

**Reserved****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION (APPEAL) No. 383 of 2018 along with O.A.  
(A) No. 169 of 2020**Tuesday, this the 11<sup>th</sup> day of July, 2023**“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)  
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”**

No. 923082-F, Cpl Achchan Shekh through his wife Shaheen Shekh, Son of Laddhan Shekh resident of Village: Bharawaal, Post Office: Derapur, District : Kanpur Dehat (U.P.) PIN 209301

**..... Appellant**Ld. Counsel for the : **Shri Yashpal Singh, Advocate**  
Appellant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block New Delhi PIN - 110011.
2. The Chief of Air Staff, Vayu Bhawan, New Delhi PIN - 110011.
3. Air Officer Commanding, Air Force Record officer, Subroto Park, New Delhi.
4. Presiding Officer of DCM held on 01.06.18 at 02 Wing, AF.
5. Air Officer Commanding. No. 2 Wing, AF, Pune.
6. Air Officer Commanding. No. 11 Wing, AF, Pune.
7. Air Officer Commanding-in-Chief, South West Air Command, Gandhi Nagar.
8. Air Officer Commanding - in - Chief, Eastern Air Command, Shilong.

**.....Respondents**

Ld. Counsel for the  
Respondents.

**:Shri GS Sikarwar,  
Central Govt. Counsel.**

**ORDER**

**“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”**

1. O.A. (A) No 383 of 2018 was filed by Mrs Shaheen Sheikh wife of Ex Cpl Achchan Sheikh in the year 2018 while Ex Cpl was in jail. The instant Original Application (Appeal) was filed under Section 15 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (I) *Quash the finding and sentence dated 01.06.2018 passed in DCM held at No. 02 Wing, AF Pune, confirmation order dated 11.07.2018 passed by the HQ SWAC, IAF, after summoning the same from respondent.*
- (II) *Direct the respondent to reinstate the appellant with all consequential benefits.*
- (III) *Pass the order of exemplary compensation for false prosecution and illegal imprisonment, in the interest of justice.*
- (IV) *Pass any order which this Hon’ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the petitioner, in the interest of justice.*
- (V) *Allow the Original Application with exemplary cost.*

2. Ex Cpl Achchan Sheikh was released on bail vide this Tribunal order dated 14.09.2018. After release of appellant from imprisonment, he filed O.A. (A) No 169 of 2020 on 22.07.2020 and

both the appeals have been clubbed vide this Tribunal dated 11.12.2020. Appellant has filed instant Appeal with the following prayers:-

- (i) *Allow the Original Application (Appeal) and set aside conviction and special findings dated 21.05.2018 and 01.06.2018 respectively and sentence dated 01.06.2018 against the applicant recorded by the DCM held at No. 2 Wing, AF (Pune) on 27.02.2018 and subsequent days (Impugned Order No. 2).*
- (ii) *Allow the Original Application (Appeal) and set aside order dated 09.01.2020 (Impugned order No. 1) issued by respondent Dy. JAG (Air) III.*
- (iii) *Allow the Original Application (Appeal) call for record and set aside confirmation order dated 11.07.2018 recorded by respondent AOC-in-C and reflected in letter dated 13.07.2018.*
- (iv) *Allow the Original Application (Appeal) call for record and set aside order dated 08.08.2017 passed by respondent AOC, 2 Wing ordering for SOE (Impugned order No. 3).*
- (v) *Allow the Original Application (Appeal), call for record and quash the order convening DCM to hold trial of applicant dated 29.01.2018 passed by respondent AOC-in-C (Impugned order No. 4).*
- (vi) *Allow the Original Application (Appeal) and reinstate the applicant in service with all consequential benefits including back pays, allowances and promotions.*
- (vii) *Issue an appropriate order or direction and award an adequate compensation to applicant for having unlawfully and malafidely arrested and kept him in solitary close arrest in a cell at Main Guard Room, No. 2 Wing, AF Pune for period w.e.f. 05.08.2017 and 26.02.2018 respectively.*
- (viii) *Issue an appropriate order or direction to respondent Union of India, to take appropriate stern action against respondents (1) Air Cmde KVS Nair, (2) Gp Capt N Nikhil Naidu, (3) MWO (HFO) JK Gangwar, (4) Wg Cdr V Sridhar, (5) Sqn Ldr Aman Virk and (6) Sqn Ldr RV Thakur (MO) for having indulged in false prosecution of applicant, committing forgeries and manhandling applicant respectively.*
- (ix) *Issue any other order or direction as this Hon'ble Tribunal may deem fit and proper in the ends of justice.*

3. Briefly stated facts of the case are that appellant was enrolled in Air Force on 01.07.2009. He was tried by District Court Martial

(DCM) on 27.02.2018 for various offences and awarded punishment of reduced to rank, dismissal from service and one year Rigorous Imprisonment (RI). He was granted bail on 14.09.2018 by this Tribunal. This appeal has been filed by Cpl Achchan Shekh with the prayer to quash the order of punishment passed by DCM and to reinstate him in service with all consequential benefits.

