

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

ORIGINAL APPLICATION No. 66 OF 2010

Lt. Gen. Avadhesh prakash (retd.) ...Petitioner

Versus

Union of India & others ...Respondents

For the Petitioner: Ms. Jyoti Singh, Advocate with Sh.
Ankur Chibber, Advocate

For the Respondents: Ms. Indira Jaising, Addl. Solicitor
General with Mr. Satyakam, Mr. Anil
Gautam, Advocates.

C O R A M:

HON'BLE MR. JUSTICE A.K.MATHUR, CHAIRPERSON

HON'BLE LT.GEN. S.S. DHILLON, MEMBER (A)

JUDGMENT

1. Petitioner by this Petition has prayed that the
convening order dated 30th September, 2009 of the

Court of Inquiry held at Kolkata and its proceedings along with the Findings and Opinion may be quashed and the letter/order dated 29th January, 2010, whereby Section 123 has been invoked against the applicant for disciplinary purposes may be quashed.

2. Petitioner was commissioned in the Infantry on 20th December, 1970 and he had participated in many important military events and was accorded many high commendations during his tenure of his service.
3. There is a land situated in Chumta Tea Estate belonging to the State of West Bengal. It was leased

out by the State Government to four companies which are as follows:

1. JF Low & Company Ltd.
2. Akshera Vanijya Pvt. Ltd.
3. Mata Vaishno Devi Mercantile Pvt. Ltd.
4. Sheetla Vyapaar Ltd.

4. Out of the 2711 acres of land of the Chumta Tea Estate, approximately 71.55 acres of land, which was leased to the aforesaid four companies by the State of West Bengal was not used for the purpose of growing tea as the said land was rocky and plantation on the said land was not possible. Therefore, these four lessee companies requested to State of West

Bengal to consider for change of land use from tea garden to other commercial venture viz. development for tourism purposes. The State of West Bengal accepted the said proposal, in principle, in 2005 with certain conditions in favour of lessees and a long term lease agreement dated 22nd September, 2006 was executed between the State Government and the lessee companies. The lease was for a period of 99 years for the purpose of developing a tourism complex including facilities like resort, hotel and retreat housing complex.

5. In 2008 Army (GOC 33 Corps) took up a case with the Government of West Bengal for cancellation of lease

due to security implications of the commercial project coming near Sukhna Military Station. On this objection, the State of West Bengal issued notices to four lessee companies about proposed cancellation of the lease. The matter regarding cancellation of lease was pending with the State Government.

6. On 4th October, 2008 GOC (33 Corps) again took up the case with the Government of West Bengal for cancellation of the lease. At that relevant point of time, the petitioner was the Military Secretary and he was one of the Principal Staff Officers to Chief of Army Staff. He alleges that he has nothing to do with the grant of lease or for issuing 'No Objection

Certificate' for development of this area for commercial purpose.

7. On 16th October, 2008 the petitioner went on an official visit to Calcutta, on 17th October, 2008 he proceeded to Gangtok and in the morning of 18th October, 2008 he was at Hashimara. Thereafter, on 18th afternoon he proceeded to Sukhna for addressing the officers. Around 4.30 p.m. one of his friends namely Mr. Dilip Agarwal met him and expressed a desire to establish an educational institute in the land in question, therefore, No Objection Certificate was required from headquarter (33 Corps).

8. It is alleged that the petitioner thought it was a noble cause and it will be for the welfare of the civilians as well as for the Army in that area. Therefore, he suggested Mr. Dilip Agarwal to approach Military Authorities for that purpose and he thought it fit to visit personally the land, before requesting Corps Commander. In the night the petitioner was invited for dinner by Corps Commander at his residence and during dinner he made a recommendation to the Corps Commander to consider the case of granting No Objection Certificate without compromising security for establishing an

educational institution by his friend Mr. Dilip Agarwal.

9. It is alleged that in November, 2008 the Corps Commander Lt. Gen. PK Rath apprised the applicant on phone that the request of Mr. Dilip Agarwal could not be accepted. Petitioner thought that matter is closed. Thereafter, 33 Corps Commander then took up the matter in December, 2008 with the State of West Bengal and insisted that as per their communication of October, 2008, the lease issued in favour of the four companies may be cancelled.
10. An official meeting was called by Government of West Bengal on 6th February, 2009. The meeting was

attended by AQMG (Works) and the representatives of lessees and Mr. Dilip Agarwal, in the chamber of Additional Chief Secretary of the State of West Bengal. It is alleged that when AQMG (Works) was specifically asked with regard to the proposal for construction of educational institute for area, the officer replied that Army had *no objection* for establishment of an educational institution only. Then the Memorandum of Understanding (hereinafter referred to as 'MoU') was formalized and thereafter executed on 20th March, 2009 between the Station Commander, Station HQ, Sukna and the Lessee of the land in question.

11. During April, 2009 Lt. Gen. Rath while speaking to Army Commander Lt. Gen. VK Singh, informed him of his decision on the subject and there was a difference of opinion between the two. Thereafter, the Corps Commander instructed his staff to rescind/negate all the actions taken till then and revert to original stance.
12. On 27th May, 2009 the Corps headquarter wrote to Additional Chief Secretary, Government of West Bengal that the Army had ex-parte cancelled the MoU with four lessees and requested that the lease with four companies be cancelled and land be transferred to the Army authorities.

13. Thereafter, a Court of Inquiry was convened on 30th September, 2009, presided over by Lt. Gen. KT Parnaik as Presiding Officer and Maj. Gen. RP Dastane and Maj. Gen SC Jain as Members. It is alleged that the Court of Inquiry was not properly constituted in terms of Regulation 518 of the Army Regulations as the two Members of the Court of Inquiry were in the rank of Major General, while the petitioner and Lt. Gen. Rath, both were in the rank of Lt. General and senior to Lt. Gen. Parnaik. Petitioner also submitted that this was in violation of Rule 180 of the Army Rules, 1954.

14. Thereafter, the petitioner received a show cause notice on 11th January, 2010, in which certain allegations, which were completely false and baseless, were leveled against him and he was required to show cause why administrative action of *Censure* be not taken against him. The petitioner sent his reply on 22nd January, 2010 to the aforesaid show cause notice. However, on the last working day of his Army career, he was served with a letter dated 29th January, 2010, on the same day, in which it was mentioned that he would be attached for disciplinary proceedings and the show cause notice was cancelled. This was also challenged by the petitioner that the

said action was illegal as in terms of the policy of the Army itself there could not have been a change of path from administrative action to disciplinary action.

