

**AFR****RESERVE****Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No. 382 of 2017**Monday , this the 9<sup>th</sup> day of May, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Col. Dilip Singh Shekhawat S/o Shri Narayan Singh Shekhawat, C/o 3 UK (I) Company NCC, Uttarkashi, Uarakhand-249193.

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**Applicant**Ld. Counsel for the : **Shri Ravi Prakash Tripathi, ,  
Applicant Shri Virat Anand Singh and  
Shri Indrasen Singh, Advocates**

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, DHQ PO : New Delhi-110011.
2. Chief of the Army Staff, IHQ of MOD (Army), South Block, DHQ PO : New Delhi-110011.
3. The Adjutant General, IHQ of MOD (Army), South Block, DHQ PO : New Delhi-110011.

**.....Respondents**Ld. Counsel for the : **Shri G.S. Sikarwar,  
Respondents. Central Govt. Counsel**

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. This Original Application has been filed against the order dated 28.07.2017 of the respondent No. 1 passed under Section 19 of the Army Act, 1950 read with Rule 14 (2) of the Army Rules, 1954 by which services of the applicant has been terminated by dismissing him from service with immediate effect. The reliefs claimed in Original Application are as under:-

- (a) *Call for the complete records of the case leading to the passage of the impugned order of dismissal and set aside the said order;*
- (b) *Set aside the proceedings of the Court of Inquiry and Additional Court of Inquiry held in this case;*
- (c) *Set aside show cause notice dated 02.07.2015;*
- (d) *Direct the Respondents to allow the applicant to continue in service until he completes his terms of engagement for Superannuation on 30.09.2017; and*
- (e) *Pass such other order(s) and/or direction(s) as may be deemed appropriate by this Hon’ble*

*Tribunal under the facts and circumstances of the case.*

2. Brief facts of the case giving rise to this Original Application are that applicant was commissioned in the Indian Army on 08.03.1986. While posted at 3 Uttarakhand (Independent) Company, Uttarkashi, Lt. Col. (MNS) Poonam Chaturvedi, who was then posted in Military Hospital (MH), Dehradun lodged a First Information Report (FIR) dated 22.04.2012 which was registered under Sections 376, 420, 504, 506 Indian Penal Code. The applicant was arrested by the Police and later on released on bail under the orders of Hon'ble High Court. The First Information Report was investigated by the Police and after completing investigation a charge-sheet was filed under Sections 376, 420, 504, 506 Indian Penal Code in which cognizance was taken. Applicant filed a Civil Misc. Writ Petition under Section 482 of the Criminal Procedure Code for quashing of the charge-sheet which was allowed by the Hon'ble Uttarakhand High Court.

3. Parallarily a Court of Inquiry (C of I) was conveyed by Headquarters Uttarakhand Sub Area to investigate the allegations. A Show Cause Notice dated 02.07.2015 was issued to the applicant asking why services of the officer be

not terminated for his misconduct. Applicant filed his reply in which he stated that he had not committed any misconduct, rather he had fallen prey to Lt. Col. (MNS) Poonam Chaturvedi. The submission of the applicant was not considered and applicant was dismissed from service administratively under Army Act Section 19 read with provisions of Sub Rule 5 (a) of Rule 14 (2) of the Army Rule, 1954. Being aggrieved, applicant has filed instant O.A. to quash dismissal order and allow him to continue in service until he superannuates on 30.09.2017.

4. Learned counsel for the applicant submitted that applicant was commissioned in the Indian Army on 08.03.1986. He was promoted to the rank of Colonel (Col) and posted at 3 Uttrakhand (Independent) Company, NCC Uttarkashi. Lt. Col. (MNS) Poonam Chaturvedi, posted at Military Hospital (MH), Dehradun lodged a First Information Report (FIR) against the applicant on 22.04.2012 in Police Station Garhi Cantt., Dehradun which was registered under Sections 376, 420, 504, 506 Indian Penal Code. Hon'ble High Court of Uttrakhand stayed the criminal proceedings launched against the applicant in pursuance of aforesaid FIR. Simultaneously even when the above proceedings were in

progress a parallel Court of Inquiry (C of I) was conveyed by HQ Uttarakhand Sub Area vide convening order dated 04.12.2012 to investigate the allegations. An additional C of I was also held in the said matter. On the basis of evidence collected by two Cs of I, the applicant was served with a notice dated 02.07.2015 to show cause why he should not be dismissed from service on account of committing adultery of Lt Col (MNS) Poonam Chaturvedi. Applicant submitted his interim reply on 31.08.2015 in which he inter alia requested for supply of findings and recommendations of the C of I. This request of the applicant was however rejected and applicant was asked to submit his final reply to Show Cause Notice. The applicant submitted his final reply on 13.11.2015 rejecting all allegations made in the Show Cause Notice in which he emphasised that C of I proceedings as well as Show Cause Notice were illegal and therefore, void. Thereafter nothing was heard of from the respondents. On 19.08.2017, applicant proceeded on 30 days leave due to domestic issues. Applicant was dismissed retrospectively from service w.e.f. 28.07.2017 under Army Act Section 19 read with Army Rule 14 but copy of dismissal order was not served to the applicant.

