ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

T.A. Nos.232 of 2010, 233 of 2010, 234 of 2010
239 of 2010, 240 of 2010, 4 of 2011, 5 of 2011
and O.A.No.83 of 2011

FRIDAY, THE 14TH DAY OF JUNE, 2013/24TH JYAISHTA, 1935

CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)

HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

<u>TA No.232 of 2010:</u>
(WP No.14547 of 2009 of Karnataka High Court at Bangalore)

<u>APPLICANT:</u>

ADAVAYYA KARAGUPPI, S/O. BASALINGAYYA,
AGED 27 YEARS, OCC. EX ARMY SOLDIER,
R/O. VILLAGE HOGARTI, POST – SUTAHATTI,
DISTRICT: BELGAUM, KARNATAKA.

BY ADV. SRI. RAMESH C.R.

versus

<u>RESPONDENTS</u>:

1. THE UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF DEFENCE, GOVERNMENT OF INDIA, NEW DELHI – 110011.
2. CHIEF OF ARMY STAFF, SOUTH BLOCK, ARMY HEADQUARTERS, NEW DELHI 110 011.
3. THE GOC, HQ A TN K & K AREA, ISLAND GROUNDS, CHENNAI, TAMIL NADU.
4. THE COMMANDER, HQ KERALA, KARNATAKA & GOA AREA, BANGALORE, KARNATAKA.
5. THE COMMANDANT, HQ MADRAS ENGINEERS GROUP & CENTRE, BANGALORE, KARNATAKA.

BY ADV. SRI.K.M. JAMALUDEEN, SENIOR PANEL COUNSEL.

TA No.233 of 2010:
(WP No.16572 of 2006 of the Karnataka High Court at Bangalore)

APPLICANT:

KADAPPA G. TODAL, AGED ABOUT 24 YEARS,
S/O.SHRI GIRAPPA, R/O. AVARAGOL, TALUK HUKKERI,
DIST. BELGAUM.

BY ADV. SRI. RAMESH C.R.

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, MINISTRY OF DEFENCE,
DHQ P.O., NEW DELHI – 110001.

2. CHIEF OF THE ARMY STAFF, COAS SECRETARIAT,
ARMY HEADQUARTERS, SOUTH BLOCK,
DHQ P.O., NEW DELHI 110 011.

3. THE COMMANDANT, AIR DEFENCE ARTILLERY CENTRE,
NASIK ROAD CAMP - 422 102.

BY ADV. SRI.K.M. JAMALUDEEN, SENIOR PANEL COUNSEL.

TA No.234 of 2010:
(WP No.21623 of 2010 of the Karnataka High Court at Bangalore)

APPLICANT:

SANGAPPA, EX. SEPOY (DMT), S/O.SRI. NANDAPPA SANGANNAVAR,
AGED ABOUT 21 YEARS, RESIDENT OF VILLAGE BANACHINAMARDI,
POST: BANACHINAMARDI, TALUK GOKAK, DIST. BELGAUM,
PIN – 591 307, KARNATAKA.

BY ADV. SRI. RAMESH C.R.

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, MINISTRY OF DEFENCE,
SOUTH BLOCK, DHQ P.O.,, NEW DELHI – 110011.

2. THE CHIEF OF THE ARMY STAFF, COAS' SECRETARIAT,
ARMY HEADQUARTERS, SOUTH BLOCK, DHQ P.O.,
NEW DELHI 110 011.

3. THE COMMANDER, HEAD QUARTERS,
25 ARTILLERY BRIGADE, C/O.56 APO.

4. THE COMMANDANT, ARTILLERY RECORDS,
TOPKANA ABHILEKH, PIN 900 482,
C/O. 56 APO.

BY ADV. SRI.K.M. JAMALUDEEN, SENIOR PANEL COUNSEL.

TA No.239 of 2010:
(WP No.8090 of 2006 of the Karnataka High Court at Bangalore)

APPLICANT:

NINGAPPA S.G., EX-140 AD REGT. (SP), C/O. 56 APO,
NOW RESIDING AT:
GODDANNAVAR, POST SUTAGATTI, TALUK BAILHOGAL,
DIST. BELGAUM, KARANTAKA, PIN 591 145.

BY ADV. SRI. RAMESH C.R.

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY, MINISTRY OF DEFENCE,
SOUTH BLOCK, DHQ P.O., NIRMAN BHAWAN P.O.
NEW DELHI – 110011.

2. THE CHIEF OF THE ARMY STAFF, COAS SECRETARIAT,
ARMY HEADQUARTERS, SOUTH BLOCK, DHQ PO,
NIRMAN BHAWAN P.O., NEW DELHI – 110 011.

3. THE COMMANDANT AND OIC RECORDS,
SENA VAYU RAKSHA ABHILEKH,
ARMY AIR DEFENCE RECORDS, PIN – 900 482.

4. THE COMMANDING OFFICER, 140 AIR DEFENCE REGIMENT (SP),
C/O. 56 APO.

5. THE BRIGADE COMMANDER,
HQ 614 (1) MECH AIR DEFENCE BRIGADE,
C/O. 56 APO.

BY ADV. SRI. K.M. JAMALUDEEN, SENIOR PANEL COUNSEL.

TA No.240 of 2010:
(WP No.871 of 2010 of the Karnataka High Court at Bangalore)

APPLICANT:

SIDDANNA GANJIHAL, AGED ABOUT 26 YEARS,
S/O.SHRI CHANNABASAPPA, EX.526 ASC BATTALION,
C/O. 56 APO,
NOW RESIDING AT:
VILLAGE: MUGANUR, TEHSIL: HUNAGUND,
DISTRICT: BAGALKOT, STATE: KARNATAKA,
PIN 587 120.

BY ADV. COLONEL ASOK KUMAR AND SRI. ROHIT KUMAR

versus

RESPONDENTS:

1. UNION OF INDIA, REPRESENTED BY ITS
SECRETARY, MINISTRY OF DEFENCE,
SOUTH BLOCK, DHQ P.O., NEW DELHI – 110011.

2. THE CHIEF OF THE ARMY STAFF, COAS' SECRETARIAT,
INTEGRATED HEADQUARTERS, SOUTH BLOCK,
DHQ P.O., NEW DELHI 110 011.

3. THE COMMANDANT AND OIC RECORDS,
ASC RECORDS (SOUTH)
BANGALORE – 560 007.

4. THE COMMANDING OFFICER,
526 ASC BATTALION,
C/O. 56 APO.

5. THE GENERAL OFFICER COMMANDING,
26 INFANTRY DIVISION,
C/O. 56 APO.

6. THE RECRUITING OFFICE, HQ RECRUITING ZONE,
148, FD MARSHAL, K.M.CARRIAPA ROAD,
BANGALORE – 560025.

BY ADV. SRI. K.M. JAMALUDEEN, SENIOR PANEL COUNSEL.

TA No.4 of 2011:

(WP No.14548 of 2009 of the Karnataka High Court at Bangalore)

APPLICANT:

GOUDAPPA , S/O.SHIVALINGAPPA ROTTI,
AGED 27 YEARS, OCC. EX ARMY SOLDIER,
R/O. VILLAGE AND POST SUTAGATTI,
TEHSIL BAILHONGAL, DISTRICT BELGAUM,
KARNATAKA - 591 147.