15. Petitioner retired on 31st January, 2010 and thereafter, filed this petition challenging the letter invoking Section 123 of the Army Act, 1950.
16. Learned counsel for the petitioner has seriously objected to the conduct of the Court of Inquiry and submitted that petitioner was not given sufficient opportunity to present and effectively cross examine the witnesses. Therefore, it is a serious violation of Rule 180 of the Army Rules, 1954. It is contended that the order of convening Court of Inquiry is also

violative of Regulation 518 of Regulations for the Army, 1987, wherein it says that no person, junior in rank of person facing the Court of Inquiry, shall constitute the Court of Inquiry. Regulation 518 reads as under:

"518. Courts of Inquiry and Station Boards - The convening officer is responsible that a court of inquiry or station board is composed of members whose experience and training best fit them to deal with the matter at issue. The personnel detailed to constitute the Court of Inquiry or Station Board should have no personal interest or involvement, direct or indirect, in the subject matter of the investigation. A Court of Inquiry may consist of officers only, or of one or more officers together with one or more JCOs, WOs, NCOs as may be desirable. When the character or military reputation of an officer is likely to be material issue, the presiding officer of the court of inquiry wherever possible, will be

senior in rank and other members at least equivalent in rank to that officer.

When investigating damages to service equipment, the evidence of a technical officer who is experienced and fully conversant with the technical details of the equipment should be recorded. A station board may consist of any person selected by the convening officer. The members of a mixed civil and military board will take precedence in accordance with any general or special instructions issued by the Central Government. The stationery and forms required by a board will be supplied by the unit which applies for it."

17. In this connection learned counsel for the petitioner submitted that the petitioner was in the rank of Lt. Gen. and likewise, PK Rath was also in the rank of Lt. Gen., whereas, the Court of Inquiry constituting of Lt. Gen. KT Parnaik as Presiding Officer and Maj. Gen. RP Dastane and Maj. Gen. SC Jain. Therefore, Court of

Inquiry stands vitiated. Petitioner also submitted that Lt. Gen. Parnaik was junior to the petitioner. It was further submitted by the petitioner that as per the Army policy once a show cause notice was issued to the petitioner for taking administrative action, then, as per the Army Policy dated 11th May, 1993, the course should not have been changed and order for Court Martial should not have been ordered against the petitioner.

18. Learned counsel for the petitioner has taken us to the evidence and submitted that petitioner has not been given fair treatment by the Court of Inquiry and he was not given sufficient opportunity before the

Court of Inquiry to defend himself, when his reputation and his character was assassinated, which is in serious violation of Rule 180 of the Army Rules, 1954.

19. Before we proceed to examine the argument of the petitioner, let us see the things in the chronological order. The Court of Inquiry was convened for Inquiry into the change of stance for granting No Objection Certificate to the four lessees for building educational institution. Whereas, the consistent request of the authorities was that the State of West Bengal should be approached to cancel the lease of the four companies and handover this land for use

of the Army. But, that stance was changed and 'No Objection Certificate' was granted. Therefore, the Court of Inquiry was convened. The convening order reads as under:

"CONVENING ORDER"

1. A C of I composed as per para 2 below, shall assemble at the place, date and time to be fixed by the presiding Officer to inquire into the circumstances resulting in the following:-
 - (a) Undertaking given by Lt. Col Joseph Verghese, AQMG (Wks) Hq 33 Corps, on 06 feb 09, at the hearing held by Addl Chief Secy and commissioner General Land Reforms, Govt. of West Bengal stating that Army has "no objection" if an educational institution with residential facility is set up in the proposed land measuring about 71 acres instead of tourism/ housing or commercial project, whereas, the said stance was contrary to earlier projection made by HQ 33 Corps vide their

letter No 230100/ Land/Gen/Q3 dt 03 Dec 08, to HQ Eastern Command Stating:-

- (I) To Pursue case with State Govt. for cancellation of lease, and
- (II) Land to be acquired/transferred to Army from the State Govt.

- (b) MoU was signed and notarised on 20 Mar 09 between the Stn Cdr, Sukha and Director, M/s J. F. Low & Company Ltd, M/s Sheetala Vyapar Pvt Ltd, M/s. Mata Vaishonodevi Mercantile Pvt. Ltd. And M/s. Akshara Vanijya Pvt. Ltd. in furtherance of the undertaking given on 06 Feb 09 as mentioned at Ser (a) supra without recourse to making reference to HQ Eastern Command.
- (c) The requirement of cancellation of MoU dated 20 Mar 2009, in case the copies thereof were not supplied/provided to the second party to the MoU and/or Govt of West Bengal.
- (d) Circumstances leading to and the necessity/justification for change in the stand taken by HQ 33 Corps vide their letter No. 230100/Land/Gen/Q3 dt 03 Dec 08 and the MoU dt 20 Mar 09.

2. **Composition**

(a) Presiding Officer - IC-25901X, Lt Gen KT Parnaik, YSM, GOC, 4 Corps

(b) Members (i) - IC-30392N, Maj Gen RP Dastane, VSM, GOC, Bengal Area

(ii) - IC-34648H, Maj Gen SC Jain, MG EME, HQ Eastern Cmd.

3. The C of I shall pinpoint responsibility and apportion blame based on its finding.
4. Provision of Army Rule 180 shall be complied with, wherever necessary and certificate of compliance rendered at the relevant places by the Presiding Officer and the witnesses concerned.
5. The C of I proceedings duly complete in all respects, in quadruplicate, shall be submitted to HQ Eastern Command by 30 Oct 09.