4. Learned counsel for the appellant submitted that appellant was enrolled in Air Force on 01.07.2009 and he was promoted to the rank of Corporal on 01.07.2014. He was tried by District Court Martial (DCM) on 27.02.2018 for various offences. Two Charge Sheets were issued against the appellant and appellant was tried by DCM for six charges. He was found guilty in three charges, first under Section 39 (d) and second under Section 40 (b) of Air Force Act. DCM awarded him punishment of Rigorous imprisonment for one year, Dismissal from service, Reduced to ranks and Severe Reprimand. He was dismissed from service on 01.06.2018. Wife of the appellant filed bail application before this Tribunal which was allowed vide order dated 14.09.2018 and husband of the appellant has been released on bail. The appeal preferred against the sentence awarded by DCM was rejected by Chief of Air Staff vide order dated 09.01.2020. The appellant is only son of his parents. Father of appellant aged 64 years was suffering from Hernia from

two years. He was being treated at 7 Air Force Hospital, Kanpur and his surgery was planned in November 2014, therefore, the presence of appellant with his father was necessary. Marriage of sister of the appellant was also settled in the month of November 2014. Accordingly, the appellant applied for 19 days part of Annual Leave to meet his both requirements. He was asked to produce documentary proof. The appellant produced wedding card of his sister and promised to produce medical paper of his father on his return from leave but he was granted only 13 days leave. The appellant managed only marriage of his sister during leave and surgery of his father could not be done. On return from leave, appellant produced his medical paper and requested for leave but JWO i/c and O i/c send the papers for verification to Senior Medical Officer 11 Wing, AF who verified and confirmed its genuineness, but the appellant was not granted leave. He approached Air Officer Commanding, then he was granted leave for treatment of his father. He was issued 7 charge sheets within a week. Show cause notice reveals that the appellant failed to carry out Daily inspection (DI) of Diesel Generator (DG) and arrester barrier. DI of DG set and arrester Barrier pertains to Electrical Tradesman and Mechanical Transport hereinafter shall be referred as (MT) driving relates to MT Drivers. Appellant was an Auto Fitter (Mechanical Transport Fitter). He was not trained in Electrical System nor was given any job training (OJT). The charge sheets are for the orders parallel to

directing a General Duty Medical Officer to fly solo fighter Aircraft that always involves imminent danger to human life and service property and shall prove fatal, if excited, therefore, such orders do not fall under category of lawful orders.

5. Learned counsel for the appellant further submitted that there were about 20-25 Elect Fitter and Auto Fitter tradesmen in the Section, but the appellant was only targeted in the name of extra trade morning and afternoon on working days and holidays and that too without intervention of charter of duty. There was violation of mandatory provisions of Rules 39 and 40 of Air Force Rules read with para 731 (g) and 740 (f) of Regulations for Air Force. The appellant was not provided opportunity to prepare defence. Rule 39 of Air Force Rules provides that *'An accused person for whose trial a Court Martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses and with any friend or legal adviser whom he may wish to consult.'* Rule 40 (1) of the Air Force Rules provides that the accused shall be informed by an officer of every charge on which he is to be tried and also that on his giving the names of witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance. The interval between his being so informed of charges against him and his arraignment must be such as to allow him to have his witnesses