BY ADV. SRI. C.R. RAMESH

versus

RESPONDENTS:

1. THE UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF DEFENCE,
   GOVERNMENT OF INDIA, NEW DELHI – 110001.

2. CHIEF OF ARMY STAFF, SOUTH BLOCK,
   ARMY HEADQUARTERS, NEW DELHI 110 011.

3. THE GOC , HQ A TN K & K AREA,
   ISLAND GROUNDS, CHENNAI, TAMIL NADU.

4. THE COMMANDER, HQ KERALA, KARNATAKA & GOA SUB AREA,
   BANGALORE, KARNATAKA.

5. THE GOC, HQ 14 CORP. C/O.56 APO.

6. THE COMMANDING OFFICER, 618 TRANSPORT COMPANY,
   ASC TYPE 'C', C/O. 56 APO.

BY ADV. SRI.S. KRISHNAMOORTHY, SENIOR PANEL COUNSEL.

TA No.5 of 2011:
(WP No.14549 of 2009 of the Karnataka High Court at Bangalore)

APPLICANT:

SHIV KUMAR, S/O. MALLAPPA, AGED 26 YEARS,
OCC: UNEMPLOYED, R/O. VILLAGE MANASINAKAI,
POST: MUSTIGERI, DISTRICT BAGALKOT,
KARNATAKA.

BY ADV. SRI. K.M. SAXENA & SRI. B.NAGARAJAN.

versus

RESPONDENTS:

1. THE UNION OF INDIA REP.BY THE SECRETARY,
   MINISTRY OF DEFENCE, GOVT. OF INDIA,
   NEW DELHI 110 011.

2. CHIEF OF ARMY STAFF, SOUTH BLOCK
   ARMY HEADQUARTERS, NEW DELHI-110 011.
3. THE GOC, HQ A TN K & K AREA,
   ISLAND GROUNDS, CHENNAI (TN).
4. THE COMMANDER, HQ 112 MOUNTAIN BRIGADE,
   C/O 56 APO.

5. THE COMMANDANT,
   THE MARATHA LIGHT INFANTRY REGIMENTAL CENTRE,
   BELGAUM (KAR).

BY ADV.SRI.TOJAN J.VATHIKULAM, CENTRAL GOVT. COUNSEL.

OA No.83 of 2011:

APPLICANT:

NO.2610148 W EX SEP. YALLAPPA V.LAKKUNDI,
3 MADRAS, AGED 29 YEARS,
PO/AT: SUTTAGATTI, TALUK - BAILHONGAL,
DISTRICT – BELGAUM, KARNATAKA STATE,
PIN – 591 147.

BY ADV. SRI. RAMESH. C.R.

versus

RESPONDENTS:

1. THE UNION OF INDIA, THROUGH THE
   SECRETARY, MINISTRY OF DEFENCE (ARMY),
   SOUTH BLOCK, NEW DELHI – 110001.

2. THE CHIEF OF THE ARMY STAFF, DHQ P.O.,
   INTEGRATED HEADQUARTERS, MINISTRY OF DEFENCE,
   SOUTH BLOCK, NEW DELHI 110 001.

3. THE COMMANDING OFFICER, HQR 64 MTN. BRIGADE,
   C/O.99 APO.

4. THE COMMANDING OFFICER, 3 MADRAS, C/O. 56 APO.

5. THE OFFICER IN CHARGE, (RECORDS),
   RECORDS, THE MADRAS REGIMENT, WELLINGTON,
   NILGIRIS, TAMIL NADU – 643231.

BY ADV. SMT. E.V. MOLY, CENTRAL GOVERNMENT COUNSEL.

ORDER

Shrikant Tripathi, Member (J):

1. In all these matters, similar questions of law and facts are involved for decision, therefore, with the consent of the learned counsel for the parties they were heard together and are being disposed of by this common order.

2. Heard Mr.Ashok Kumar and Mr.Rohit Kumar, appearing for the applicants in T.A.Nos.240 of 2010 and 5 of 2011, and Mr.Ramesh C.R. for the applicants in T.A.Nos.232/10, 233/10, 234/10, 239/10, 4/2011 and O.A.No.83 of 2011 and Mr.K.M.Jamaludeen. Senior Panel Counsel and Mr.Tojan J.Vathikulam and Mrs.E.V.Moly, Central Government Counsels for the respondents in all the matters and perused the record.

3. All the applicants have impugned their respective discharge from the service, which was made on the ground that each of them got their enrolment in a fraudulent manner. We, therefore, consider it just and expedient to state brief facts of the cases, leading to their discharge before narrating their independent allegations.

4. It appears that after the enrolment of the applicants in the Indian Army as Sapper/Sepoy, Advocates Shri Narayan Shedabhavi and Shri R.K. Ranganathan made complaints to the effect that while making recruitment at the various recruiting centres, certain malpractices had been done, which resulted in making the fraudulent enrolment not only of the applicants, but also few other persons. On receipt of the complaints, the 4th respondent instituted a Court of Inquiry to enquire into the allegations of malpractices and fraudulent enrolment. The Court of Inquiry examined 51 witnesses, out of which (Witness No.1 to 13 and 32 to 51), were the 33 persons against whom allegations of fraudulent enrolment have been made. The remaining 18 witnesses (Witness Nos.14 to 31) were official witnesses. The Court of Inquiry found that 34 candidates had resorted to unfair means by conniving to ensure that other persons appeared in the examination in their place during the Common Entrance Examination held on 31st March 2002, 20th April, 2002 and 20th May, 2002 at Recruiting Office, Head Quarters, Bangalore and on 30th June, 2002 at BRO, Mangalore. Out of the

aforesaid 34 candidates, one recruit was discharged from service as he was considered unfit to become an efficient soldier. The remaining 33 candidates who had been involved for having their fraudulent enrolments were recommended to be served with show cause notices under the Army Act, Section 20, read with Army Rule 17. Apart from the aforesaid candidates, certain officers/officials involved in making the recruitment were also found guilty against whom separate recommendations were made. 12 touts/agents were also identified who played pivotal role in having the applicants and others enrolled in the Army. The Court of Inquiry recommended lodging of FIR against them. It is also significant to mention that the report of the Court of Inquiry was ultimately examined by Maj.Gen. Paramjit Singh, GOC, who directed for issue of a show cause notice to each of the applicants and other candidates under the Army Act Section 20 read with Army Rule 17, vide his order dated 17th July, 2004. After receipt of the notices, the applicants submitted their respective replies to the show cause notices. The respondents, after considering the replies ultimately decided to terminate the services of the applicants and accordingly issued the discharge certificates/movement orders to them.

5. The facts of each case, relevant for the decision, are being narrated as follows:

(i) TA No.232 of 2010: The applicant, Adavayya Karaguppi, No.15327803 F, filed Writ Petition No.14547 of 2009 in the Karnataka High Court for quashing the order of his discharge from the Army. After the establishment of the Tribunal at Kochi, the matter was transferred to this Bench under Section 34 of the Armed Forces Tribunal Act and has been registered here as T.A.No.232 of 2010. According to the Court of Inquiry, the applicant (Witness No.38 in the Court of Inquiry) was to appear as a candidate in the Common Entrance Examination held on 31.3.2002 at HQ, Recruiting Office, Bangalore. But he is said to have indulged in malpractice by fraudulently allowing a proxy to appear in his place for the examination. He was served with the show cause notice(Annexure E) dated 13th September 2008 whereby he was informed that he had indulged in the malpractice by fraudulently allowing a proxy to appear in the examination in his place, against which he submitted his reply dated 20.9.2008 (Annexure F) stating that he himself appeared in the examination and had not paid anybody for his recruitment in the Army. Brigadier R.M.Mittal, Commandant, on perusal of the show cause notice and the applicants' reply thereto, passed the order dated 20th October, 2008 (Annexure G) terminating the services of the applicant with immediate effect under Section 20(3) of the Army Act read with Army Rule 17. Accordingly, the applicant was served with the termination notice stating that his service had been

terminated under Army Act Section 20 read with Army Rule 17, with effect from 27th October, 2008.

