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**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI**

**T.A NO. 220 OF 2009
(WRIT PETITION (C) NO. 3653 OF 1991)**

1. COL. (NOW LT. COLONEL) M. NASIRUDDIN,
HEADQUARTERS 16 CORPS
ATTACHED TO JAT REGIMENTAL CENTRE
BAREILLY CANTT.
2. COL. (NOW LT. COLONEL) M.P.S CHOWHAN
HEAD QUARTERS, U.P AREA
ATTACHED TO JAT REGIMENTAL CENTRE
BAREILLY, CANTT.

THROUGH: MR. ANIL SRIVASTAVA, ADVOCATE.

.. PETITIONER

VS.

1. UNION OF INDIA,
THROUGH SECRETARY TO GOVT. OF INDIA,
MINISTRY OF DEFENCE, NEW DELHI.
2. CHIEF OF ARMY STAFF
ARMY HEADQUARTERS, NEW DELHI.
3. GENERAL OFFICER COMMANDING-IN-CHIEF
CENTRAL COMMAND, LUCKNOW.

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4. GENERAL OFFICER COMMANDING HEADQUARTERS,
UTTAR PRADESH AREA, BAREILLY
5. COMMANDANT,
JAT REGIMENTAL CENTRE, BAREILLY CANTT.

THROUGH: MS. JYOTI SINGH, ADVOCATE
WITH LT. COL. NAVEEN SHARMA

.. RESPONDENTS

CORAM

HON'BLE MR. JUSTICE S.S KULSHRESHTHA, MEMBER
HON'BLE LT. GEN. S.S DHILLON, MEMBER

JUDGMENT

25.02.2010

1. This petition has been filed for quashing the order of promulgation dated 30.10.1991 passed by the General Officer, Commanding-in-Chief (third respondent), whereby the petitioners were removed from service. Prayer has

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also been made for quashing the General Court Martial (GCM) proceedings convened at JAT Regiment Centre, Bareilly, including the revisional proceedings taken by GCM from 23rd August to 25th August 1991. It is stated that the GCM proceedings against the petitioners are void ab initio and that Army Rule 180 has not been complied with. The rights of the petitioners were adversely affected on account of the non-adherence of DSR Para 518 and the Army Rules 22 to 25, 33 and 34.

2. The facts, as unfolded by the petitioners, are: To carry out the purchase of 1174 Mules at various locations, a purchase board was constituted comprising the first petitioner (presiding officer), one member as ASC representative of HQ 11 Corps, one representative of Receiving Unit and the DRO or his representative, in terms of the letter dated 06/07.8.1987. The terms and conditions were specified in the agreement entered into between the Government of India and the supplier viz. M/s. K.J international. The supplier was required to produce the mules for selection by the purchase board at various locations as indicated in Schedule III of the agreement. The specification

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of the animals to be selected was shown in Schedule I of the agreement. As per para 6 of the agreement, the selected animals were to be branded and handed over by the purchase board to the supplier, who was, in turn, required to deliver the same to the Receiving Unit at his risk and cost under his own escort and transport. At the time of handing over the animals to the supplier, the purchase board was to hand over three copies of the descriptive rolls giving full details of the animals including colour, breed, sex, age, height, descriptive marks and also girth measurements. The supplier or his representative would be present throughout the selection to check the particulars of each of the animals and thereafter sign all the seven copies of the descriptive rolls prepared in respect of all selected and branded animals in token of receipt of the selected animals. Being DRO, the second petitioner was to prepare a copy of the issue and receipt voucher for the total number of animals handed over to the supplier for the purpose of paper transaction as well as to take the animals in charge. The second petitioner was bound to make payment for the animals physically delivered by the supplier to the Receiving Unit on the basis of the receipted copy of the descriptive rolls. The issue receipt voucher was the

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supporting document for payment to be made to the supplier for subsequent audit purposes. The Receiving Unit would check and compare all the animals received from the supplier with the descriptive rolls and take delivery of the same when it was satisfied that the animals were selected and branded by the purchase board. After satisfying itself about the correctness as per the descriptive rolls, a receipted copy would be given by the Receiving Unit to the supplier in token of the receipt of the animals as detailed therein.

