thus, the statutory mandates of Railways Act with respect to trial by holding SCM proceedings against the appellant has not been complied with. As held by the Hon'ble Supreme Court in para 35 of the said judgment, it was necessary to record reason for holding SCM. To quote:

> *"33. In the premises, we hold that it is not imperative that an SCM be convened, constituted and completed by CO of the Unit to which the accused belonged. It is competent and permissible for the CO of the Unit to which the accused was attached or sent on attachment for the purposes of trial, to try such accused by convening, constituting and completing SCM in a manner known to law i.e. strictly within the confines of Sections 116 and 120 of the Act and other Statutory provisions. We fully endorse and affirm the view taken by the High Court that SCM is an exception and it is imperative that a case must be made out for immediacy of action. The reasons to convene an SCM must be followed by well articulated reasons or the record itself must justify such resort."*

35. In view of above, trial of appellant by SCM is not only vitiated for non-compliance with the provisions of Railways Act, but also the lack of urgency coupled with adhering to SCM proceedings without recording any reason invalidates the trial.

36. Major A.P. Gupta has admitted in his statement that he was not having a reserve ticket and no effort was made by him to lodge a report in writing; he had not reported the incident to Station Officer, Manikpur, but stated that all facts have been enumerated in the CoI. His statement that he was beaten by 9-10 persons and appellant also caught him, is not supported by evidence.

37. In his statement Major AP Gupta has admitted that he prevented Sep BK Singh and Hav Anil Kumar Mishra to remove their luggage at their destination station, he wanted them to come upto Allahabad so that they could be arrested by Military police. This act of the officer in our opinion was an extreme provocation and an illegal act and could have been the main trigger for the avoidable skirmish between the officer and the applicant.

38. One strange feature borne out from the record is that Hav Anil Kumar Mishra, co-accused was tried and punished separately. He was also produced as prosecution witness. He stated that he had seen Major A.P. Gupta shouting and two RPF approaching him and that Sep BK Singh was sitting on a seat with his lips swollen and some blood near his noise. For convenience, relevant paras of the statement of this prosecution witness are reproduced as under:

> *"26. On checking also what was going on I was told that two people from army were having a fight. I went inside to see and saw Maj AP Gupta shouting and two RPF were apch him. I saw Sep BK Singh was sitting on a seat with his lips swollen and some blood near his noise. On checking I was told that there had been a fight between Maj AP Gupta and Sep BK Singh.*
>
> *27. I found Maj AP Gupta in a foul mood and requested him to calm down. Maj AP Gupta told me that he was an offr and since a Sep had behaved with him in an incorrect manner he would not spare him. I then told Sep BK Singh to apologize to Maj AP Gupta which he did. Maj AP Gupta said if he apologises loudly three times in front of the complete public I will forgive him Sep BK Singh then apologized to Maj AP Gupta three times loudly in front of the complete public.*
>
> *28. I saw two RPF constables then talking to Maj AP Gupta and saying that if Maj AP Gupta had a complaint he should give it in writing, as they were seeing Sep BK Singh sitting there bruised. They then advised Maj AP Gupta to resolve the problem in house since it was an internal army matter. After the two constables left Maj AP Gupta and Sep BK Singh started arguing again, I then took Sep BK Singh to some other seat and made him sit down there on seat No 1."*

39. The aforesaid statement of prosecution witness, Hav AK Mishra contradicts the statement given by Maj AP Gupta, which makes the prosecution case unworthy of credence. To find out the truth, it was incumbent upon the respondents to produce other material independent witnesses who were party to the incident in question, but there appears to be deliberate attempt on the part of

the respondents to withhold the material witnesses, which at the face of record, seems to be fatal to the prosecution case. No finding could have been recorded merely on the statement made by Major A.P. Gupta, that too in the absence of compliance of the statutory provisions (supra).

40. To sum up, the factual matrix on record makes out and constitute an offence under the Railways Act and the Railways Act being a special Act, trial should have been proceeded in accordance to the provisions contained therein. Apart from this, on account of non-compliance of Rule 180 of the Army Rules and non-lodging of FIR as well as for reasons given in preceding paras of this judgment, the punishment awarded to the appellant besides being discriminatory in nature suffers from the vice of arbitrariness, hit by Article 14 of the Constitution of India. In addition to above, since punishment of dismissal awarded by SCM to Sep BK Singh who was main accused in the case has been set aside and Sep BK Singh has been reinstated in service, hence punishment awarded to Hav AK Mishra by SCM is also liable to be quashed.

41. In view of discussions made above, the OA deserves to be allowed and is hereby **allowed.** The impugned orders passed by the respondents are set aside. The appellant has already undergone Rigorous Imprisonment for 60 days in military custody

and now he has been promoted to the rank of Hav. The respondents are directed to grant promotion to the appellant at par with his batch mates with other consequential benefits in accordance to rules within a period of four months from today.

42. No order as to costs.

(Maj Gen Sanjay Singh) **(Justice Ravindra Nath Kakkar)**

Member (A) **Member (J)**

Dated : 20 April, 2023

Ukt/-