present and to consider his defence. Para 731 (g) of Regulations for Air Force provides that as soon as practicable after an accused has been remanded for trial by court martial, he will be supplied with a copy of summary of evidence, charge sheet and list of witnesses. Para 740 of Regulations for Air Force provides that *'Commanding Officer will ensure that accused has been informed of every charges on which he is to be tried and accused must be afforded proper opportunity for preparing his defence and this requirement will be complied within 96 hours before a trial and if the accused is on active service, 24 hours before trial'*. These circumstances establish that charge sheets were frivolous, vexatious and abuse of process of law. Rule 24 (1) stipulates that accused shall have full liberty to cross examine any witness against him and to call any witness and make any statement in his defence but the appellant was neither given copy of charge sheet beforehand nor full liberty and time to cross examine the witnesses. Appellant did not participate effectively in the Trial. None of the witnesses made any statement in presence of appellant during trial and AOC ordered Summary of evidence out of his whim without any evidence. The order of SOE is pre-decided, illegal and without evidence therefore, the trial is cryptic and unreasoned which vitiates the DCM Proceedings. There are several infirmities in the proceedings of DCM and the action taken by the respondents before the DCM. Learned counsel for the appellant pleaded that

punishment awarded by DCM to appellant be quashed and appellant be reinstated in service with all consequential benefits.

6. On the other hand, learned counsel for the respondents submitted that appellant was tried by DCM on 27.02.2018 on the charges contained in two Charge Sheets for various offences under Section 39 (d) 41 (2), 40 (c) and 40 (b) for without sufficient cause failing to appear at the time fixed for duty and for using threatening language to his superior officer. Meanwhile, the appellant was posted to 2 Wing and committed two more offences under Section 40 (a) and 40 (b) of Air Force Act 1950 which were made part of second charge sheet for his trial by DCM. All the offences were tried together in terms of Paras 665 and 666 (f) of Regulations for Air Force 1964. In terms of Rule 24 (3) of Air Force Rules, 1969, a Commanding Officer after hearing a charge, if decides to proceed with charge may adjourn the case for purpose of having evidence reduced to writing which is referred as 'SoE'. In the instant case, AOC 2 Wing Air Force after hearing the charge, ordered the evidence to be reduced to writing considering availability of prima facie evidence. Thus, AOC 2 Wing AF was well within his powers to order recording of SoE. The appellant was kept in custody on 05.08.2017 because he had committed serious offences of using criminal force and insubordinate language against his superior officer punishable under Section 40 (a) and 40 (c) of AF Act 1950

respectively. The said custody was in consonance with Section 102 of AF Act 1950 read with Rule 22 of AF Rules 1969. The accused was taken into custody on 26.02.2018 for pending trial by DCM which assembled on 26.02.2018 and subsequent days and was released on 07.04.2018 by AOC 2 Wing AF. Letter for DCM was dispatched to the accused home address. Further Station Asst Adjt had called the appellant on the contact number available with his Section. Call was attended by his father and his father was informed regarding assembly of DCM from 27.02.2018. After return of appellant from leave, he was handed over copy of Charge Sheet and SoE 96 hours prior to assembly of DCM in terms of Para 740 of Regulations. On 26.02.2018, when the Stn Adjt offered the documents to accused, he refused to accept the same stating that he will not accept any document without his civil defence counsel. Appellant was found Guilty and he was awarded punishment to suffer rigorous imprisonment for one year, to be dismissed from service, to be reduced to ranks and to be severely reprimanded. Appellant did not submit any pre-confirmation petition under Section 161 (1) of AF Act, till date the sentence was pronounced on 01.06.2018. Appellant was provided complete set of DCM proceedings vide letter dated 12.07.2018 in presence of two independent witnesses. There was no violation of mandatory provisions of Rule 39 and 40 of Air Force Rules read with paras 731 (g) and 740 (f) of Regulation for the Air Force. Learned counsel

for the respondents pleaded that finding is in conformity of Sections 138 (3) of Air Force Act 1950 read with Rule 71 (4) & (5) of Air Force Rules 1969. The findings are based on evidence and there is no perversity in recording of findings. Impugned orders passed by the respondents and order convening DCM dated 29.01.2018 are wholly just proper and in accordance with law. Instant O.A. has no substance and is liable to be dismissed.

7. We have heard learned counsel of both the parties and perused the original proceedings placed on record. On the arguments of the counsel for the parties, the only question which falls for determination is as to whether on the facts and circumstances of this case, the appellant is entitled for reinstatement in the service?