5. While on leave the applicant apparently informally learnt of his dismissal and fearing the same had filed a petition in this Tribunal which was admitted on 29.08.2017 whereupon the counsel for the respondents had submitted that no final order of dismissal had been passed. The Court even queried from the respondents as to how no action had been taken on the final reply to the Show Cause Notice by the applicant submitted on 13.11.2015 despite passage of nearly 1 year and 9 months. This Tribunal had also requested the respondents to confirm the alleged dismissal order by the next date listed i.e. 01.09.2017 and this was finally confirmed. In FIR, Lt. Col. (MNS) Poonam Chaturvedi had stated that she was cheated and sexually assaulted by Lt Col DS Shekhawat on assurance of marrying her while he was already married and father of two children. The applicant was arrested in the said FIR by the Police and later released on bail under the orders of Hon'ble High Court. The First Information Report was investigated by the Police and after completing investigation a charge-sheet was filed under Sections 376, 420, 504, 506 Indian Penal Code in the Court of Judicial Magistrate – II, Dehradun in which cognizance was

taken. Applicant meanwhile filed a Civil Misc. Writ Petition under Section 482 of the Criminal Procedure Code which was allowed by Hon'ble Uttarakhand High Court vide order dated 13.08.2019 holding that on the basis of the facts stated in the First Information Report and evidence collected during investigation the offences under Sections 376, 420, 504 and 506 Indian Penal Code are not made out.

6. Ld. Counsel for the applicant submitted that order dated 28.07.2017 of the Central Government terminating the services of the applicant by dismissal from service with only 75% pension under Section 15 of the Army Act, 1950 read with Rule 14(2) of the Army Rules, 1954 is bad in law. He submitted that applicant's services have been terminated based on the reports of Court of Inquiry and Additional Court of Inquiry which were conducted for allegations made in FIR lodged against the applicant by Lt. Col. (MNS) Poonam Chaturvedi. The allegations made against the applicant in FIR were that Lt. Col. (MNS) Poonam Chaturvedi was a divorcee and mother of two small children who was cheated and sexually assaulted by the applicant on false assurance of marrying her, while the applicant was already married and father of two children. He further submitted that in Court of

Inquiry held against the applicant it was found that Lt. Col. (MNS) Poonam Chaturvedi was not a divorcee, but she was a married woman, who was in the habit of trapping army officers and civilians in her web of a well designed plan and conspiracy and then blackmailing them through fear of exposing their sexual relationship and even by lodging a FIR. As a result in one case a very senior army officer i.e. Col. Subroto Mukhopadhyay had committed suicide. He submitted that after death of Col. Subroto Mukhopadhyay FIR was lodged by the wife of Col. Subroto Mukhopadhyay against Lt. Col. (MNS) Poonam Chaturvedi in which she is facing a criminal trial in a Court in Gujarat. He further submitted that in C of I held against the applicant, the applicant was not found guilty of any penal offences, rather he has been found guilty of mis-conduct being involved in extra-marital relationship of adulterous nature with Lt. Col. (MNS) Poonam Chaturvedi which is no more an offence after the decriminalization of this offence by the Hon'ble Supreme Court. He further submitted that when the applicant's act of being involved in extra marital relationship of adulterous nature with Lt. Col. (MNS) Poonam Chaturvedi, who was a married woman at the time of offence, is no more offence, under the provisions of Indian Penal Code, why should the applicant be dismissed from service,

without pension and gratuity under Section 19 of the Army Act, 1950 read with Rule 14(2) of the Army Rules, 1954?

7. Ld. Counsel for the applicant further submitted that from the evidence collected during Court of Inquiry it was found that Lt. Col. (MNS) Poonam Chaturvedi is a blackmailer, who is in the habit of blackmailing not only army officers, but also civilians, by trapping them in her net to extract money from them, by engaging in a sexual relationship with them and then threatening to expose the said relationship and also extracting money from them as happened in the case of the applicant, who handed over as many as 11 post-dated cheques to her in consideration of obtaining her silence regarding the existence of their extra marital relationship. Ld. Counsel for the applicant submitted that the act of the applicant, of being involved in extra marital relationship with Lt. Col. (MNS) Poonam Chaturvedi, does not constitute an offence of adultery, as there was no use of force, fraud, perjury, coercion, cruelty and deceit in the said relationship, therefore, the applicant cannot be punished for the said act administratively under the garb of mis-conduct under Section 19 of the Army Act, 1950 read with Rule 14(2) of the Army Rules, 1954.