Case File No.:305971/CTE/Q3(Land)(PC) (SS Dasaka)

Maj Gen

HQ Eastern Comd

MGOL

Fort William

for GOC-in-C

Kolkata-21

30 Sep 09

Distr

HQ4 Corps Q (Wks).
HQ 33 Corps Q (Wks).
HQ Bengal Area (Q)
Stn HQ, Sukna

Internal

EME Branch
AG's Branch
JAG Branch
Office Copy"

20. **PW-1 Lt. Col. Jiji Varghese** was examined. He was Assistant Quartermaster General (Works) Headquarters 33 Corps. He stated that in February, 2008 through newspaper report they came to know that a commercial complex was being developed on approximately 80 acres of barren Chumta Tea Estate land located adjacent to Headquarters 33 corps. Due to security implication of such a project in the midst of Sukna Military Station, a

case was taken up with the government of West Bengal for cancellation of lease to the four companies who had taken on lease this piece of land from the Government of West Bengal. Accordingly, a letter was written by the erstwhile General Officer Commanding 33 Corps on 29th February, 2008, 15th March, 2008 and 18th May, 2008, to the Chief Secretary, Government of West Bengal. Then, on 4th October, 2008 the present General Officer Commanding 33 Corps also wrote to the Chief Secretary, Government of West Bengal for the further progress in the matter and Col. NK Dabas met District Magistrate, Darjeeling to pursue the case. Then, on 29th December, 2008 a proposal was received from a trust named

Geetanjali Education Trust for establishment of educational institution in barren portion of Chumta Tea Estate land and on this a meeting took place in the office of Brigadier Administration (now Brigadier Quartermaster General) Headquarters 33 Corps on 1st January, 2009. A letter was also received on 1st February, 2009 from four lessee companies that they intend to establish an educational institution and then a meeting took place in the chamber of Dr. PK Agarwal, IAS, Additional Chief Secretary of Government of West Bengal on 6th February, 2009, wherein, a request was made to send a representative from the Army. In the meeting of 3rd February, 2009 he was deputed to give an

conditional No Objection Certificate and Memorandum of Understanding may be finalised. Accordingly, he attended the meeting and conveyed no objection to the proposal for establishment of an educational institution only. These directions were given to him by erstwhile Brigadier Quarter Master General 33 Corps, based on the notings and he produced the notings. Thereafter, Memorandum of Understanding was prepared and incorporated in the lease deed.

In an answer to a question PW-1 categorically stated that when Brigadier PC Sen, erstwhile Brigadier Quartermaster General called in the presence of Col. NK

Dabas, Colonel Quartermaster General (works) and gave directions for change of the stance.

PW-1 has deposed that no Memorandum of Understanding was sent to Additional Commissioner, Land Reforms, Kolkata and he was told by the erstwhile Brigadier Quartermaster General, Brigadier PC Sen in the morning of 04/05 April, 2009 to dispatch the Memorandum of Understanding by hand.

21. On 15th October, 2009, after the statement of Jiji Verghese (PW-1) the Army Rule 180 was invoked in respect of **Lt. Gen. PK Rath (PW-2)**, GOC 33 Corps and the statement of Lt. Col. Jiji Varghese (PW-1) was read out to Lt. Gen. PK Rath (PW-2) and was requested to

cross examine PW-1. Thereafter, Lt. Gen. PK Rath cross examined Lt. Col. Jiji Varghese (PW-1).

Additional questions were also asked to Lt. Gen. PK Rath (PW-2) and ultimately Lt. Gen. PK Rath (PW-2) signed his detailed statement, running into more than 15 pages. In an answer to one of the questions Lt. Gen. PK Rath (PW-2) stated that he changed the decision, as against an offer of building a tourist resort/commercial complex, the changed offer was to build an educational institution of the reputation of Mayo College. PW-2 also submitted that there was no ammunition dump in the vicinity and even a state highway passes right through that area.

PW-2 has deposed that on 29th December, 2008 an application was received from Gitanjali Education Trust, which put forward a proposal for establishment of a good educational institute with a Mayo College franchise. Therefore, he thought that the purpose is noble and he decided to examine the same. He also thought that ultimate decision lay with the Government of West Bengal and he decided to give a conditional no objection to an educational institute being proposed.

Lt. Gen. PK Rath (PW-2) was asked certain question by the Court. PW-2 admitted that Mr. Dilip Agarwal met him on 31st January, 2009 for No Objection Certificate. PW-2 also deposed that he doesn't remember to have

met Mr. S. Bajoria. PW-2 deposed that in long years of service he has taken decisions judiciously. Granting of a conditional no objection was not a carte blanche to the construction of an educational institution, but, with certain conditions to ensure security.

22. **PW-3 Brigadier AA Ramchandani** (erstwhile Brigadier Administration of Headquarters 33 Corps). He has deposed about the past decision that the previous General Officer Commanding 33 Corps Lt. Gen. Deepak Raj, who raised the concern about the security point and, therefore, made request for cancellation of the lease deed. PW-3 was cross examined by Lt. Gen. PK Rath (PW-2).

23. **PW-4 Lt. Gen. R Halgali** (erstwhile Chief of Staff of Headquarters 33 Corps) has deposed that the earlier communication was sent by Lt. Gen. Deepak Raj to the Chief Secretary for cancellation of the lease in favour of the private lessees and same line was pursued by Lt. Gen. PK Rath, but, PW-4 proceeded on leave from 3rd December, 2008 to 15th January, 2009 and during this interim period the decision for issue of conditional No Objection Certificate was taken and on his return he discussed the matter during the morning conference and it was felt that no good school exists in the vicinity of Sukhna due to which large number of houses are unoccupied by officers and staff. On 22nd January,

2009, a letter was received from Special Secretary to West Bengal addressed to General Officer Commanding asking for deputing a representative for the hearing on the cancellation of the lease. Then, General Officer Commanding directed Brigadier Administration to detail a representative and Lt. Col. Jiji Varghese was detailed and Memorandum of Understanding was finalized. General Officer Commanding directed that the draft Memorandum of Understanding be prepared in consultation with Deputy Judge Advocate General and the draft was amended as per directions of the General Officer Commanding.

PW-4 also deposed that the Memorandum of Understanding was prepared by the Brigadier Administration, in consultation with the Deputy Judge Advocate General. PW-4 also deposed that a lot of water had flown during his absence when he was on leave. He was cross examined by Lt. Gen. PK Rath.

24. **PW-5 Major General PC Sen** (erstwhile Brigadier Quartermaster General of Headquarters 33 Corps). He was at that time Brigadier Administration. PW-5 deposed that the issue of educational institution was referred to him by General Officer Commanding after his joining the duties. The Memorandum of Understanding was to be prepared to address security

concern of the station. The process of making of Memorandum of Understanding was completed on 20th March, 2009 and same was perused and approved on 1st April, 2009 by General Officer Commanding and he had a discussion with Chief of Staff and he also spoke to General Officer Commanding to apprise Eastern Command before forwarding it to Government of West Bengal. PW-4 further deposed that as advised by the Chief of Staff the General Officer Commanding informed Headquarters Eastern Command. PW-4 also deposed that he is not sure whether Mr. Dilip Agarwal met General Officer Commanding on 29th December, 2008. He met him only once more on 31st January, 2009 and Mr. S.