(ii) T.A.No.233 of 2010: The applicant, Kadappa Todal, No.1577906 F, filed Writ Petition No. 16572 of 2006 in the High Court of Karnataka at Bangalore for quashing the order dated 21.01.2005 (Annexure A) discharging him from service with effect from 22.1.2005. After the establishment of the Tribunal at Kochi, the matter was transferred to this Bench under Section 34 of the Armed Forces Tribunal Act and has been registered here as T.A.No.233 of 2010. The applicant was enrolled on 15th July 2002 in the Corps of Army Air Defence. After successful completion of training, he was attested as a Sepoy. According to the Court of Inquiry, the applicant (Witness No.2) was to appear as a candidate in the Common Entrance Examination held on 26th May, 2002 at Army School, Kamaraj Road, Bangalore. But he is said to have indulged in malpractice by fraudulently allowing a proxy to appear in his place for the examination. He was served with the show cause notice(Annexure E) dated 20th November 2004 whereby he was informed that he was found to be involved in malpractices during his enrolment against which he submitted his reply (Annexure F) stating that he himself had written the answer sheet/book and had not given money to anyone. Col. K J S Dhaliwal, Commandant, on perusal of the

show cause notice and the applicants' reply thereto passed the order dated 21st January, 2005 (Annexure A) terminating the services of the applicant with effect from 22nd January, 2005 under Section 20(3) of the Army Act read with Army Rule 17.

(iii) **T.A.No.234 of 2010**. The applicant, Sangappa Sangannnaver, No.14447270 K, filed Writ Petition No.21623 of 2005 in the High Court of Karnataka at Bangalore challenging the order issued by the respondents discharging him from service. After the establishment of the Tribunal at Kochi, the matter was also transferred to this Bench under Section 34 of the Armed Forces Tribunal Act and has been registered here as T.A.No.234 of 2010. The applicant was enrolled in the Army on 12.6.2002. After successful completion of the training, he was attested as a sepoy. According to the Court of Inquiry, the applicant (Witness No. 48 in the Court of Inquiry) was to appear as a candidate in the Common Entrance Examination held on 28th April, 2002 at HQ, Recruiting Office, Bangalore. But he is said to have indulged in malpractice by fraudulently allowing a proxy to appear in his place for the examination. He was served with the show cause notice(Annexure B) dated 28th January, 2005 disclosing that he had been found guilty of adopting unfair means by conniving to ensure that some other person appeared in the examination in his place against which he submitted his

reply dated 31st January, 2005 (Annexure C) whereby he denied the allegation and stated that he himself had appeared for the written examination. He had also stated the his handwriting in the re-test did not tally with that of the written test because he was not in touch with written work as he was entrusted with practical aspects of training like driving, maintenance/repair of vehicles etc. Brigadier DK George, Commander, on perusal of the show cause notice and the applicants' reply thereto passed the order dated 22nd April, 2005 (Annexure A) terminating the services of the applicant with effect from 30th April, 2005 under Section 20(3) of the Army Act read with Army Rule 17. Accordingly, the applicant was terminated under Army Act Section 20 read with Army Rule 17, with effect from 30th April, 2005.

(iv) **T.A.No.239 of 2010:** The applicant, Ningappa S.G., No.15778780, filed Writ Petition No.8090 of 2006 in the High Court of Karnataka at Bangalore challenging the order issued by the respondents discharging him from service. After the establishment of the Tribunal at Kochi, the matter was transferred to this Bench under Section 34 of the Armed Forces Tribunal Act and has been registered here as T.A.No.239 of 2010. The applicant was enrolled in the Indian Army on 8th June, 2002. After successful completion of training, the applicant was attested as a Sepoy on 28th March 2003. According to the Court of Inquiry, the applicant (Witness No. 1 in the Court of Inquiry) was to appear as a

candidate in the Common Entrance Examination held on 28th April, 2002 at HQ, Recruiting Office, Bangalore. But he is said to have indulged in malpractice by fraudulently allowing a proxy to appear in his place for the examination. He was served with the show cause notice(Annexure C-1) dated 28th April, 2005 to show cause within ten days. It is alleged that the applicant submitted a reply to the show cause notice, but according to para 19 of the reply statement, it was received after the stipulated period of 10 days, therefore, the reply was not administratively dealt with. The respondents have however, stated in para 8 of the reply statement that, the reply to the show cause notice was also given due consideration by the competent authority and the same was rejected. Neither the applicant nor the respondents has brought on record the reply filed by the applicant to Annexure C1 show cause notice. It is also significant to mention that the applicant had admitted his guilt during the Court of Inquiry. The Brigade Commander, 614 (Independent) Mechanised Air Defence Brigade after considering the show cause notice and the applicants' reply thereto passed the order dated 27th April, 2005 terminating the services of the applicant under Army Act Section 20 read with Army Rule 17, pursuant to which Movement Order dated 09th June, 2005 was issued terminating his services with effect from 10th June, 2005.

(v) **T.A.No.240 of 2010:** The applicant, Siddanna Gajhihal, No.6396399 F, filed Writ Petition No.871 of 2010 in the High Court of Karnataka at Bangalore, challenging the order of his discharge from the Army. After the establishment of the Tribunal at Kochi, the matter was transferred to this Bench under Section 34 of the Armed Forces Tribunal Act and has been registered here as T.A.No.240 of 2010. The applicant was enrolled in the Indian Army on 28th June, 2002. After successful completion of the training, the applicant was attested on 12.11.2003. According to the Court of Inquiry, the applicant (Witness No. 9 in the Court of Inquiry) was to appear as a candidate in the Common Entrance Examination held on 28th April, 2002 at the Recruiting Office, Bangalore. But he is said to have indulged in malpractice by fraudulently allowing a proxy to appear in his place for the examination. He was served with the show cause (Annexure E) dated 20th June, 2007 against which he submitted his reply dated 29th June, 2007(Annexure E-1) wherein he has stated that he appeared for the examination and solved the question paper. He has further stated that he did not know how his answer sheet had been changed. On perusal of the show cause notice and the applicants' reply thereto, the recommendation to terminate the services of the applicant was ratified by the General Officer Commanding, 26 Infantry Division vide Annexure R1 dated 09th July, 2007. Accordingly, the applicant was discharged from service under

Army Act Section 20 read with Army Rule 17, with effect from 10th July 2007 and was issued the Movement Order, Annexure A.

(vi) **T.A.No.4 of 2011**: The applicant, Goudappa Rotti, No.14836645-I, filed Writ Petition No.14548 of 2009 in the High Court of Karnataka at Bangalore, challenging his discharge from service with effect from 12.5.2008. After the establishment of the Tribunal at Kochi, the matter was transferred to this Bench under Section 34 of the Armed Forces Tribunal Act and has been registered here as T.A.No.4 of 2011. The applicant was enrolled in the Indian Army on 28th April 2002. After successful completion of training, he was attested as a Sepoy. According to the Court of Inquiry, the applicant (Witness No. 14 in the Court of Inquiry) was to appear as a candidate in the Common Entrance Examination held at Recruiting Office, Bangalore. But he is said to have indulged in malpractice of fraudulent entry by conniving to ensure that another person appear in his place for the CEE examination. He was served with the show cause notice(Annexure E) dated 26th March, 2008 against which he submitted his reply (Annexure F). But, in the said reply, he did not speak a single word with regard to the charge and had merely pressed his length of service, poor family background and liability to maintain old parents and younger brothers. On the basis of these personal reasons, he prayed for permission to continue in service. On perusal of the show cause notice and the applicants' reply thereto

an order terminating the services of the applicant under Section 20(3) of the Army Act read with Army Rule 17 was passed. Accordingly, the applicant was dismissed from the service under Army Act Section 20 read with Army Rule 17, with effect from 12th May 2008 and Discharge Certificate (Annexure G) was issued to the applicant.