8. In support of above, the Ld. Counsel for the applicant has placed reliance on the Judgment of the Hon'ble Andhra Pradesh High Court in the case of ***Bharat Heavy Plates and Vessels Ltd. Versus Sreeramchandra Murthy and another.*** In WA No. 944 of 1983, decided on 28.12.1987, wherein the learned Court has held that offence of adultery would not involve moral turpitude, if there is no use of force, fraud, perjury, coercion, cruelty and deceit in commission of the offence. He submitted that for charge of extra marital relationship and illegal transaction of money between the applicant and Lt. Col. (MNS) Poonam Chaturvedi to secure her silence a separate Court of Inquiry was convened against Lt. Col. (MNS) Poonam Chaturvedi wherein she was found guilty. The fact that there was no use of force, fraud, perjury, coercion, cruelty and deceit in the extra marital relationship between the applicant and Lt. Col. (MNS) Poonam Chaturvedi proves that FIR under Sections 376, 420, 504 and 506 Indian Penal Code filed by Lt. Col. (MNS) Poonam Chaturvedi, for verification of which a Court of Inquiry was ordered against the applicant, was quashed by the Hon'ble Uttarakhand High Court vide its order dated 13.08.2019 in Criminal Misc.

Application (C-482) No. 117 of 2012. The Hon'ble High Court had held that in view of the facts stated in the FIR and that because applicant had filed the Suit for Decree of Divorce against her husband after lodging of FIR, proves that she was not a divorcee when she lodged the First Information Report and, as such, offences under Section 376, 420, 504 and 506 Indian Penal Code as mentioned in the FIR are not made out. Thus, he submitted that when the FIR as well as Charge-sheet filed against the applicant was quashed by the Hon'ble Uttarakhand High Court, then how can the applicant be punished administratively for the said charges, under the garb of mis-conduct being involved in extra-marital relationship of adulterous nature with a fellow lady officer and for illegal transaction of money with a view to obtain her silence.

9. A combined reading of Army Act section 19 and Army Rules, Rule 14 shows that an officer in the Indian Army may be dismissed or removed from service by the central government on account of misconduct after fulfilling the following conditions-

1. *When after considering the reports of misconduct of the officer the Central Government or the Chief of the Army Staff is satisfied that the trial of the officer by a court-martial is in expedient or impracticable, and;*

2. *Central Government or Chief of the Army Staff is of the opinion that further retention of the said officer in the service is undesirable.*

10. Only on fulfilling the aforesaid conditions the Chief of the Army Staff shall inform the officer together with all reports adverse to him and shall call upon the officer to submit in writing his explanation and defence.

11. In Army Rule 14(2) it is provided that Chief of the Army Staff may withhold from disclosure any such report or portion thereof if, in his opinion, its disclosure is not in the interest of the security of the state.

12. In the case of the applicant it was very necessary that the Central Government or Chief of the Army Staff should have been satisfied that trial of the officer by a court-martial was inexpedient or impracticable and further retention of the officer in service was not desirable, as provided in AR 14 (2), before issuing Show Cause Notice to the officer and this decision should be based on cogent evidence and reasons. His further case is that before being satisfied the COAS ought to keep in mind all aspects of the case such as nature of act/offence committed by the officer, the circumstances in which the act/offence was committed and what evidence has

been provided in that regard and also what findings/opinion have been recorded by the Col on account of evidence led before it. His further case is that there is nothing against the applicant in the two Csol reports to record satisfaction that his trial by a court-martial was inexpedient or impracticable. Trial by a court-martial against the applicant cannot be said to be inexpedient or impracticable merely on the reason that it had become time barred under section 122 of the Army Act. His further case is that if trial had become time barred and on account of which applicant could not be tried by a court-martial being barred by limitation as provided under Army Act section 122 then he could not be dismissed from the service under administrative action also, as it would amount to legalise a thing or action which is legally not permissible.

Learned counsel for the applicant further submits that it is clearly stated in AR 14(2) that if after considering the reports against the officer the COAS is satisfied that his trial by a court-martial is inexpedient or impracticable and his further retention in service is undesirable, he(COAS) shall so inform the officer together with all reports adverse to him and he(officer)shall be called upon to submit, in writing, his explanation and defence. In Army Rule 184(2) it is provided that if any person who is subject to the Army Act whose

character or military reputation is affected by the evidence before a Court of Inquiry shall be entitled to copies of such statements and documents as have a bearing on his character or military reputation as aforesaid unless the COAS for reasons recorded by him in writing, orders otherwise.

Learned counsel for the applicant further submits that there are many other lapses in proceedings against the applicant. The officer who convened the Col was not competent to convene the court against the applicant and no approval of the COAS was taken before issuing the show cause of notice to the applicant.