Bajoria met General Officer Commanding on 31st January, 2009. PW-4 also deposed that he was asked to make a progress in the matter expeditiously. PW-4 further deposed that Colonel Quartermaster General (Works), Asistant Quartermaster General (Works) and he also put in his bit. Deputy Judge Advocate General was also consulted. Colonel NK Dabas, Colonel Quartermaster General (Works) got few Memorandum of Understanding samples to prepare the draft Memorandum of Understanding. PW-4 also deposed that change of stance was decided at the level of General Officer Commanding. PW-4 thought that General Officer Commanding must have informed higher authorities at the appropriate level.

PW-4 recommended to the Chief of Staff to advise the General Officer Commanding to inform the Headquarters Eastern Command. PW-4 deposed that Chief of the Staff gave a direction for preparation of Memorandum of Understanding.

Lt. Gen. PK Rath cross examined the witness (PW-4) at length.

25. **PW-6 Brigadier Sunil Chadha.** His duty was to review station security and internal functioning of the station headquarters. He recommended the proposal so that they could bid for seats for wards of personnel serving at Sukhna. He doesn't have much role to play in the matter, except to push the files.

Lt. Gen. PK Rath and Maj. Gen. PC Sen, both were present and both cross-examined this witness.

26. **PW-7 Colonel NK Dabas.** He was performing duties as Colonel Quartermaster General (Works). He has deposed that all the events which has taken earlier, as deposed by other witnesses and he has deposed that he was on temporary duty and on leave from 13th December, 2008 to 15th January, 2009 and during this time he was informed by Lt. Col. Jiji Varghese on telephone about giving the No Objection Certificate and meeting with Mr. Dilip Agarwal. PW-7 told him to avoid it till he come back from leave. It is alleged that during this time the decision was taken to change the stance for giving No

Objection Certificate. By and large, he has also repeated the same story, trying to pass the responsibility from one person to another. This witness was also examined by Lt. Gen. PK Rath and Maj. Gen. PC Sen.

27. **PW-8 Colonel Javed Iqbal.** He was a Deputy Judge Advocate General. He has come into the picture regarding preparation of draft agreement. He was also cross-examined by Lt. Gen. PK Rath and Maj. Gen. PC Sen.
28. **PW-10 Naib Subedar KS Vishwakarma.** This witness was Liaison Officer to the Staff Officer (Colonel Rajeev Ghai) of the Military Secretary Lt. Gen. Avadhesh Prakash when Col. Rajeev Ghai visited HQ 33 Corps in early October 2008 (specific date not known). The

witness escorted Col. Rajeev Ghai during his stay of two days at HQ 33 Corps, which included a visit to Chumta Tea Estate.

At this juncture, i.e. on 7th November, 2009, Lt. Gen. PK Rath (PW-2), after examining the witness PW-10), made a request to give further additional statement to the Court and the request of Lt. Gen. PK Rath was acceded to and on 7th November, 2009 Lt. Gen. PK Rath brought into the picture facts about the involvement of Lt. Gen. Avadhesh Prakash, Military Secretary.

29. Lt. Gen. PK Rath (PW-2) has deposed that alternative proposal for setting up of an educational institution was received in his office. During the visit of Lt. Gen.

Avadhesh Prakash he asked him to look into the matter and mentioned the name of his friend Mr. Dilip Agarwal to him. Mr. Dilip Agarwal met him twice in his office in the presence of others. The first time on 31st January, 2009 in the presence of Brigadier Administration and later on, on the first/second of February, 2009. He has also deposed that Lt. Gen. Avadhesh Prakash visited officially in October, 2008. Lt. Gen. PK Rath also deposed that Lt. Gen. Avadhesh Prakash told him that his friend is likely to make an alternate educational institute proposal and have a look at it. He also deposed that as far as his personal interest is concerned he had no knowledge. In a question that whether his decision was

influenced by the recommendation of Lt. Gen. Avadhesh Prakash, he answered that his decision was solely on the merit of the case. Lt. Gen. PK Rath further mentioned that since the name of Military Secretary was not required to be mentioned as he has taken the decision on the merit of the matter. He further deposed that he is a very straight forward General and education & welfare of his men are very close to his heart and changed his stance for the benefits of troops. He also deposed that because of newspaper publicity of land grabbing mafias, he was completely shaken up. He also deposed that he had no inkling of this kind of design, otherwise, he would have never acceded to this.

Therefore, from this stage, i.e. from 7th November, 2009 the problem of the petitioner starts, because his name had figured for the first time in the additional statement given by Lt. Gen. PK Rath.

30. Additional statement was also given by Lt. Gen. Halgali (PW-4). He has deposed that Military Secretary (Petitioner) spoke to him on two occasions. First, around second week of October, 2008 and he telephoned to him and enquired about the Chumta Tea Estate. Then, he told him that for security reasons it has been rejected. He told him that a school is going to be established there and it will be a good and beneficial institution for persons below officer rank and children. Then he told me that

Mr. Dilip Agarwal will come and explain. I informed him that General Officer Commanding is not here he can talk to him later. Next morning he reported this conversation to General Officer Commanding. Next day Mr. Dilip Agarwal also came and repeated the same aspect of an educational institution being established. I informed the Corps Commander of this meeting with Mr. Dilip Agarwal. Lt. Gen. Avadhesh Prakash again called him in March, 2009 and asked about the Chumta Tea Estate. He told him that he was not dealing with the subject, he should speak to General Officer Commanding. He again emphasized the beneficial effect of establishment of an educational institution.

Lt. Gen. Halgali was cross-examined by Lt. Gen. PK Rath and Maj. Gen. PC Sen.

31. **PW-11 Col. BL Das** was also examined. He was posted to 6 Engineer Regiment, West Bengal. Nothing of any substance was given by him and similarly by **PW-12 Colonel Gopal Singh** also.

32. **PW-14 Naib Subedar Surjit Singh** was examined. He was a liaison officer and he conducted the visit of Military Secretary. He accompanied Lt. Gen. Avadhesh Prakash to Chumta Tea Estate also.