(vii) **T.A.No.5 of 2011**: The applicant, Shiv Kumar, No.2803050 K, filed Writ Petition No.14549 of 2009 in the High Court of Karnataka at Bangalore, challenging his discharge from service of the Army. After the establishment of the Tribunal at Kochi, the matter was transferred to this Bench under Section 34 of the Armed Forces Tribunal Act and has been registered here as T.A.No.5 of 2011. The applicant was enrolled in the Indian Army on 10th May, 2002. After successful completion of training, he was attested as a Sepoy. According to the Court of Inquiry, the applicant (Witness No. 48 in the Court of Inquiry) was to appear as a candidate in the Common Entrance Examination held at Recruiting Office, Bangalore. He was served with the show cause dated 11th June, 2007 (Annexure R1) stating that he had enrolled in the Army by unfair means and to show cause why his services should not be terminated, against which he submitted his reply dated 30th June, 2007 (Annexure R2), admitting the guilt. He had further stated that he had completed five years service in the Army and was the only breadwinner of the family, that he regret for the mistake and prayed for

another chance to serve the Army. On perusal of the show cause notice and the applicants' reply thereto an order dated 04th March, 2007 (Annexure R4) terminating the services of the applicant under Section 20(3) of the Army Act read with Army Rule 17 was passed by the Officiating Commander, 112 Mountain Brigade on 5th July 2007. Accordingly, the applicant was dismissed from the service under Army Act Section 20 read with Army Rule 17, with effect from 09th July, 2007 and Discharge Certificate (Annexure E) was issued to the applicant.

(viii) **O.A.No.83 of 2011**: The applicant, Yallapa V.Lakkundi, No.2610148 W, has filed the instant O.A. challenging his discharge from the Army. The applicant was enrolled in the Army on 8th June, 2002. After successful completion of the training, he was posted at the Madras Regiment. According to the Court of Inquiry, the applicant (Witness No. 42 in the Court of Inquiry) was to appear as a candidate in the Common Entrance Examination held at Recruiting Office, Bangalore. But he is said to have indulged in malpractice by fraudulently allowing a proxy to appear in his place for the examination. He was served with the show cause notice (Annexure A1) dated 7th February 2008, wherein he was directed to show cause why he be not dismissed from the service as a case of fraudulent enrolment, against which he submitted the reply dated 22nd February, 2008 (Annexure A2) stating that he had appeared in CEE Exam. He had further stated that there might have

been some lapse in coding or decoding the answer papers, which resulted in the misunderstanding. On perusal of the show cause notice and the applicants' reply thereto, an order terminating the services of the applicant under Section 20(3) of the Army Act read with Army Rule 17. Accordingly, the applicant was dismissed from the service under Army Act Section 20 read with Army Rule 17, with effect from 5th March 2008 and Discharge Certificate (Annexure A3) was issued to the applicant

6. Learned counsel for the applicants submitted that during the Court of Inquiry, the applicants were not provided adequate opportunity of hearing nor they had proper occasion to substantiate their defences. More so, the provisions of Army Rule 180 as also Para 518 of the Defence Service Regulations, 1987 were not followed, which was required to be mandatorily followed, simply due to the reason that the character and reputation of the applicants were likely to be affected due to the Court of Inquiry and its conclusion. It was next submitted that the decision to discharge the applicants from the Army merely on the basis of the conclusion of the Court of Inquiry was not proper. The proper course for the respondents was to get the Summary of Evidence recorded and proceed with the matter accordingly. As the applicants had rendered their services for a quite long period without any

shortcomings, issue of mere show cause notices was not proper. The show cause notices were not only vague and uncertain, but were also based on irrelevant materials. The materials which gave occasion to the issue of the show cause notices were also not supplied to the applicants. So, in absence of relevant materials, the applicants' rights to defend themselves and to put forth proper replies to the notices were adversely affected. It was next submitted that the replies furnished by the applicants were not properly considered by the respondents nor they passed any speaking order indicating as to how the conclusion to discharge the applicants from the service was drawn. Since the Discharge Order had a civil consequence, it could only be passed by a speaking order after observing the principles of natural justice. Accordingly, the counsel for the applicants submitted that the orders discharging the applicants from the Army were illegal, violative of Articles 14 and 16 of the Constitution of India, and against the principles of the natural justice.

7. In addition to the aforesaid submissions, the counsel for the applicants next submitted that the applicants were civilians on the date of the written examination and as such the misconduct if any allegedly committed by them at that time could not be enquired into according to the provisions of the Army Act and Rules made thereunder due to the

simple reason that the applicants were not subject to the aforesaid Act at that point of time. It was also submitted on behalf of the applicants that the applicants' services had been exemplary, therefore, action taken by the respondents after expiry of the period of three years from the date of their enrolment was not proper, and the entire actions of the respondents were accordingly barred by section 122 (4) of the Army Act. Learned counsel for the applicants next submitted that all the applicants had denied the charge that they had not appeared themselves in the written examination and had allowed their proxy to answer the question papers, therefore, no discharge order could be passed without recording a finding of fact regarding truthfulness of the charge against them, but the respondents on receiving the reply discharged the applicants from the services only on the basis of the finding of the Court of Inquiry, which had no relevance nor could be relied upon to substantiate the charge, due to the simple reason that the findings of the Court of Inquiry was merely a fact finding inquiry, which could only be taken as the basis to proceed further towards holding a Court Martial.

8. Learned counsel for the respondents, on the other hand, submitted that the statements of the applicants and other affected persons had been recorded during the Court of Inquiry and all of them

admitted their guilts. It was incorrect to say that the characters and military reputations of the applicants were likely to be affected due to the Court of Inquiry and as such there was no requirement in law to observe Army Rule 180. If, for argument sake it was so required to be done, the Army Rule 180 was fully observed, as each of the applicants appeared during the Inquiry and made their statements admitting their guilt. It was next submitted on behalf of the respondents that the services of the applicants could be terminated as per the Army Act, section 20(3) read with Army Rule 17 without holding any further proceeding. As the applicants had been found guilty of being fraudulently enrolled in the Army and they had admitted their guilt during the Court of Inquiry, the authorities were fully justified to serve a show cause notice on each of the applicants. More so, before terminating the services of the applicants, the reply furnished by each of them to the show cause notices was also given due consideration and appropriate decision in accordance with law was taken. Neither Army Rule 184 nor Army Act Section 122(4) was attracted in the matter.

9. The respondents' counsel lastly submitted that as the respondents decided to proceed with the matter under Section 20(3) of the Army Act read with Army Rule 17, it was not necessary for them to record summary of evidence or to hold a Court Martial proceedings

against the applicants before taking any final decision.

10. We have given our anxious consideration to the rival submissions and perused the record.

11. The first question that arises for our consideration is whether the applicants were subject to the Army Act and could be dealt with in accordance with the said Act and the Rules thereunder. In this connection, the submission on behalf of the applicants were that they were civilians on the date of commission of the alleged act of fraudulent enrolment, because they had been required to appear for the CEE (written test) for being considered for enrolment in the Indian Army. It was next submitted that, no doubt, the applicants were subsequently enrolled in the Indian Army, but whatever acts they had done prior to their enrolment had been done by them as Civilians, therefore, none of them was subject to the aforesaid Act or Rule.