13. Learned counsel for the applicant further submits that even the reply to Show Cause Notice was not properly considered by the authorities. The COAS should have taken into account that it was his first misconduct, in 34 long years of service and before this incident the applicant had never been involved in any activity which was prejudicial to the service and also that applicant was an athlete of repute who has earned many awards for the army and a 3rd generation officer of the Indian Army. The COAS should also have taken into consideration that applicant was not a offender but a victim, who had fallen prey to a lady officer who was in habit

of trapping army officers and others in her net to extract money. He should have also taken into account that in respect of the same misconduct a Col had been conducted in the case of Lt Col Poonam Chaturvedi wherein she had been held guilty and punished with the same punishment which proved the defence taken by the applicant that he was a victim and not an offender, but unfortunately his defence was not considered and he was recommended for dismissal from service which is not proper.

14. Learned counsel for the applicant further submits that COAS also failed to consider, before recommending for applicant's dismissal that, only less than three months service was remaining before the applicant superannuates and that he could be allowed to complete tenure of service. He ought to have taken into account the aspect that applicant has the responsibility towards his wife and two grown up children who had to complete their studies, which was not possible if applicant was dismissed from service without gratuity and pension. He also ought to have considered that Commanding Officer of the applicant's unit and two other army officers had recommended that the applicant should be allowed to superannuate after completing his service. Thus, he submits

that taking into account all above aspects it can be rightfully said that punishment provided to the applicant is too harsh, which should be converted into discharge and applicant should be allowed to get full pensionary benefits ,if the same cannot be quashed.

15. On the other hand, learned counsel for the respondents submitted that Col DS Shekhawat was performing duties of Officer Commanding 3 Uttarakhand (I) Coy NCC Uttarkashi from 11.08.2011. A FIR was lodged by Lt Col Poonam Chaturvedi (MNS), MH Dehradun against Lt Col DS Shekhawat alleging that the officer had caused her sexual and mental harassment under the false promise of marriage. Consequently a non bailable warrant (NBW) was issued on 05.05.2012 by Judicial Magistrate II, Dehradun. The officer was arrested from his native place in Rajasthan on 16.06.2012. He was remanded to fourteen days judicial custody. DV Ban Type 'S' was imposed upon Lt Col DS Shekhawat by HQ Central Command (DV) vide order dated 29.06.2012. The officer was suspended from duty wef 16.06.2012 and a proposal to withhold 25% of Basic Pay vide para 349 of DSR & Para 5 (a) of AO 17/2001 was forwarded to CDA (O), Pune. The officer applied for bail. He was

released from police custody/jail on 07.07.2012 and he reported to his unit on 08.07.2012. On 12.10.2012 officer initiated an application before Hon'ble High Court for quashing of criminal case No 4215 of 2012 under Section 376, 504, 420 of IPC on 12 Oct 2012. The applicant was granted interim stay.

16. A C of I was ordered by Headquarter Uttrakhand Sub Area vide letter dated 04.12.2012 to investigate into the nature of transaction effected through eleven cheques between Lt Col DS Shekhawat and Lt Col (MNS) Poonam Chaturvedi of Military Hospital Dehradun. In addition, an additional C of I was also ordered vide letter dated 08.03.2013 for obtaining additional evidence. Directions of General Officer Commanding in Chief, Central Command were received vide letter dated 17.06.2014 to process a case for termination of services of Lt Col DS Shekhawat under provisions of Army Act Section 19 read with Army Rule 14. A Show Cause Notice dated 12.07.2015 was issued to which applicant submitted his reply. Group Cdr, NCC Gp Headquarters. Additional Director General NCC Directorate, Uttrakhand however recommended that the officer should be retained in service until his superannuation on 30.09.2017

and proposed action to terminate services of the applicant should be dropped. A second C of I dated 23.08.2013 was convened to investigate circumstances under which the officer remained absent from duty from 09 May to 14 May 2012 (6 days), 16 May to 20 May 2012 (05 days) and 22 May 2012 to 15 Jun 2012 (25 days). DV Ban was imposed by HQ DG NCC on 19 Nov 2014 vide letter dated 19 Nov 2014 which was lifted vide letter dated 10.04.2015 and letter dated 15.06.2015. Case of the applicant of Absent Without Leave was closed by HQ Director General NCC letter dated 11.06.2015. Because the case was still subjudice with no likelihood of early settlement and since the applicant failed to appear before the Court, suspension of officer issued on 16.06.2012 was revoked by GOC in C, Central Command vide letter dated 22.10.2014. The officer rejoined duty wef 14.11.2014 at 1000 hrs. The officer was to superannuate on 30.09.2017 in accordance with Integrated Headquarters of MoD letter dated 30.09.2016. The services of the officer were however terminated with immediate effect by way of dismissal from service without pension and gratuity by Central Govt under the powers vested vide Army Act Section 19 read with provisions of Sub Rule 5 (a) of Rule 14 of Army Rule 1954 vide Central Govt letter dated 28.07.2017. The order of