8. On the point of procedural irregularities, we would like to refer the case of **Major G.S. Sodhi vs. Union of India** (1991) 2 SCC 382), wherein the Hon'ble Supreme Court has considered Army Rule 22 and the other Rules. The relevant part of the said judgment reads as under:

*“6..... Rule 22 provides for the hearing of charges. Rule 23 lays down the procedure for taking down the summary of evidence. Rule 24 deals with remand of accused and lays down that the summary of evidence recorded under Rule 23 shall be considered by the Commanding Officer who thereupon shall either remand the accused for trial by a court-martial or refer the case to the proper superior military authority and if the accused is remanded for trial by a court-martial the commanding officer shall without unnecessary delay either assemble a summary court-martial or apply to the proper military authority to convene a court-martial. Rule 25 provides for the*

*procedure to be followed on a charge against an officer. Rule 28 deals with framing of charges and lays down that the charge-sheet shall contain the whole issue or issues to be tried by a court-martial. Rule 33 deals with the defence by the accused person.....”*

*“11. .... Rule 22 contemplates that every charge against a person other than an officer, shall be heard in the presence of the accused, and the accused shall have full liberty to cross-examine any witness against him, and to call any witnesses and make any statement in his defence. Rule 25 lays down the procedure on a charge against officer and is to the effect that where an officer is charged with an offence under the Act, the investigation shall, if he requires it, be held, and the evidence be taken in his presence in writing, in the same manner as required by Rules 22 and 23.....”*

9. Violation of Rule 25 (1) (c) vitiates DCM proceedings. Charges were not explained to the appellant in pursuance to Rule 40 of the Air Force Rules, 1969. The appellant was also not provided with a copy of the proceedings of DCM, which was held in contravention of the Rules, nor was the appellant afforded any opportunity to defend himself.

**“731. Court-Martial - Application for**

*(a) When making an application for the trial of an accused by a court-martial the commanding officer will forward to the convening authority the documents listed in the Table subjoined to this para.*

*(b) Applications for trial by court-martial will be made in Form 116, on which the commanding officer will assess in his own handwriting the character of the accused, if he is an airman, without reference to any contemplated charge. The commanding officer will also, in Form 116, suggest the name of an officer under his command as prosecutor. The information required as to officers who have investigated the case, or sat on a court of inquiry, must be given with great care. The application will be signed by the officer in command of the accused's unit, and*

*completed on the reverse by the medical officer.*

*(c) The charge sheet will be signed by the officer in command of the unit to which the accused person is posted or attached and will state the place and date of signature.*

*(d) A written statement will be obtained from the accused as to whether wishes to have an officer assigned to assist him at the trial. If so, a suitable officer will be made available to the accused. If a particular officer from another command is applied for, signalled application for his services will be made to Air Headquarters.*

*(e) All particulars of service, date etc. which will alter before the date of trial are to be entered on the Form 1655 in pencil. When required to be handed into the court the form will be corrected and completed in ink with the accused's correct history as on the first day of trial and dated and signed by the officer in charge of documents.*

*(f) The covering letter forwarding the documents listed in should always state-*

*(i) Any reason which is not self-evident, why a general court-martial is considered necessary (when applicable);*

*(ii) Any particular points on which doubts or difficulties are being experienced., and*

*(iii) An explanation of any technical local or inside information which is not clear from the summary of evidence.*

*(g) As soon as practicable after an accused has been remanded for trial by court-martial he will be supplied with a copy of summary of evidence, charge sheet and list of witnesses. Should any of these documents subsequently be amended, revised copies are to be handed to the accused."*

10. In the case in hand, the appellant was issued Two charge sheets on 19/22.02.2018 as under:

CHARGE SHEET No. 1:

- (a) First Charge under Section 39(d), Air Force Act:- The accused/applicant without sufficient cause failed to appear for duty on certain dates and time between 05.03.2015 and 10.03.2015.
- (b) Second Charge under Section 41(2), Air Force Act:- The accused/applicant disobeyed the order of superior on 05.03.2015 by not bringing a vehicle for maintenance/rectification.
- (c) Third Charge under Section 40(c), Air Force Act:- The accused/applicant used insubordinate language to his superior on 10.03.2015.
- (d) Fourth Charge under Section 40(b), Air Force Act:- The accused/applicant on 17.03.2015 used threatening language to his superior.

CHARGE SHEET No. 2:

- (a) First Charge under Section 40(a), Air Force Act:- The accused/applicant used criminal force to his superior on 05.08.2017.
- (b) Second Charge under Section 40(b), Air Force Act:- The accused/applicant used threatening language to his superior on 05.08.2017.