12. In our view, the submissions of the learned counsel for the applicants have no substance. No doubt, the applicants were civilians on the date they had been required to appear in the Common Entrance Examination, and had participated though allegedly through proxies, but the said examination was held to recruit the applicants to the Indian

Army and ultimately they were recruited, therefore, the alleged acts of fraud so done by the applicants had resulted in their enrolment to the Indian Army, which came into light during the Court of Inquiry which was held on receiving the complaints from the aforesaid two advocates. As on the date of actions taken against the applicants under Army Rule 17, they were, due to being army personnel, subject to the Army Act and the Rules made thereunder, they cannot be permitted to contend that the acts of their fraudulent enrolments to the Indian Army were not subject to the Army Act and the Rules.

13. "Fraudulent enrolment" is an offence under Section 43 of the Army Act. The provision of section 43, being relevant, is reproduced as follows:

> " 43. Fraudulent enrolment. Any person subject to this Act who commits any of the following offences, that is to say,-
>
> (a) without having obtained a regular discharge from the corps or department to which he belongs, or otherwise fulfilled the conditions enabling him to enrol or enter, enrols himself in, or enters the same or any other corps or department or any part of the naval or air forces of India or the Territorial Army; or
>
> (b) is concerned in the enrolment in any part of the Forces of any person when he knows or has reason to believe such person to be so circumstanced that by enrolling he commits an offence against this Act;
>
> shall, on conviction by court- martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned".

14. It is thus clear that the offence of fraudulent enrolment is a punishable crime under the Army Act, 1950 on conviction by a court martial. The punishment that can be inflected on the guilty is of imprisonment for a term which may extend to five years or such less punishment as is provided in the Act. It is thus evident that as and when the offence of fraudulent enrolment in terms of section 43 of the Army Act is committed, the charged person can be tried and punished by a Court Martial. But, apparently, in this case, the respondents did not consider it proper to convene a court martial for trial of the applicants with regard to the aforesaid offence punishable under section 43 of the Army Act nor did anything in this regard. If the respondents had proceeded to convene a Court Martial for trial of the applicants on the aforesaid charge, the punishment of dismissal from the service could also be imposed against the applicants by the Court Martial as per section 71(e) read with section 73 of the Army Act, besides other punishments provided therein.

15. But the respondents neither held any court martial proceedings against the applicants, nor considered it proper to deal with them accordingly, may be due to the simple reason that the trial by the court martial had become barred by limitation under section 122 (4) of the Army Act, 1950, according to which, no trial for an offence of

desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question not being an officer has subsequent to the commission of the offence served continuously in an exemplary manner for not less than three years with any portion of the Regular Army. To put it otherwise, no court martial trial on the charge of fraudulent enrolment can be initiated against a person who has served continuously for not less than three years in the regular army after the commission of the offence, provided he had rendered the service in an exemplary manner. In the present case, the report of the Court of Inquiry had come into existence well before the expiry of the aforesaid period of three years. But we fail to understand as to what prompted the authorities not to hold a court martial proceedings against the applicants and keep the matter pending, in most of the cases, for several years, which resulted in causing expiration of the limitation prescribed in section 122(4) of the Act.

16. Now, another question that arises for our consideration is whether the respondents were justified in invoking the provisions of section 20(3) of the Act read with Army Rule 17 in a case where the matter to initiate court martial proceedings had become barred by limitation under section 122(4) of the Act and it was not possible to initiate any such action. To put it otherwise, what the respondents

could not do in terms of section 122(4) of the Act, could be done by them by adopting the recourse provided in section 20(3) read with Army Rule 17. Section 20 of the Army Act provides for dismissal, removal or reduction by the Chief of the Army Staff and by other officers. Sub-section(3) of section 20 being relevant in the present case may be reproduced as follows:

> 20. **Dismissal, removal or reduction by the Chief of the Army Staff and by other officers**.
> (1) xxx xxx xxx
> (2) xxx xxx xxx
> (3) An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer."...

17. Section 20(3) of the Army Act as extracted above, empowers an officer having the rank of Brigadier or equivalent Commander or any other officer as prescribed, to dismiss or remove from service any person under his command, but no such power can be exercised against an Officer or a Junior Commissioned Officer. Sub-section (7) of section 20 further provides as to how the power of dismissal and removal is to be exercised by the Chief of the Army Staff and other officers, according to which, the exercise of any power under section 20 shall be subject to the rules and regulations and provisions of the Act. Rule 17 of the Army Rules, 1954 seems to have been framed to provide for the procedure as

to how the power of dismissal or removal under section 20 of the Army Act is to be exercised. In other words, no dismissal or removal from service can be done under Army Act section 20 without due compliance of the requirements of the provisions of Army Rule 17. The provisions of Army Rule 17 being relevant may be reproduced as follows:

> **"Dismissal or removal by Chief of the Army Staff and by other officers. —**
>
> Save in the case where a person is dismissed or removed from service on the ground of conduct which has led to his conviction by a criminal court or a court-martial, no person shall be dismissed or removed under sub-section (1) or sub-section (3) of section 20; unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service:Provided that if in the opinion of the officer competent to order the dismissal or removal,it is not expedient or reasonably practicable to comply with the provisions of this rule, he may after certifying to that effect, order the dismissal or removal without complying with the procedure set out in this rule. All cases of dismissal or removal under this rule where the prescribed procedure has not been complied with shall be reported to the Central Government"

18. Apparently the power of dismissal or removal under Army Act section 20 read with Army Rule 17 is an independent power and is not dependent on the conclusion of a court martial proceedings. The proceedings of a court martial is a proceedings in the nature of a trial

of an offence in which not only the punishment of imprisonment can be inflicted but also the punishment of dismissal or removal from service, inter alia, can also be imposed. If the authorities did not move towards holding of a court martial proceedings due to any reason, it could not be contended that, in such a situation the power to dismiss or remove a person from service in terms of Army Act section 20 read with Army Rule 17 could not be exercised. In our view, the power to dismiss or remove a person from service under Army Act section 20 vested in the empowered officer notwithstanding that no court martial proceedings had been initiated in the matter. There does not appear to be any limitation for initiating the action under Army Act section 20 read with Army Rule 17. Section 122(4) of the Army Act no doubt creates a bar on initiation of a court martial proceedings on expiry of three years from the commission of the offence. But that provision of limitation is not applicable with regard to the action contemplated or done under Army Act section 20 read with Army Rule 17. In this view of the matter, the contention raised on behalf of the applicant that the show cause notice as also the dismissal/removal/ discharge of the applicants from service under Army Act section 20 read with Army Rule 17 were barred by section 122(4) of the Army Act, has no substance.

19. No doubt, as held above, normally the rule of limitation provided in Army Act section 122(4) is not applicable in respect of proceedings under the Army Act section 20 read with Army Rule 17. But the object behind the enactment of the aforesaid sub-section (4) needs to be kept in mind while dealing with a case of fraudulent enrolment in terms of of the Army Act section 20 read with Army rule 17. The object behind the said sub-section (4) is, obviously, to allow the persons, who got their fraudulent enrolment in the Army, to continue in service of the Army notwithstanding the fraudulent enrolment, if their service in the Army have continuously been exemplary for not less than 3 years. Army Act Section 122(4) seems to accord protection to all those who had been recruited in a fraudulent manner, but after the recruitment they continue not only in service continuously for not less than three years but also give service performance in an exemplary manner. In such matters, whatever malpractices had been done during the recruitment, can be treated to be washed off due to the exemplary performance of the candidates. Is it feasible and proper to dismiss a person who obtained his enrolment in a fraudulent manner but remained in service continuously for not less than three years in an exemplary manner, is the paramount question, which has to be kept in mind by the officer or authority while considering a case of fraudulent enrolment for passing an order under Army Act Section 20 read with Army Rule 17.