Central Govt could not be served upon the officer as he had proceeded on Part of Annual Leave till 20.09.2017. Part II Order regarding dismissal of officer from service wef 28.07.2017 was published. The officer finally reported to NCC Group Headquarter, Dehradun on 08.09.2017 and termination order of Central Govt was served to the officer at 1305 hrs on this date. Now the officer has filed instant O.A. with the prayer to quash his termination order and to treat him in service upto 30.09.2017 and grant him all retiral benefits. Learned counsel for the respondents pleaded that impugned order dated 28.07.2017 is just, proper and in accordance with law. There is no illegality in impugned order and as such O.A. filed by the applicant deserves to be dismissed.

17. Learned counsel for the respondents further submits that it is being incorrectly claimed by the applicant that he has been wrongly held guilty for the misconduct of having extra marital relationship with Lt Col Poonam Chaturvedi and also for entering into financial transactions with the said Poonam Chaturvedi for obtaining her silence in respect of existence of his relationship. As a matter of fact applicant, who was holding the rank of Colonel in the Indian Army was a father of two grown up children and Lt Col Poonam Chaturvedi was

also married and mother of two children. In regard to the adulterous relationship Lt Col Poonam Chaturvedi had lodged a First Information Report against the applicant which was registered under sections 376,420,504&506 of the Indian Penal Code in Police Station Garhi Cantt in which the applicant was arrested and thereafter released on bail under order of Uttarakhand High Court. After investigation in the said FIR a charge sheet was filed against the applicant under the aforesaid sections of the Indian Penal Code in the court of judicial magistrate Dehradun.

18. Learned counsel for the respondents further submits all mandatory rules and regulations have been followed while conducting Court of Inquiry and additional Court of Inquiry. Applicant was provided full opportunity to cross examine the witnesses who deposed against him and was also given opportunity to give his defence and after considering the said reports and the defence led by the applicant he was found guilty of unbecoming of government servant for committing misconduct. As a result the applicant was dismissed from service under section 19 of the Army Act read with AR 14(5).

19. Learned counsel for the respondents further submits that before issuing Show Cause Notice to the applicant the

COAS had duly considered the reports submitted against the applicant and being satisfied that his trial in the matter by a court martial was inexpedient since both the applicant and Lt Col Poonam Chaturvedi were army officers and there was great possibility of both turning hostile against each other, as Court of Inquiry in respect of the same charges was also held against Lt Col Poonam Chaturvedi wherein she was found guilty of committing misconduct and administrative action under section 19 of the Army Act was contemplated against her. As such administrative action was also taken against the applicant under section 19 of the Army Act in lieu of trial by a court-martial. The COAS was also of the opinion that looking to nature of charges found proved against the applicant his further retention in service was undesirable and therefore, he approved the issue of Show Cause Notice to the applicant and, accordingly, a Show Cause Notice along with copies of the statements of the witnesses was served on the applicant calling upon him to submit his reply and defence on why he be not dismissed from the service.

20. Learned counsel for the respondents further submits that show cause notice issued to the applicant was based on statements of the witnesses recorded during course of Court

of Inquiry together with other evidences led in support of the charges levelled against the applicant. It was not based on the findings/opinion of the Col, wherefore only copies of the statements of the witnesses and other adverse evidence were supplied to the applicant, together with Show Cause Notice. Thus he submits that so far as compliance of AR 14(2) by providing copies of the reports is concerned, the same has been done in the case of the applicant and his grievance in this regard is wholly unfounded as held by the Hon'ble Apex Court in ***Civil Appeal No 2721 of 2001, Union of India and Others vs. Harjeet Singh Sandhu with Civil Appeal No 2722 of 2001, Union of India and Others Vs Ex Capt Harminder Kumar*** decided on 11.04.2001.

21. Learned counsel for the respondents further submits that as regards compliance of AR 184(2), copies of the statements of the witnesses who deposed during the course of the Court of Inquiry have been given to the applicant wherefore respondents are being wrongly accused for not making compliance of rules. He further submits that applicant has neither denied his relationship with Lt Col Poonam Chaturvedi nor his entering into financial transactions with her and in view of this, it is unfair on the part of the applicant to

say that he has been denied natural justice while holding Col against him and for dismissing him from service on the basis of evidence collected during the course of the Col.

22. Learned counsel for the respondents further submits that explanation and defence submitted by the applicant were duly considered by the COAS and being not found satisfactory the same were rejected and the case was recommended to the Central Government for termination of services of the applicant by dismissal without gratuity and pension which was later modified to dismissal from service with seventy five percent pension on representation of the applicant which is fully justified and does not need any interference.