33. **PW-15 Lt. Col. PC Pathak** was examined. He was posted at Headquarters 33 Corps and he was Commanding Officer for Bengal (Girls) Battalion National Cadet Corps

at Siliguri. He deposed that he met Col. Rajiv Ghai, Staff Officer to Military Secretary, who accompanied the Military Secretary on his visit to Sukhna.

34. **PW-17 Lt. Gen. Deepak Raj.** He deposed about earlier events that he did not approve of granting of No Objection Certificate in the matter.
35. Again, Lt. Gen. PK Rath, made one statement, in addition to the statement given by him on 7th November, 2009 expressing his anguish.
36. Some additional questions were asked to Maj. Gen. PC Sen and in response to that he answered that in February, 2009 he received an enquiry about this issue

from a Staff Officer from the office of the Military Secretary.

37. Court also made certain questions to Col. NK Dabas and in response to that he has deposed that Military Secretary, during his visit to headquarters, in October, 2008, made enquiries about the progress of the Chumta Tea Estate. He avoided to answer the same.
38. After the end of this evidence on 12th November, 2009 Rule 180 of the Army Rules, 1954 was invoked in respect of Col. NK Dabas. He was given opportunity to present himself and to cross-examine any witness. Col. NK Dabas declined to cross examine any witness.

39. Certain additional questions were also asked to Lt. Gen. Halgali. He has deposed that Military Secretary or General Officer Commanding called Brigadier Administration to amend the document, because Mr. Dilip Agarwal seems to have spoken to Military Secretary. Finally General Officer Commanding called him and asked him to make the amendments the way Mr. Dilip Agarwal wanted.

40. **PW-18 Col. Rajiv Ghai**, Staff Officer to Military Secretary, was also examined and he admitted to have met Mr. Dilip Agarwal and deposed about the event. He admitted that Mr. Dilip Agarwal met him in Chumta Tea

Estate. PW-18 was also cross-examined by other witnesses.

41. **PW-19 Lt. Gen. Avadesh Prakash** was examined. Lt. Gen. Avadesh Prakash, petitioner, has denied that he has any role whatsoever in grant of No Objection Certificate to concerned parties. He admitted that Mr. Dilip Agarwal is his friend and he has asked Lt. Gen. PK Rath to look into the request of Mr. Dilip Agarwal, without compromising on the security. When he received a call back from Lt. Gen. PK Rath that for security reasons it is not possible to accede to the request insofar as he was concerned the matter stood closed. He admitted that he had visited this land along with Mr. Dilip Agarwal and he

also deposed that before asking for No Objection Certificate, he thought he should see the location, therefore, he visited the site. At this stage he was cross-examined by Col. NK Dabas and Maj. Gen. PC Sen.

42. All the witnesses cross-examined Lt. Gen. Avadesh Prakash, including Lt. Gen. PK Rath, at length. On 18th November, 2009, for the first time, on the basis of the detailed cross-examination of Lt. Gen. Avadesh Prakash, Rule 180 of the Army Rules, 1954 was invoked and he was directed to be present throughout the Court of Inquiry and cross-examine any witness, make any statement, produce any evidence he may wish to make or give, produce any defence witness of his character and

military reputation. Lt. Gen. Avadesh Prakash did not sign the minutes and objected to invocation of Rule 180 of the Army Rules, 1954. According to his understanding of Rule 180 of the Army Rules, 1954, when all the statements have been recorded in his absence and court did not find it appropriate to invoke Rule 180 against him. Now, based on his statement and questions by certain witnesses, his character and military reputation is impeached it is not proper to invoke Rule 180 at belated stage. Providing an opportunity to cross-examine the witness in such manner will be a formality as he does not know what these witnesses have deposed earlier. He argued that when certain witnesses deposed against him

and court wanted to invoke Rule 180 he should have been called on 7th November, 2009 when his name appeared for the first time and, therefore, he objected that he has not been given a fair chance to hear the statement of witnesses and question them at that stage. He also alleged that when all other witnesses, whose character and military reputation is questioned, they were present and they are given chance to cross-examine and he has been now asked to cross-examine them at the conclusion of Court of Inquiry. Therefore, he said that invocation of Rule 180 is not warranted. This objection was recorded and signed on 18th November, 2009.

Then, again on 19th November, 2009, despite objection recorded by Lt. Gen. Avadhesh Prakash, he was directed to be present and an opportunity was given to cross-examine each and every witness and read the proceedings of the Court. This was not signed by Lt. Gen. Avadhesh Prakash and he reiterated his objection.

Then, in his additional statement, Lt. Gen. Avadhesh Prakash recorded that he was asked to sign a certificate, which says that he has been given an opportunity to cross examine witnesses here or to peruse the statements, which were already recorded in his absence. He also submitted that, after statement of all the witnesses have been recorded and the Court of Inquiry has all of a

sudden become conscious of applying Rule 180 at a belated stage and asked him to sign the proceedings. He further submitted that when a witness makes a statement affecting character and military reputation of other witness, the concerned person has to be present throughout the Court of Inquiry and all the statements are to be recorded in his presence and he pointed out that this is the legal position. Therefore, he objected that this is not the proper implementation of Rule 180. This statement was signed by him on 19th November, 2009.

43. Certain more questions were asked to Lt. Gen. PK Rath in the Court of Inquiry.

44. On 20th November, 2009, Colonel Hunny Bakshi was examined. Then, again on 20th November, 2009, Lt. Gen. Avadesh Prakash was given an opportunity to cross-examine this witness, but, he declined to do so.
45. Some more witnesses were examined on 26th November, 2009 and all other witnesses were present except Lt. Gen. Avadesh Prakash.
46. **PW-21 Mr. S. Bajoria of JF Low & Company** was also examined but the petitioner did not cross-examine him and was not present.
47. Then, again on 27th November, 2009 petitioner was present & protested and said his earlier objection stands.

48. At close of all the witnesses a report was submitted by the Court of Inquiry of its findings and on that basis a show cause notice dated 11th January, 2010 was issued to the petitioner giving an opportunity to show cause as to why suitable administrative action should not be taken against him. Petitioner filed his reply and protested that he has no role to play in the matter. After receiving the reply to show cause notice, the respondent, Chief of Army Staff, invoked Section 123 of the Army Act, 1950 and directed to report to Headquarter Eastern Command for disciplinary action. In this background, this petition was filed challenging the order of invocation of Rule 180,

notice of convening inquiry and order under Section 123 of the Army Act, 1950.