20. We have to next consider as to what formalities were required to be done in a case where the provisions of Army Act section 20 read with Army Rule 17 are invoked by the authorities. Whether issue of show cause notice to the concerned person is an empty formality or it has some meaningful purpose is the paramount question, we have to answer. It is also required to be seen as to how a reply denying the charge/allegation levelled by the show cause notice is to be dealt with by the concerned officer/Commander on receiving the reply. Whether in doing so, the officer/Commander/the Chief of the Army Staff is required to pass any reasoned order or not. These questions seem to be very relevant to find out as to whether or not the procedures adopted by the respondents in discharging the applicants from service were correct and legally justified?

21. In our view, the compliance of the Army Rule 17 is mandatory in nature. It has two purpose, firstly, to provide an opportunity to the person concerned to explain the particulars of the cause of action made against him, and to put forth his explanations along with materials if any for controverting the particulars of the cause of action and also for showing that the intended dismissal or removal from service is uncalled for. The other object behind the said Rule 17

seems to be to give due consideration to the reply/explanations so furnished by the person concerned and to accept or annul the same with a reasoned order (speaking order). To put it otherwise, what is required by rule 17 is firstly to inform the person proposed to be dismissed or removed from service with the particulars of the cause of action (allegations) levelled against him and secondly to provide him reasonable time to state in writing any reasons (grounds) against the proposed dismissal or removal. When the rule mandatorily requires providing of such opportunity to the delinquent army personnel, it is also inbuilt or inherent therein that the authority, who is to consider the reasons furnished by the delinquent army personnel, to apply his mind to the facts of the case, give due consideration to the explanation and pass a reasoned order. Mere providing of an opportunity to furnish reasons without giving due consideration to the reasons so furnished, would serve no purpose in providing show cause opportunity to the concerned person. Therefore, what is required by Rule 17 of the Army Rules 1954 is not only to inform the particulars of the cause of action(allegations) with full certainty and free from ambiguity and vagueness to the delinquent so as to enable him to furnish reasons, if any, but also to require the authority concerned to consider the reasons so furnished and pass a speaking order in the matter. But the aforesaid requirements of Rule 17 need not be observed in a case

where dismissal or removal is made on the ground of conduct which has led to conviction of the person concerned by a Criminal Court or Court Martial.

22. There is one more exception to the aforesaid principles as contained in the proviso to Army Rule 17, which empowers the competent officer to dispense with the requirement of the provisions of Rule 17, if he forms the opinion that it is not expedient or reasonably practicable to comply with provisions of Rule 17. To put it otherwise, a dismissal or removal from service can be made without due compliance of the Army Rule 17, if the competent authority records the opinion that the compliance of the said Rule is not expedient or reasonably practicable. But, in all such matters a report must be sent to the Central Government.

23. In the matter of ***S.N.Mukherjee vs. Union of India***, (1990) 4 SCC 549, a Constitution Bench of the Supreme Court interalia examined the question of necessity of observing the principles of natural justice and recording of reasons by the authority exercising the quasi judicial functions, and held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in

action. The requirement of recording reasons for its decision, by an administrative authority exercising quasi judicial functions achieves this object by excluding chances of arbitrariness and ensuring the degree of fairness in the process of decision making. Accordingly, the Apex Court held that the requirement to record reasons can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities.

24. In the celebrated case of ***Cooper** v. **Wandsworth Board of Works, (1963) 143 ER 414,*** the principle was thus stated:

> *"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam'' says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat''.*

25. It is, therefore, well settled that the adherence to principles of natural justice is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or **any administrative action involving civil consequences is in issue.** These principles are well settled. The first and foremost principle is what is commonly known as '**audi alteram partem**' rule. It says that no one

should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated and non-est. The other limb of the principles of natural justice is recording of reasons by the authority exercising the quasi judicial functions or administrative functions involving civil consequences. An order disclosing no reason apparently violates the principles of natural justice.

26. It is also well settled that the principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi- judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

27. In the instant cases, the report of the Court of Inquiry prompted the respondents to proceed against the applicants under the Army Act Section 20(3) read with Army Rule 17 by issuing show cause notices and there was no other material except the materials collected

during the court of inquiry for such action against the applicants. The Court of Inquiry is constituted under Army Rule 177. The purpose of holding a Court of Inquiry is to collect evidence and if so required to report in regard to any matter which may be referred to the officers and as such, the Court of Inquiry is in the form of a preliminary investigation, which cannot be equated with a trial or Court Martial. If the character and military reputation of a person subject to the Army Act is likely to be affected due to a Court of Inquiry, he has to be provided as per Army Rule 180, full opportunity of being present throughout the inquiry and of making any statement and of giving any evidence, he may wish to make or give and of cross examining of witnesses whose evidence in his opinion affects his character or military reputation. Besides this, he must be provided further opportunity to produce any witness in defence of his character or military reputation.

28. The Apex Court had occasion to examine the ambit and scope of Army Rule 180 in the matter of ***Lt.Col.Prithi Pal Singh Bedi vs. Union of India and Ors***. (1982) 3 SCC 140, and held that Army Rule 180 makes it obligatory that whenever a Court of Inquiry is set up and in the course of inquiry the character or military reputation of a person is likely to be affected, then such a person must be given full

opportunity to participate in the proceedings of the court of inquiry.

29. It is therefore, evident that the provisions of Army Rule 180 being mandatory in nature, must be observed in a case where the character or military reputation of a person subject to the Army Act is likely to be affected due to the Court of Inquiry. Any disregard to the said provision would result in vitiating the court of inquiry against the affected person.

30. The learned counsel for the respondents tried to contend that the character or military reputation of the applicants were not likely to be affected due to the Court of Inquiry. More so, they had appeared during the court of inquiry and made their statements. According to the learned counsel for the respondents, the applicants in T.A.Nos.233 of 2010, 239 of 2010 and 4 of 2011 had admitted their guilt to the extent that they paid money for their enrolment and someone else appeared on their behalf in the Common Entrance Examination. He next submitted that the applicants in T.A.Nos.232/2010, 234/2010, 5/2011 and O.A.No.83 of 2011, no doubt stated that they themselves appeared in the Common Entrance Examination and had written answer sheets, but during the Inquiry, on being shown the answer sheets, they admitted that the handwritings on the answer sheets were different.

The applicant in T.A. No.240 of 2010 admitted that he did not appear during the test and his brother had taken the Hall Ticket. On the basis of these statements, learned counsel for the respondents submitted that all the applicants had therefore admitted their guilt during the Court of Inquiry. In this connection, learned counsel for the applicants submitted that except the applicants in T.A.Nos.4 of 2011 and 5 of 2011, all other applicants did not admit their guilt in their replies submitted against the show cause notices and they have further set up the case that they did not make any confessional statement during the Court of Inquiry. Learned counsel for the applicants next submitted that besides the statements of the recruits, the statements of certain officials, witnesses Nos.14 to 31, were also recorded, but none of the applicants was afforded any opportunity to cross examine the said official witnesses. More so, they were not provided any opportunity even to adduce evidence in defence and as such Army Rule 180 was violated.

31. In our view, the applicants and other recruits who were alleged to have obtained their enrolments fraudulently in the Indian Army were, in fact, the affected persons due to the reason that the ultimate conclusion of the Court of Inquiry could be applied against them and it could be asserted that they indulged themselves in malpractices for ensuring their enrolments, so, it can be safely held that

the characters of the applicants who were subject to the Army Act, were not only involved but were also likely to be affected due to the Court of Inquiry, and as such, the compliance of Army Rule 180 was obligatory and its non compliance would go against the respondents.