23. Counsel for the applicant has averred that COAS ought to have taken into consideration the length of service rendered by the applicant, the fact that applicant is a 3rd generation officer in Indian Army and an athlete of notable repute, the fact that applicant has the responsibility of his wife and two grown up children who are still studying and need financial support from the applicant to complete their studies; the fact that it was the first misconduct of the applicant and he was never involved in such activities ever before. The

respondents counsel countered this by stating that the COAS had taken all these facts into consideration and also the nature of the misconduct applicant had committed and after being convinced of the gravity of misconduct committed by the applicant, he was recommended to be dismissed from service which cannot be termed harsh in any manner.

24. Learned counsel for the respondents submits that applicant was holding a high position in the army when got himself involved in extra marital relationship with a lady army officer. He also got himself involved in financial transactions with the lady officer in order to obtain her silence in regard to existence of his relationship without informing the concerned authorities which falls in category of grave misconduct which renders him liable to be dismissed from service. A colonel rank officer in the Indian Army is a role model for his subordinates and soldiers in the unit he/she is posted. It is not expected of an officer of his rank to be involved in an activity like this, which is a blot to the reputation of not only the unit he works in but also to the Indian Army. Thus he submits that considering the gravity of the misconduct committed by the applicant dismissal from service without gratuity and pension was the appropriate punishment which was awarded to him

which was later modified to dismissal from service with seventy five percent pension which is the most appropriate punishment and does not need any further dilution.

25. Heard learned counsel for the parties and perused the documents available on record.

26. The question before us to decide is 'whether impugned order is liable to be quashed and applicant is entitled for grant of pension and gratuity?'

27. On perusal of service profile of the applicant, it appears that applicant has put in about 32 years of unblemished service. He is sincere, loyal, hard working and dedicated towards the organisation. In his entire service, there is neither any case of indiscipline nor warning against him. Applicant is a reputed athlete. He represented services in athletics at the National level. He participated in Services Championship in Basket Ball and Volley Ball. He broke cross country record in the Academy by 3 minutes. His performance in various courses was excellent. He was Contingent Commander Republic Day Parade 2015 of NCC Directorate Uttarakhand. He was awarded GOC in Chief Commendation Card. Lt Col (MNS) Poonam Chaturvedi came into contact with the

applicant at Military Hospital Dehradun. On perusal of documents, it appears that Lt Col Poonam Chaturvedi was in the habit of trapping and blackmailing officers. She cheated not only Lt Col DS Shekhawat, but she had by then cheated many other officers. For example Lt Col (MNS) Poonam Chaturvedi had cheated Col Subroto Mukhopadhyay and he had committed suicide. Suicide note dated 02.10.2008 written by this officer, shows that she entrapped him and started blackmailing him by extorting money and threatening to lodge a FIR with the police. Due to her cruel behaviour, the officer committed suicide. Smt Hemawati, wife of Col Subroto Mukhopadhyay had lodged a FIR against Lt Col (MNS) Poonam Chaturvedi on 07.10.2008 which was registered as case Crime No I-365 of 2018 at District Bhuj (Gujrat). Lt Col (MNS) Poonam Chaturvedi is facing trial before the trial court. From perusal of suicide note dated 01.10.2008, it has been revealed that on account of blackmailing and pressure for marriage, Col Subroto Mukhopadhyay committed suicide on 04.10.2008.

28. Additionally one Inspector Farooq Qureshi of Gujrat Police was also blackmailed by said Lt Col Poonam Chaturvedi. He also became her victim as she filed a similar

FIR dated 07.01.2013 against him. After Criminal Prosecution the said Inspector Qureshi had also committed suicide on 09.01.2013. The matter was reported in Bhaskar News, Gandhidham dated 10.01.2013.

29. Thus Lt Col (MNS) Poonam Chaturvedi was in the a habit of blackmailing and pressuring Officers. Conduct of Lt Col (MNS) Poonam Chaturvedi has been proved to be malicious and she had lodged a FIR against the applicant only with a view to blackmail him. Lt Col (MNS) Poonam Chaturvedi has accepted the fact that she received cheques from Lt Col DS Shekhawat and encashed them on 03.01.2012, 19.01.2012 and 02.02.2012 but when one post dated cheque of the applicant could not be encashed, then she lodged a false and fabricated FIR. Lt Col Poonam Chaturvedi lodged a FIR on 22.04.2012 stating that she is a divorcee and she had two children. However in a report under Right to Information Act, it was revealed that Lt Col (MNS) Poonam Chaturvedi is married to one Sandeep Kumar Sharma as per available documents in the hospital where she worked. On 26.04.2012 she was medically examined by Medical Officer, District Women Hospital, Dehradun, in which no external or internal injury was found.