49. It may be relevant to mention here that Rule 180 of Army Rules, 1954 provides an opportunity to the incumbent whenever the military reputation of the incumbent is questioned. The Rule 180 reads as under:

"180. Procedure when character of a person subject to the Act is involved - Save in the case of a prisoner of war who is still absent whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person 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 any witness whose evidence in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military

reputation. The presiding officer of the court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights, under this rule."

The Rule 180 contemplates that whenever the character or military reputation of the person is involved, he must be given full opportunity of being present throughout the inquiry and making of any statement and giving any evidence he may wish to make or give and of cross-examining any witness whose evidence in his opinion, affects his character or military reputation and producing any witnesses in defence of his character or military reputation.

50. Therefore, the key word in this rule is that the person should be given full opportunity of being present throughout the inquiry and make any statement and to cross-examine the witnesses.

51. Though, this Court of Inquiry is a preliminary inquiry and final inquiry which has yet to take place, but, nonetheless, the law has emphasized that the incumbent should be given full opportunity and should be present throughout. However, Court of Inquiry is not necessary for Court Martial. In this connection reference may be made to a decision of the Apex court held in the case of *'Lt. Col. Prithi Pal Singh Bedi etc. etc. v. Union of*

India & Ors. [1982 (3) SCC 140] their Lordships have observed as under:

"When an offence is committed and a trial by a general court martial is to be held, there is no provision which requires that a court of enquiry should be set up before the trial is directed. To ensure that such a person whose character or military reputation is likely to be affected by the proceedings of the court of enquiry should be afforded full opportunity so that nothing is done at his back and without opportunity of participation, Rule 180 merely makes an enabling provision to ensure such participation. But it cannot be used to say that whenever in any other enquiry or an enquiry before a commanding officer under Rule 22 or a convening officer under Rule 37 or the trial by a court martial, character or military reputation of the officer concerned is likely to be affected a prior enquiry by the court of enquiry is a sine qua non."

52. Therefore, it is true that the Court of Inquiry is a preliminary inquiry and it is always not necessary for a court martial under Rules 22 or 37. But, if Court of Inquiry is initiated, then, it should be ensured that principles of natural justice are followed.

53. The contour of principles of natural justice has been summed-up in the *Maneka Gandhi's case*. In that case their Lordships very clearly summed-up the contours of principles of natural justice which reads as under:

"Since the life of the law is not logic but experience and every legal proposition must in the ultimate analysis be tested on the touchstone of pragmatic realism, *audi alteram partem* rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralyzing the administrative process or the need for

promptitude or the urgency of the situation so demands. But the rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which may arise. It would not, therefore, be right to conclude that the rule is excluded merely because the power to impound a passport might be frustrated if prior notice and hearing were given to the person concerned. The passport authority may impound the passport without giving any prior opportunity to the person concerned but as soon as the order impounding the passport is made, an opportunity of hearing, remedial in aim, should be given to him so that he may present his case and controvert that of the authority and point out why his passport should not be impounded and the order impounding should be recalled. A fair opportunity of being heard following immediately upon the order impounding the passport would satisfy the mandate of natural justice and a provision requiring giving of such an opportunity should be read by implication into the Act. And if so read, the procedure prescribed by the Act would be right, fair and just and would not suffer from the vice of arbitrariness or unreasonableness.

Therefore, the procedure established by the Act for impounding the passport is in conformity with the requirements of Article 21 and does not fall foul of that Article.

54. The contours of principles of natural justice cannot be put in a straight jacket it varies from case to case. Hon'ble Supreme Court in various decisions has laid down that concept of fair hearing is an *"elastic one and is not susceptible of easy and precise definition"* [AIR 1960 SC 468].

In other decisions (2000 [5] SCC 65, 1996 [11] SCC 404, 1998 [6] SCC 538) Hon'ble Supreme Court also observed that components of fair hearing are not fixed but are

flexible & variable and their scope and applicability differ from case to case and situation to situation.

55. Therefore, the principles of natural justice depends upon variable factors and it also varies from situation to situation. But, the concept of the fair hearing is ingrained in our system, be it administration or in our judicial system. The attempt should be to promote justice and fair play in all adjudicatory functions.

56. Not only in India, but, in England also where in the earlier case of *Ridge v. Baldwin* [1964 AC 40] their Lordships observed that '*essential requirements of natural justice at least include that before someone is condemned he is to have an opportunity of defending himself*'.

57. Similarly, in the case of *Board of Education v. Rice* [1911 AC 179, 182] their Lordships observed that '*they(the Board of Education) must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything, but I do not think they are bound to treat such a question as though it were a trial They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their views.*'

58. In the case of '*Major G.S. Sodhi v Union of India*' [1991 (2) SCC 382] their Lordships held that:

"... ..the Court of Inquiry and participation in the Court of Inquiry is at a stage prior to the trial by court-martial. It is the order of the court-martial which results in deprivation of liberty and not any order directing that a charge be heard or that a summary of evidence be recorded or that a court-martial be convened. Principles of natural justice are not attracted to such a preliminary inquiry. Army Rule 180, however, which is set out earlier gives adequate protection to the person affected even at the stage of the Court of Inquiry." .

59. Delhi High Court had also an occasion to examine the similar provision in the case of '*Lt. Gen. Surendra Kumar Sahni v. Chief of Army Staff and Ors.*' [2008 (3) SLR 39] and also took the view that holding of Court of Inquiry is not necessary. However, their

Lordships observed that requirement under Rule 180 would be mandatory.

60. Similar matter came before this Tribunal. This Tribunal also had an occasion to examine this rule in the case of *'Lt.Gen. Surender Kumar Sahni v. Union of India & Ors [T.A. No. 34 of 2009]* and took the view that the holding of Rule 180 clearly stipulates that throughout the Court of Inquiry full opportunity should be given to incumbent including the right to cross-examine or examine any witness.

61. So far as Rule 180 is concerned there is no two opinion. It is a mandatory provision and it has to be complied with once the authority has resorted to start the Court of

Inquiry. Therefore, in this legal background we have to examine, whether in the present case, the norms of Court of Inquiry were followed or not. It is a fact that initially the Court of Inquiry was not ordered against the petitioner. It is during the course of Court of Inquiry it came to the light that the change of earlier stance of the authorities for permitting the construction was on account of certain extraneous forces. Therefore, the Court of Inquiry was convened to find out that what were the factors for which the earlier stance of acquiring the land in question were changed and No Objection Certificate was granted for construction of an educational institution.