11. The appellant was tried by the District Court Martial which started from 27.02.2018 onwards for the charges mentioned in the

two charge sheets. After trial, the 'findings' of District Court Martial were as under:-

- (a) 'Guilty' of First Charge under Section 39(d), Air Force Act of the Charge Sheet No. 1 with the exception of instances mentioned at serial numbers (a), (d), (e) and (f).
- (b) 'Not Guilty' of Second Charge under Section 41(2), Air Force Act of the Charge Sheet No. 1.
- (c) 'Not Guilty' of Third Charge under Section 40(c), Air Force Act of the Charge Sheet No. 1.
- (d) 'Guilty' of Fourth Charge under Section 40(b), Air Force Act of the Charge Sheet No. 1.
- (e) 'Not Guilty' of First Charge under Section 40(a), Air Force Act of the Charge Sheet No. 2 for 'using criminal force', but 'Guilty' of 'assaulting'.
- (f) 'Guilty' of Second Charge under Section 40(b), Air Force Act of the Charge Sheet No. 2 with the exception of the words "*tum bahut hero bante ho, dekhte hai tumhe kaun bachata hai*".

12. On 01.06.2018 the District Court Martial (DCM) awarded following punishment to the appellant:-

- (a) Rigorous imprisonment for one year.
- (b) Dismissal from service.
- (c) Reduction to ranks.
- (d) Severe reprimand.

13. Coming to the facts of the present case, it is no longer in dispute that appellant was charged for six charges. He was found

'Guilty' in two charges and 'Not Guilty' in four charges. The appeal preferred against the sentence awarded by the District Court Martial was rejected vide order dated 09.01.2020 passed by the Chief of Air Staff. The punishment awarded by DCM is not sustainable in the eyes of law due to Violation of mandatory provisions of Rules 39 and 40 of the Air Force Rules read with Paras 731(g) and 740(f) of Regulation for Air Force (No opportunity to prepare defence):-

**(a)** Rule 39 of the Air Force Rules provides that 'an accused person for whose trial a Court-Martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses, and with any friend or legal adviser whom he may wish to consult.'

**(b)** Rule 40(1) of the Air Force Rules provides that the accused before he is arraigned shall be informed by an officer of every charge on which he is to be tried; and also that, on his giving the names of witnesses whom he desires to call in his defence, reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.

The interval between his being so informed of the charges against him and his arraignment must be such as to allow him to have his witnesses present, and to consider his defence.

**(c)** Para 731(g) of the Regulation for Air Force provides that as soon as practicable after an accused has been remanded for trial by court-martial he will be supplied with a copy of summary of evidence, charge sheet and list of witnesses.

**(d)** Para 740 of the Regulation for Air Force provides as under:

*“Before trial, the commanding officer will ensure that the following requirements are complied with:-*

*(a) The accused must be informed by an officer, of every charge on which he is to be tried.*

*(b) If he so desires, the accused must be informed of the rank, name and unit of the officer, who are to form the court, as well as the waiting members.*

*(c) The accused must be informed that on his giving the names of ally of the witnesses for the defence, reasonable steps will be taken to procure their attendance.*

*(d) The accused must be afforded proper opportunity for preparing his defence.*

*(e) The accused person for trial will be examined in respect of fitness for trial by a medical officer on the morning of each day the court is ordered to sit for his trial. A commanding officer is responsible that no accused person is brought before a court-martial if, in the opinion of the medical officer, he is unfit to undergo trial.*

*(f) The requirements under sub-paras (a), (b), (c) and (d) will be complied with 96 hours before a trial and if the accused is on active service, 24 hours before trial.”*

**(e)** The above provisions relating to ‘opportunity to prepare defence’ in Air Force rules/regulations are *pari materi* to the provisions under Rule 34 of the Army Rules which provides as under:

*“(1) The accused before he is arraigned shall be informed by an officer of every charge for which he is to be tried and also that, on his giving the names of witnesses whom he desires to call in his defence reasonable steps will be taken for procuring their attendance, and those steps shall be taken accordingly.*

*The interval between his being so informed and his arraignment shall not be less than ninety-six hours or where the accused person is on active service less than twenty-four hours.*

*(2) The officer at the time of so informing the accused shall give him a copy of the charge sheet and shall, if necessary, read and explain to him the charges brought against him. If the accused desires to have it in a language which he understands, a translation thereof shall also be given to him.*

*(3) The officer shall also deliver to the accused a list of the names, rank and corps (if any), of the officers who are to form the court, and where officers in waiting are named, also of those officers in courts-martial other than summary courts-martial.*

*(4) If it appears to the court that the accused is liable to be prejudiced at his trial by any non-compliance with this rule, the court shall take steps and, if necessary, adjourn to avoid the accused being so prejudiced.”*

**(f)** The **Hon’ble Supreme Court** in the case of **Union of India and others versus A. K. Pandey reported in (2009) 10 SCC 552** has held that under Rule 34 of the Army Rules, the requirement of interval of ‘Ninety-six hours’ between the accused being informed of charge for which he is to be tried and his arraignment is mandatory and its non-observance vitiates the entire proceedings.