30. All the above incidents prove that Lt Col (MNS) Poonam Chaturvedi has malicious intent; that she is a characterless lady and she entraps officers and then blackmails them for financial gains. Suicide note written by Col Mukhopadhyay shows that Lt Col (MNS) Poonam Chaturvedi has entrapped a large number of officers for financial gains. Many officers paid her money but they did not disclose the matter for sake of their honour. She took number of post dated cheques from the applicant to keep quiet and the applicant for sake of his honour gave her a number of cheques; a fact she has accepted in the C of I.

31. Now we come to the important issue of legal infirmities in the entire proceedings and examine if there was indeed any illegality in the conduct of the proceedings. The first matter perhaps is the non supply of the findings, opinion and recommendations of the C of I. Admittedly these were not provided to the applicant and he was forced to submit an interim reply to Show Cause Notice at first (in which he requested for these reports) and after the same was not provided he was compelled to submit his final reply in Nov 2015. This vitiates the action taken by the respondents against the applicant. Army Rule 184 (2) states that '**Any**

***person subject to the Act whose character or military reputation is affected by the evidence before a court of inquiry shall be entitled to copies of such statements and documents as have a bearing on his character of military reputation as aforesaid unless the Chief of Army Staff for reasons recorded by him in writing, orders otherwise.'***

Army Rule 14 (2) mandates that along with the show cause notice the officer concerned must also be given ***'all the reports adverse to him'*** to enable him submit his explanation and defence. For the meaning of the word 'report' used in Army Rule 14 (2), reference can be made to Army Rule 179 (1), which unambiguously states that the expression report means ***'findings, opinion and recommendations of the C of I'***. However, the findings, opinion and recommendations of the C of I were admittedly not supplied to the applicant along with the Show Cause Notice. Absence of the findings, opinion and recommendations of the C of I, which have evidently been taken into consideration by the competent authority to form his opinion and issuance of the Show Cause Notice, left the applicant handicapped in preparation of his defence/reply to said Show Cause Notice.

32. A Division Bench of Hon'ble Delhi High Court in its judgment dated 17.01.2011 passed in LPA No 603/2002 Maj RK Sareen Vs UOI & Ors has held as under:-

*'35. In the instant case, in view of the fact that the award of punishment is an administrative action it was incumbent upon the GOC to observe the rules of natural justice while awarding said punishment to the appellant. A bare reading of the show cause notice dated 28.04.1995 and the order dated 25.08.1995,... shows that the findings directions and recommendation of the Court of Inquiry weighed heavily with the GOC in awarding punishment of censure to the appellant. In such circumstances, the rules of natural justice require that the GOC ought to have supplied the findings, directions and recommendations of the Court of Inquiry to the appellant along with the show cause notice dated 28.04.1995. The non supply of the said documents to the appellant implies that the appellant has not been granted a reasonable opportunity of being heard and has resulted in violation of rules of natural justice'.*

36. Before proceeding further, let us analyse rule 184 of Army Rules relied upon by the Single Judge to justify non supply of findings, recommendations and directions of the Court of Inquiry to the appellant. Rule 184 of the Army Rules reads as under:-

**"184. Right of certain persons to copies of statements and documents-** (1) Any person subject to the Act who is tried by a court martial shall be entitled to copies of such statement and documents contained in the proceedings of a court of inquiry, as are relevant to his prosecution or defence at his trial.

*(2) Any person subject to the Act whose character of military reputation is affected by the evidence before a court of inquiry shall be entitled to copies of such statements and documents as have a bearing on his character or military reputation as aforesaid unless the Chief of Army Staff for reasons recorded by him in writing, orders otherwise.”*

37. *As noted in foregoing paras, clause (1) of Rule 184 was read by the Single Judge to mean that a person is not entitled to receive the findings/ recommendations of the Court of Inquiry. In this regards, suffice would it be to state that the learned single judge failed to note that Rule 184 is applicable in cases where a person is tried by the Court Martial, which was not the position in the instant case.*

38. *The sum and substance of the above discussion is that the order dated 25.08.1995 passed by the GOC awarding punishment of censure by way of severe displeasure to the appellant is liable to be quashed as the same is violative of rules of natural justice. Ordered accordingly”.*

33. Facts of the instant case are similar to those of the abovementioned case as both the cases fall under Sub Rule (2), and not Sub Rule (1), of Army Rule 184.