32. The instant cases need to be examined in the backdrop of the above said principles.

33. In T.A.No.4 of 2011, the applicant, Goudappa Rotti, No.14836645-I, was served with the show cause notice dated 26th March, 2008 (Annexure E). The notice proceeded to narrate the proceedings of the Court of Inquiry and its conclusion. The notice further stated that the applicant Goudappa Rotti was one of the 34 enrolled candidates who had resorted to unfair means by conniving to ensure that another person appeared in the examination in his place. He was further informed that the GOC 14 Corps was of the view that his dismissal from service in terms of Army Act section 20 read with Army Rule 14 was called for. Therefore, he was called upon to show cause within one month against the proposed dismissal. A copy of the report of court of inquiry was also forwarded along with the show cause notice. In our view, the notice was perfectly legal and valid. The substance of the material allegations transpired during the court of inquiry, had been disclosed in the show cause notice. More so, the

applicant was provided one month's time to reply, which, keeping in view the facts and circumstances of the case, cannot in any way, be said to be unreasonable. The applicant, Goudappa Rotti, submitted his reply vide Annexure F, wherein he did not speak a single word regarding the allegations made against him, rather he narrated about his length of service, poor family background and the liabilities to maintain his old parents and younger brothers and accordingly prayed for permission to continue in service. In view of the fact that the applicant Goudappa Rotti, did not speak any single word against the allegations of fraudulent enrolment, it can be easily inferred that whatever allegations had been made against him, he did not dispute the same rather impliedly admitted, therefore, he cannot make any legitimate grievance against the service of show cause notice and decision on merit. It is however, made clear that the applicant Goudappa Rotti was enrolled in the Indian Army on 28th April, 2002 and his discharge took place on 12th May 2008 and as such he served the Army continuously for 6 years and 14 days. Besides the aforesaid reply, he stated that he had been in the continuous service of the Army for the last six years and accordingly, prayed for permission to continue in service. The respondents, while considering his case, in pursuance of the reply to the show cause notice failed to give any consideration to the ground that he had served the Army continuously for six years and he be accordingly permitted to

continue in service. This aspect was required to be given due consideration by the respondents as per the observations already made by us in Para 19 of this order and as such, his matter to this extent requires reconsideration.

34. In T.A. No.5 of 2011, the applicant, Shiv Kumar, No.2803050K, after receiving the show cause notice (Annexure R1) submitted his reply (Annexure R2) by which he admitted the charge of fraudulent enrolment very clearly and specifically. He then prayed for a lenient view, on the ground that, he was the sole bread-earner in his family. In view of the fact that the applicant, Shiv Kumar has admitted his guilt by the reply submitted by him to the show cause notice, he has nothing to contend against the charge of fraudulent enrolment levelled against him. The conclusion of the respondents in this regard requires no interference. It is, however, made clear that this applicant was enrolled in the Army on 10th May,2002 and was discharged on 9th July, 2007 and accordingly he had served the Army continuously for 5 years and 2 months. In addition to the aforesaid explanations, he had also stated in the reply to the show cause notice that he had rendered continuously for more than five years and had no means of livelihood except the service. The respondents did not consider this stand of the applicant, Shiv Kumar, in the light of the objects behind Army Act section 122 (4) as explained in

para 19 of this order. The attitude of the respondents in ignoring the applicant's case as per the object behind aforesaid section 122(4) amounts to non-consideration of the relevant ground, which vitiates the final decision taken by them. In this view of the matter, the case of the applicant, Shiv Kumar, is liable to be re-considered to this extent.

35. Learned counsel for the applicants in T.A.No.233 of 2010 and O.A.No.83 of 2011 contended that the show cause notices served on the applicants, Kadappa Todal No.1577906 and Yallappa V.Lakkundi, No.2610148W, were ambiguous, as the facts which, according to the respondents, constituted the fraudulent enrolment were not disclosed. Only this much was stated in the notice that they were found to be involved in the malpractice of fraudulent enrolment and accordingly they were called upon to explain their conduct and show cause why they should not be dismissed from service. We have already held that the notice must be precise and unambiguous and it should apprise the party determinatively the case he has to meet. In our view, the show cause notices given in these two cases do not meet the requirements. The notices had not disclosed as to what malpractice had been committed by these applicants during the enrolment. It was also not stated in the notices that the applicant had allowed anybody else to appear in their place in the written examination or they paid any money

to someone else. In absence of these material disclosures in the show cause notices, it can be inferred that the notices were ambiguous. But, before attaching any significance to such defects in the show cause notices, we have to see as to whether the said defects resulted in causing any prejudice to these applicants or not. In this connection, it may be mentioned that the applicant in T.A.No.233 of 2010 (Kadappa Todal) submitted his detailed reply to the show cause notice, which is on record as Annexure F. He very clearly stated that he neither contacted any agent nor paid any money to anybody else. He further stated that he himself had appeared during the written examination, and before his entry into the examination hall, his photograph and other documents were checked. In this way, he was fully aware of the allegations having been made against him and accordingly he gave his reply to all the material allegations levelled against him without any difficulty and this could be due to the simple reason that he was furnished relevant extracts from the proceedings of the Court of Inquiry along with the show cause notice. The other applicant in OA No.83 of 2011, Yallappa V.Lakkundi, submitted his reply (Annexure A2) in which he very clearly stated that he had been performing his duty with sincerity and devotion since the date of enrolment. He further disclosed in the reply that the charge that some other person appeared in the written examination in his place was incorrect, as he himself

appeared in the Common Entrance Examination. He next replied that there could be lapses in encoding or decoding the answer papers resulting in the misunderstanding. He next submitted that he had served the army six years with devotion and dedication and accordingly wanted to continue in service. In this view of the matter, the aforesaid ambiguity in the show cause notices given to these two applicants had not resulted in causing any prejudice to them, therefore the aforesaid ambiguity in the show cause notices cannot be taken as a ground to hold the dismissal/discharge order as bad and erroneous.

35. The show cause notices issued to the applicants, (Adavayya Karaguppi No.15327803 F, Sangappa Sangannaver, No.14447270K, Ningappa S.G. 15778780, and Siddanna Gajhihal) in T.A.Nos.232 of 2010, 234 of 2010, 239 of 2010, and 240 of 2010 respectively, had disclosed the specific allegations levelled against each of them. The allegations disclosed in the notices were to the effect that they had been found by the Court of Inquiry guilty of adopting unfair means by conniving to ensure that some other person appear in the examination in their place. Therefore, we are of the view that the show cause notices issued to these applicants were perfectly legal and valid and did not result in causing any prejudice to them.

37. Now we have to see as to whether the respondents while considering the cases relating to T.A.Nos. 232, 233, 234, 239, 240 all of the year 2010, and O.A.No.83 of 2011, in the light of the replies received, applied their mind to the facts of the case and passed reasoned orders (speaking orders) or not. We have already referred to the replies of the applicants in T.A.Nos.233 of 2010 and O.A.No.83 of 2011 in para 35. We are therefore, required to refer to the replies of the other applicants too. The applicants in T.A.Nos.232/2010, 234 of 2010, and 240 of 2010 had very specifically denied the allegations levelled by the show cause notices against them and stated that they had themselves appeared during the written test and had written the answer sheet. They had further stated that they did not commit any malpractice nor paid any money to anybody for their recruitment to the Army. Accordingly they set up the case that they did not commit the offence of fraudulent enrolment. However, with regard to the applicant in T.A.No.239 of 2010, the matter is slightly different. Whatever reply he submitted has not been brought on record. But it is admitted that he had submitted his reply to the show cause notice. More so, in para 8 of the reply statement, the respondents have stated that they had considered the reply of this applicant and the same was rejected. This applicant, on the other hand, stated in para 7 of the T.A that, he had sent his reply to the show cause notice, but the same was

not considered. In addition to this, he stated in para 24 of the T.A that his signatures were obtained on few blank papers during the court of inquiry. Apart from this, he had submitted one more representation (Annexure B) and stated in para 3 thereof that he himself had appeared in the written examination and all his documents were checked in the examination hall and his signatures were also obtained. He denied the charge of malpractice. In this way, the applicant in T.A.No.239 of 2010 had also set up the story that he himself had appeared in the examination and his documents were checked at that time and he had not done any malpractice.