14. In the present case, the appellant was not given an opportunity to prepare his defence and to consult witnesses, and the mandatory 'Ninety-six hours' interval period was violated. The appellant joined duty on morning of 26.02.2018. He was given certain papers in English language. He requested for those papers in vernacular language (Hindi) but they were not supplied to appellant. The DCM assembled at 1000 hrs on 27.02.2018 and appellant was arraigned on those charges at about 1200 hrs on 27.02.2018. Appellant was not trained as Arrester Barrier and he was Auto Fitter and as he was not trained for this job. Its non-observance vitiated the entire proceedings of District Court Martial.

15. Appellant was not given copy of charge sheet for consideration and preparation of any defence. None of the witnesses made any statement in presence of appellant during trial. AOC ordered Summary of Evidence (SOE) out of his whim in a prejudice manner without any scintilla of evidence before him. No charter of duty prescribed for Auto Fitter pertaining to doing of routine duty of a M.T. Driver, doing DI on DG Set and Arrester Barrier was produced and placed on SOE nor regular duty roster for one month, half month, weeks or so duly signed by a competent officer was produced nor absentee report, was produced before SOE. There is no coherence and consistency among witnesses on allegation pertaining to using threatening language u/s 40(b).

Sgt AKA Iqbal had not supported the allegation. Rule 25 (1) (c) stipulated for disposing it summarily but AOC, 11 Wing AF did not give appellant an opportunity to persuade him to dispose of charge sheet dated 30.03.2015 Summarily. There was a gross violation of principle of natural justice and Rule 25 (1) of AF Rule which vitiates whole proceedings of DCM. Defence witness of appellant went to hospital on 09.05.2018 with Cardiac problem and this matter was informed to Court (DCM). Appellant thrice filed list of witnesses for appearance of defence witness but no defence witness was produced. It is violation of Article 21 of Constitution of India which is mother of all the laws. In absence of Defence Counsel, Court asked the accused to go for examination before Chief Warrant Officer Pandey who was witness for the defence in the first list filed by the appellant in the month of March. Appellant requested the Court that his Defence Counsel will appear in the Court on 10.05.2018 and will take necessary step for conducting the proceedings and the said facts were conveyed by Defence Counsel to Friend of Accused but Judge Advocate refused to wait for next day. No opportunity was provided to the appellant to appear and defence his case or cross-examine the witnesses.

16. Hon'ble the Supreme Court in **Union of India and others Vs. Jaipal Singh, 2004(1) SCT 108 = 2003 Supp(5) SCR 115** in case a person is discharged on account of conviction, he cannot claim back

wages for the period he was not in service. The State cannot be made liable for the period for which it could not avail the services of the respondents. It is, therefore, clear from the above discussion that Hon'ble the Supreme Court has laid down the principle that in case there is "no work, no pay" shall be paid as back wages for the period the appellant was out of service in view of the orders passed.

17. Hon'ble the Supreme Court in **Union of India and others Vs. Jaipal Singh, 2004(1) SCT 108 = 2003 Supp(5) SCR 115** in case a person is discharged on account of conviction, he cannot claim back wages for the period he was not in service. The State cannot be made liable for the period for which it could not avail the services of the respondents. It is, therefore, clear from the above discussion that Hon'ble the Supreme Court has laid down the principle that in case there is "no work, no pay" shall be paid as back wages for the period the appellant was out of service in view of the orders passed.

18. In view of discussions made above, the Original Application (A) succeeds and is partly **allowed** and the impugned order dismissing appellant from service is set aside. The respondents are directed to reinstate the appellant in service from the next date of dismissal till completion of minimum period for pensionable service. Appellant shall not be entitled for pay and allowances for the period he was out of service on the principle of 'No work no pay'. Let necessary

exercise be done in compliance with this order by the respondents within a period of four months from today.

19. No order as to costs.

**(Vice Admiral Atul Kumar Jain) (Justice Ravindra Nath Kakkar)**  
**Member (A) Member (J)**

Dated : 11 July, 2023  
Ukt/-