62. In this connection the statements of Lt. Col. Jiji Varghese (PW-1), Lt. Gen. PK Rath (PW-2) and some more witnesses were examined. It appears that certain realization dawn upon Lt. Gen. PK Rath that establishment of education institute will be in the interest of region and Army. But, after sometime his conscience pricked him and admitted in his additional statement that he was approached by Lt. Gen. Avadesh Prakash for granting No Objection Certificate for construction as Mr. Dilip Agarwal was said to be his close friend (7th November, 2009). But, at that time also no notice under rule 180 was given. It is only on 17th November, 2009 it struck to the presiding officer of Court of Inquiry that there is

something which needs to be enquired from Lt. Gen. Avadesh Prakash and he was summoned as a witness (PW-19).

63. On 18th November, 2009 Rule 180 was invoked against Lt. Gen. Avadesh Prakash and he was permitted to cross-examine all witnesses who were present. Then, he was asked to sign, to which he protested that this is not the stage to invoke Rule 180 as most of the witnesses have been examined in his absence and, therefore, he submitted that invocation of Rule 180, at this juncture, is not at all warranted as his reputation is at stake and all the statements have been recorded in his absence.

64. Thereafter, some more witnesses were examined to which he took the similar stand, that this is not fair conduct of Court of Inquiry. He must be given an opportunity, which is warranted under the law.
65. Though, petitioner was given an opportunity on 19th, 20th November, 2009 and then thereafter also, but, he protested that this is not a fair opportunity.
66. What is a fair opportunity and what is not fair opportunity that depends upon the facts of the each case. In the present case the manner in which this Court of Inquiry had been held looks little strange that some witnesses appeared before Court of Inquiry and gave their statements. Then, again witnesses came and depose

something more which was not deposed by them in main statement. This kind of rumbling carried on, witnesses were coming and going. Lt. Gen. PK Rath changed his statement thrice, likewise, Lt. Gen. R Halgali twice, Maj. Gen. PC Sen twice, and Col. NK Dabas twice. They all cross-examined Lt. Gen. Avadesh Prakash when he came in witness box. This manner of conducting Court of Inquiry appears to us to be very strange. We can understand that statements of all the witnesses recorded in order, but, we fail to understand in manner the Court of Inquiry has been conducted. Be that as it may, this is a preliminary inquiry and we can ignore the manner of conducting of Court of Inquiry, because the

whole attempt is to find out the truth of the matter, but, when it concerns the military reputation of another officer, then, in that case that officer should get proper opportunity.

67. Similarly in the Code of Criminal Procedure, 1973, Section 309 provides that during the trial it appears to the Court from the evidence that any accused has committed an offence and he has not been sent to trial, the court may proceed to take cognizance and try the accused. But, accused in that case is given fair opportunity to call witnesses & cross-examine or lead evidence. In the present case, the cognizance against Lt. Gen. Avadesh Prakash was taken at the end of the trial,

therefore, he protested that he should have been given a proper opportunity. He was immediately called upon to cross-examine the witnesses present there and go through the earlier proceedings. This was not a fair trial. The Rule 180 clearly contemplates that the incumbent should get fair opportunity and fair opportunity means that in normal course all the witnesses should have been examined in his presence so that the person, whose reputation is at stake, should get an opportunity to cross-examine the witnesses. This is the normal rule. But, in the present case, the cognizance against Lt. Gen. Avadesh Prakash was taken on 18th November, 2009. By this time almost 18 witnesses were already examined and

the manner of examination of witnesses was in haphazard way. He did not know what has been deposed against him. He was immediately asked to go through the proceedings and to cross-examine the witnesses. This was not a substantial compliance of the principles of natural justice and it is a serious violation of Rule 180 of the Army Rules, 1954. The proper course was that the inquiry should have been stayed back and copies of the depositions of witnesses should have been given to him, he should have been permitted to cross-examine those witnesses and given opportunity to lead evidence if he so wishes.

68. The normal rule is that the witness should depose in presence of the person whose reputation is under stake.

But, in the present case, since it came to the light at the end of the Court of Inquiry that there is something to be inquired from Lt. Gen. Avadesh Prakash, he was summoned as a witness and submitted to cross-examine by all the witnesses, who were facing inquiry, they have already deposed prior to him before the Court of Inquiry. But, at the end of his examination on 18th November, 2009, he was asked to cross-examine the witnesses. This was nothing but mockery of principles of natural justice.

69. Normally, during the trial in a criminal case also the witness comes to the Court to depose in the trial, the accused is given statement recorded by the police under Section 161 of the Code of Criminal Procedure, 1973, well

in advance, so that they know that what is prosecution case.

70. Since it is a Court of Inquiry and it is Preliminary Inquiry, a fact finding inquiry, but, still norms of principles of natural justice requires to be followed in the proceedings. Since the Court of Inquiry has commenced, as many as 18 witnesses examined and the Court of Inquiry found that there is something to be explained by Lt. Gen. Avadesh Prakash, then he appeared in the witness box and cross-examined by Lt. Gen. PK Rath, Maj. Gen PC Sen and other witnesses who have already deposed. But, he did not get an opportunity to cross-

examine these witnesses as he did not know what they have deposed against him.

71. Therefore, it was necessary that before the Court of Inquiry took cognizance against Lt. Gen. Avadesh Prakash, they could have deferred the inquiry and should have supplied all the depositions made by all other witnesses and then he should have been given an opportunity to cross-examine the witnesses.

72. But, when 18 witnesses have been deposed, he was the 19th witness. At the end of his statement cognizance is taken against him and he was asked to cross-examine other witnesses. This, in our opinion, cannot be said to be fair and this is breach of principles of natural justice.

73. In order to do justice with parties and looking to security angle, we asked learned counsel for the petitioner to give names of witnesses whom the petitioner wants to cross-examine. She gave the names of seven witnesses namely Lt. Col. Jiji Varghese (PW-1), Lt. Gen. PK Rath (PW-2), Lt. Gen. R Halgali (PW-4), Maj. Gen PC Sen (PW-5), Col. NK Dabas (PW-7), Nb. Sub. Surjit Singh (PW-14) and Mr. S. Bajoria (PW-21).