38. The stand of the applicants in T.A.Nos.232 of 2010, 233 of 2010, 234 of 2010, 239 of 2010, 240 of 2010, and O.A.No.83 of 2011 was that they themselves appeared in the written examination and did not allow any person to appear on their behalf and they had not done any malpractice, therefore, the proper course for the competent authority was, to record reasons for not accepting their replies to the show cause notices. The competent authorities seem to have guided themselves only on the basis of the conclusions of the Court of Inquiry and made the same as the sole basis to reject the replies submitted by these applicants. In our view, the report of the Court of Inquiry had no relevance nor the same could be relied upon as an evidence. As held by

the Apex Court in the matter of ***Major Suresh Chand Mehra vs. Defence Secretary, Union of India and Others***, (1991) 2 SCC 198, the purpose of the Court of Inquiry is merely to collect evidence and if so required, to report with regard to any matter which may be referred to the said officers. The inquiry is in the nature of a preliminary investigation and cannot be equated with a trial. More so, Army Rule 182 clearly provides that the proceedings of a Court of Inquiry or any confession statement, or answer to a question made or given at the Court of Inquiry, shall not be admissible in evidence against the person subject to the Act, nor shall any evidence respecting the proceedings of the court be given against any such person, except upon the trial of such person for wilfully giving false evidence before that Court. There is, however, one exception to this proposition as provided in the proviso to the said Rule, according to which, Rule 182 shall not prevent the proceedings from being used by the prosecution or defence for the purpose of cross-examining any witness. In view of the fact that the Court of Inquiry is nothing except a fact finding inquiry and the materials collected during the inquiry cannot be used as evidence against any person subject to the Army Act, the competent authorities/respondents could not be said to be justified in placing the sole reliance on the conclusion of the Court of Inquiry while considering the cases of specific denial set up by the applicants against the show

cause notices especially, when the applicants in T.A. Nos.232/2010, 233/2010, 234/2010, 239/2010, 240/2010 and OA No.83 of 2011 had not been provided any opportunity to cross examine the witnesses and adduce evidence in their defence. More so, Army Rule 180 was also not followed. In such matters, non-compliance of Army Rule 180 becomes quite relevant and material, which goes to the root of the case.

39. It is also very significant to mention that the crucial question that had arisen before the respondents in respect of the applicants in T.A. Nos.232/2010, 233/2010, 234/2010, 239/2010, 240/2010 and OA No.83 of 2011 was as to whether or not they appeared during the written examination and answered the question papers, and the answer sheets were in their handwriting. For deciding this question, the court of inquiry mainly based its conclusion on the so-called confessional statements of some of the applicants, who did not support the alleged confessional statement in any way either in their replies to the show cause notices or in the Transferred Applications/Original Application. These applicants have very specifically stated that they did not make any confessional statement. They have further stated that they themselves appeared during the written test and did not allow anybody else to appear as a proxy for them. The so-called confessional statements, if deeply examined, seem to be

readymade statements, recorded in a stereotyped manner. More so, the Court of Inquiry did not proceed to consider the question whether or not, the alleged confessional statements made by the applicants were voluntary and free from threat, inducement or promise. Besides this, the court of inquiry did not proceed to record any certificate or finding to the effect that the confessional statements of the applicants were not obtained by any inducement, threat or promise. The so-called confessional statement of the applicants, in view of their contrary statements in their reply to the show cause notices and in their respective T.As/O.A are nothing except retracted confessions. Apart from this, in absence of the certificate or observation of the Court of Inquiry that the so-called confessional statements were voluntary and free from threat, inducement or promise, such confessions were not required to be given significance while considering the reply submitted by the aforesaid applicants.

40. Apart from the various material shortcomings indicated herein before, there had been one more material discrepancy in T.A.Nos.232 of 2010, 233 of 2010, 234 of 2010, 239 of 2010, 240 of 2010 and O.A.No.83 of 2011 and that is, the competent authority who considered the respective replies submitted by the applicants and passed the dismissal/discharge/ termination order against them did not

assign any reason as to why the stand taken by the applicants in their replies were not acceptable. To put it otherwise, the discharge/dismissal/ termination order passed against these applicants, do not appear to be a speaking order (reasoned order) and as such, the same cannot be upheld.

41. It is also significant to mention that the applicant in T.A.Nos.232/2010 was enrolled in the Army on 27th April, 2002 and was discharged on 27th October,2008 and had thus rendered 6 years and 6 months of service. Similarly in T.A. No.233 of 2010 the applicant was enrolled in the Army on 15th July 2002 and was discharged on 22nd January, 2005 and had thus rendered 2 years, 6 months and 7 days of service. In T.A.No. 234/2010, the applicant was enrolled in the Army on 12th June, 2002 and was discharged on 30th April, 2005 and had thus rendered 2 years, 10 months and 18 days of service In T.A.No.239/2010, the applicant was enrolled in the Army on 8th June, 2002 and was discharged on 10th June, 2005 and had thus rendered 3 years and 2 days of service. In T.A.No.240/10, the applicant was enrolled in the Army on 28th June, 2002 and was discharged on 10th July, 2007 and had thus rendered 5 years and 12 days of service. In OA No.83 of 2011 was enrolled in the Army on 8th June 2002 and was discharged on 5th March, 2008 and had thus rendered 5 years,

8 months and 28 days of service. In this way, except the applicant in T.A.Nos.233 of 2010 and 234 of 2010, all other applicants had rendered more than three years continuous service and accordingly, they requested for retention in service by the reply to the show cause notices. The respondents seem to have overlooked this material reply submitted by the applicants and did not give due consideration to such requests in terms of the object behind Army Act Section 122(4). Consequently, the cases of these applicants need to be given due consideration in the light of the objects behind Army Act Section 122(4) as explained in para 19 of this order.

42. For the reasons stated above, Transferred Application Nos.232/2010, 233/2010, 234/2010, 239/2010, 240/2010 and O.A.No.83 of 2011 are allowed. The dismissal/discharge/termination order passed against these six applicants in pursuance of the show cause notices given under Army Act Section 20 read with Army Rule 17 are quashed. The respondents are directed to reinstate the applicants in service with full benefits of continuity in service with effect from the date of their respective dismissal/discharge/termination, subject to the condition that none of them will be entitled to pay and allowances for the period of absence from duty during the period the order of discharge/dismissal/termination remained in operation. It will however

be open to the respondents to proceed afresh against these applicants in accordance with law and the observations made herein before.

43. The Transferred Application Nos.4 of 2011 and 5 of 2011 are partly allowed. The respondents are directed to reconsider the cases of these applicants with regard to their request to continue in service in terms of Army Act section 122(4) and take appropriate decision expeditiously, and communicate the same to them. In case these two applicants are allowed to continue in service in terms of section 122(4) of the Army Act notwithstanding the fraudulent enrolment, in that eventuality, the dismissal/discharge order of these applicants shall be treated to be nonest with effect from their respective dates of dismissal/discharge and they shall be treated to be in service as if the dismissal/discharge/termination had not come into operation. But, they will not be entitled to any pay and allowances for the period during which the order of dismissal/discharge/termination remains in operation.

44. There will be no order as to costs.

45. Let a copy of this order be placed in the files of the connected cases.

46. Issue free copy of this order to both side.

Sd/-	Sd/-
LT. GEN. THOMAS MATHEW, MEMBER (A)	JUSTICE SHRIKANT TRIPATHI, MEMBER (J)

DK.

(True copy)

Prl. Private Secretary