34. Similar view has been taken by Hon’ble Supreme Court of India in the case of UOI & Ors Mohd. Ramzan Khan (AIR1991 SC471) as under:-

*“Disciplinary inquiry is quasi-judicial in nature. There is a charge and a denial followed by an inquiry at which*

*evidence is led and assessment of the material before conclusion is reached. These facets do make the matter quasi-judicial and attract the principles of natural justice.*

*.... If the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected....” Therefore, supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof”.*

*Above mentioned ruling of the Hon'ble Supreme Court has been relied upon and applied in the following cases as well as by the Hon'ble Supreme Court and various High Courts on which reliance is placed:-*

- (i) Managing Director ECIL Vs VB Karunakar AIR 1994 SC 1074.*
- (ii) Ram Narain Vs UOI 2003 IAD Delhi 606.*
- (iii) Pradeep Kumar Biswas vs Indian Institute of Chemical Biology JT 2002 (4) SC 146.*
- (iv) ML Sondhi vs Union of India & Ors 2002 III AD (Delhi) 872.*

35. Keeping in view the impeccable service profile, sincerity, dedication and outstanding record of 32 years of the applicant, punishment of dismissal awarded to applicant is very harsh, severe and shockingly disproportionate to his misconduct and applicant deserves a sympathetic consideration. Hon'ble Apex Court in the case of **Ranjit Thakur v/s Union of Indian & Ors** (1987) 4 Supreme Court Cases 611 has held that **‘25. Judicial review generally speaking, is not directed against a decision, but is**

***directed against the “Decision making process”. The question of choice and quantum of punishment is within the jurisdiction and discretion of the Court Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of probability, a part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of court martial, if the decision of the Court even as to sentence is not outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.”*** Hon’ble Himachal Pradesh in case of Bhagat Ram has held that ***“It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution”***. The above observations by the Hon’ble Apex Court would be aptly applicable to the facts and circumstances of the present case. In judicial review, if the penalty imposed by the

authority is disproportionate to the misconduct, that will be violative of Article 14 of the Constitution. It is material to note that in the present case, the husband of Lt Col (MNS) Poonam Chaturvedi, who could be aggrieved, never made any complaint against the applicant alleging that the applicant was in adulterous relationship with his wife. The applicant was victim of conspiracy and well thought out plans of blackmail by Lt Col (MNS) Poonam Chaturvedi, rather than being a culprit. Lt Col (MNS) Poonam Chaturvedi had played similar tricks with Inspector Farookh Ahmed Quereshi of Gurjat Police and with Col Subroto Mukhopadhyay (supra). Hon'ble High Court of Utrakhand has already stayed the Criminal Proceedings against the applicant arising out of aforementioned FIR. Therefore, both proceedings have emanated from the same FIR and that the criminal proceedings having already been stayed by a judicial order, no action can legally be taken in dismissing the applicant from service.

36. Additionally we observe that the provision of Army Act 19, has been relied upon by the respondents to dismiss the applicant although as required by this act, this ought to have been a cogent or well considered decision after being

satisfied that it was inexpedient or impracticable to convene a proper Court Martial. Admittedly, more than three years had passed since the alledged offence came to light and as such trial by a Court Martial was barred under Army Act Section 122. Thus to cover up this delay resort to provision in Army Act 19 was taken which is improper.

37. Another illegal infirmity that vitiates is the service of the order of dismissal dated 28.07.2017 with retrospective effect. We find that the said order was served upon the officer on 01.10.2017. The Army Rule 18 (3) on service of such dismissal order is very clear which we reproduce here for sake of understanding:-

*“The retirement, removal, resignation, release, discharge or **dismissal** of a person subject to the Act shall not be retrospective.”*

38. The officer was served the order on 01.10.2017, and therefore his date of dismissal cannot be wef 28.07.2017. Rather we are of the opinion that since the officer was to superannuate on 30.09.2017, before service of the dismissal order, he can be considered to have superannuated on this date and not dismissed retrospectively wef 28.07.2017.

39. In the facts and circumstances of the case, we are inclined to conclude that the entire process has infirmities and are inclined to modify the punishment of dismissal from service into discharge from service. The impugned order of dismissal issued by respondents dismissing the applicant from service from 28.07.2017 is liable to be quashed. Applicant shall be treated in service till 30.09. 2017 i.e. date of superannuation and he shall be granted all retiral benefits.

40. As a result of foregoing discussion, the O.A. is **allowed**. Impugned order dated 28.07.2017 passed by the respondents is quashed and set aside. Order of dismissal is modified to the extent that dismissal of the applicant from service is converted to that of discharge from service upon superannuation. Respondents are directed to treat the applicant in service notionally till date of superannuation i.e. 30.09.2017 and grant all retiral dues including pension and gratuity in accordance with pension and other Rules/Regulations in force. The respondents are directed to grant entire arrears of pension to the applicant within four months from the date of communication of this order. Default will invite additional interest @ 8% p.a.

41. The Registry is directed to provide a copy of this order to learned counsel for the respondents for its onwards transmission and necessary compliance.

42. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated : 09 May, 2022

ukt/-