74. Since the Court of Inquiry has already proceeded thus far and many other persons are involved, in the facts and circumstances of this case, instead of directing all the witnesses to depose over again in the Court of Inquiry, in the presence of the petitioner, we deem it just and

proper so that principles of natural justice is complied with following witnesses depositions viz. Lt. Col. Jiji Varghese (PW-1), Lt. Gen. PK Rath (PW-2), Lt. Gen. R Halgali (PW-4), Maj. Gen PC Sen (PW-5), Col. NK Dabas (PW-7), Nb. Sub. Surjit Singh (PW-14) may be given to the petitioner and he may be permitted to cross-examine them in the witness box. So far as Mr. S. Bajoria (PW-21) is concerned, petitioner was given an opportunity to cross-examine him as he was examined much after 18th November, 2009, but, he declined to do so. Therefore, we are not inclined to permit the petitioner to cross-examine Mr. S. Bajoria (PW-21) now.

75. Therefore, in order to meet the principles of natural justice we permit Lt. Gen. Avadesh Prakash to cross-examine the aforesaid witnesses, but, the depositions of all the aforesaid witnesses should be given to the petitioner, 15 days in advance, so that he can go through them and cross-examine them in Court of Inquiry.

76. The next it was submitted by learned counsel for the petitioner that there is a serious violation of regulation 518 of the Regulation for the Army, 1987 (supra), which lays down that *when the character or military reputation of an officer is likely to be a material issue, the presiding officer of the court of inquiry, wherever possible, shall be senior in rank and other*

members at least equivalent in rank to that officer.

The expression that '*wherever possible*' makes this rule to be directive and not a mandatory. But, normally, a presiding officer will be senior in the rank and other members, atleast equivalent to that of rank of officer.

77. Therefore, so far as presiding officer, in the present case is concerned, was equivalent in rank i.e. Lt. General and other members were Major General. Therefore, the Regulation 518 has been substantially complied with. It is irrelevant that whether Lt. Gen. Parnaik was junior to the petitioner that doesn't make any difference. But, he is not lower in rank to the petitioner.

In this connection our attention was invited to a decision of Hon'ble Supreme Court in the case of *Union of India & Anr. V. Charanjit S. Gill* [2000 (5) SCC 742]. This was a case in which Court Martial Proceedings were challenged and in that context their Lordships observed that the Judge Advocate must be higher rank holder than of accused except in the situation where no such Senior Judge Advocate is available. But, in the present case, we are still at the stage of Court of Inquiry and this is a fact finding inquiry. Therefore, this case is distinguishable on this ground. However, as and when Court Martial is initiated against the petitioner, it is open

for them to raise this objection before the concerned authority.

78. Next it was submitted by learned counsel for the petitioner that as per the Army Policy dated 11th May, 1993, which says that once the competent authority applied his mind to the full facts of the case and decides to initiate administrative action and such action has commenced, trying the officer summarily or by court martial for the same offence subsequently is inequitable. Letter/Army Policy No. 32908/AG/DV-1 dated 11th May, 1993 reads as under:

"FINALISATION OF ADMINISTRATIVE/ DISCIPLINARY ACTION

1. Reference this Headquarters Letter No. 35418/AG/DV-1 dated 18th Aug 83 and No. 32908/AG/DV-1 dated 05 Jan 89.

2. In a recent case the issue of initiating disciplinary /administrative proceedings against an officer has brought out certain legal lacunae.
3. To make the essence of the legal requirement more transparent, it is clarified that once the competent authority after having applied his mind to the full facts of the case decides to initiate administrative action and such action has commenced, trying the officer summarily or by court martial for the same offence subsequently is inequitable. In this case the summary of evidence was recorded and the competent authority having known all the facts of the case decided to issue a show cause notice to the officer. The officer replied to the show cause notice thereby disclosing his defence to the charges contained in the show cause notice. At this stage to revert to disciplinary action is not only unjustified but also legally unsustainable.
4. However, the legal requirement outlined above does not in any way impose restrictions on the discretionary power of the competent authority to chose an administrative mode of action, instead of a disciplinary mode initially contemplated against the accused, in for some reason or the other competent authority feels that the process of disciplinary action as contemplated initially by way of trial by court martial or summary trial is found to be inexpedient or impracticable.
5. It is once again emphasized that initiating disciplinary action after issue of a show cause notice for administrative action is not only legally unsustainable but also undermines the principles of natural justice and fair play. You are therefore requested to bring the contents of this letter to the notice of all concerned for compliance.

Sd/-
(SM Chand]
Brig
Dy DG(B) D&V
For Adjutant General"

This is only a general guidance and this is not of binding nature. It is always open for a competent authority, if it is satisfied on the complete facts brought to the notice that the administrative action will not meet the ends of justice, then, in that case he can resort to Court Martial or any other mode subsequently. But, in the present case, no action has been initiated on the basis of Court of Inquiry, only notice was given to the petitioner that show cause why administrative action be not taken against him. Administrative action was not taken. It is only a show cause notice stage and at the time of show cause notice the competent authority realize that it is a case in which Court Martial should be initiated. Then, in that case,

there is no prohibition for resorting to Court Martial in the present case. No administrative action was taken against the incumbent.

79. Ms. Indira Jaising, Additional Solicitor General of India, very strenuously urged before us that the petitioner has been given a substantial opportunity to cross-examine the witnesses and she has taken us to the proceedings to show that a substantial compliance of the principles of natural justice was followed. But, we regret we could not felt persuaded for reasons stated above.

80. As a result of our above discussion, we allow this petition in part and direct that copies of depositions [Lt. Col. Jiji Varghese (PW-1), Lt. Gen. PK Rath (PW-2), Lt. Gen. R

Halgali (P-4), Maj. Gen PC Sen (PW-5), Col. NK Dabas (PW-7), Nb. Sub. Surjit Singh (PW-14)] shall be given to the petitioner 15 days in advance and they be called back before Court of Inquiry to be cross-examined by the petitioner. Court of Inquiry should be completed within two months from today and, in case, petitioner does not wish to cross-examine the witnesses, then, it will be open for the Court of Inquiry to record reason. It will be open to the petitioner to lead any evidence by calling witness or producing any documentary evidence. After completion of the Court of Inquiry, it will be open for the Court of Inquiry to give its finding *qua* petitioner. The authorities will free be to decide the fate of the case,

whether to send it for Court Martial or not to send it for Court Martial. The whole exercise should be done within two months from today. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Gen. S.S. Dhillon]
Member (A)

New Delhi
22nd February, 2010