3. Pursuant to the order, the purchase board assembled at various places on the dates made out from the board proceedings and selected and branded animals shown in the descriptive rolls and were handed over by the board to the supplier who, in turn, delivered the same to RTS and Depot Hempur, which was designated as Receiving Unit for delivery of the animals. Clear receipts of animals were given by the Receiving Unit for all the animals described except in the case of three animals with hoof numbers 552, 691 and 802. The receipt and issue vouchers of the respective deliveries were cleared by the Receiving Unit without reflecting any discrepancies except in the case of

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the above three mules. Payments were made by the second petitioner (DRO) for all the mules delivered in terms of para 6 of the agreement. After clearance, in the subsequent unit boards convened, discrepancies in the measurements and assessment of age of the animals were found. In the said subsequent unit boards, one member, who was a member in the purchase board as unit representative, Lt. Col. G.S Kahlon (third accused) was the unit representative on seven purchase boards and in the remaining three, Lt. Col. K.K Nabh (fifth accused) was the unit representative. The condition of all animals was shown as good and even in the remarks column, no indication of discrepancy was given in the measurement, height and girth or age of the animal. As per the procedure of selection of animals by the purchase board, it was a team work with each member being given different tasks by rotation. The only exception was in the case of Supply and Transport Branch representative who was not assigned any veterinary duties like mulleining or interpretation of mullein test, etc. The remaining officers being qualified veterinary officers were given all duties including measurements, assessment of age and writing of the descriptive rolls. The final recording of the descriptive rolls was done on the last

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day after re-checking from the rough notes prepared on the first date. The rough notes were kept for reference and checked by the officer while writing the descriptive rolls to find out whether there was any variation in measurement taken on the final day. No member had expressed or recorded any dissenting note about the specifications of the animals recorded in the descriptive rolls. The first petitioner, on the basis of the instructions of Maj. Gen. RKR Balasubramanian (Retd), Additional Director General visited the Receiving Unit on 25.8.1987 and met Lt. Col. K.K Nabh (fifth accused), who for the first time raised doubts about the height and measurement in respect of the mules. Moreover, difference with regard to the age of certain animal was also assessed to be of more than five years. Those mules were shown to the petitioners on the next morning by Lt. Col. K.K Nabh. They were measured again in the presence of the first petitioner. There was defect in the measuring stick used and for that reason, some doubts appear to have been expressed. The age of the other mules was calculated by dentation and it was found to be agreeing with the age shown in the descriptive roll. This flimsy or frivolous objection was made by the Receiving Unit because of the difference of opinion

between the Receiving Unit and the supplier. It appears that the matter was settled between the Receiving Unit and the supplier before the visit of the first petitioner to Hempur. This would imply that there was no variation between the descriptive roll and the animals supplied.

4. On 8.1.1988, the first petitioner received a D.O letter along with the letter dated 21.12.1987 of Col. Y.S Ahlawat complaining about the discrepancies in age and height of animals received. In reply thereto, the first petitioner had pointed out that in case there were any such discrepancies, the animals should not have been accepted. Col. Y.S Ahlawat had raised the complaint to protect himself; otherwise he could have constituted the "Unit Board" at the time of taking delivery of the animals from the supplier and not endorsed the correctness of the descriptive rolls. So also, in the month of June 1988, two unit representatives viz. accused 3 and 5 had signed the descriptive rolls to authenticate the measurements taken by them in the presence of the first and second petitioners and the descriptive rolls were counter-signed by their Commandant Col. Y.S Ahlawat. Surprisingly, in the

month of November 1988, Maj. Gen. K.L Uthup, the then ADGRVS, New Delhi ordered a departmental board of enquiry to identify the mules not conforming to the specification. The said board consisted of (i) Brig. R.N Kackar, Central Command, Lucknow (Presiding Officer); (ii) Col. Y.S Ahlawat, then Commandant RTS Depot, Hempur (Member); and (iii) Lt. Col. J.N Sopori, then Staff Officer to ADGRVS RV Directorate, Army HQ (Member). The said board of officers screened 337 mules and found that 171 animals were below standard. On the other hand, they were identified with the remount numbers (given on neck branded by the Receiving Unit), as is evident from the statement of Brig. R.N Kackar. It is also not clear as to how the verification of the height, age and girth of the animals selected by the Purchase Board was made.

5. The petitioners were held guilty on Charge Nos. 1, 3, 7, 9, 11, 13, 15, 17 and 19 and the other charges were not established against them. It is contended on behalf of the petitioners that the material witnesses were withheld by the prosecution. Even the convening authority, fourth respondent, has not satisfied itself whether the evidence adduced during investigation could

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make out the charges against the petitioners. The first petitioner was denied the service of a defending officer of his choice. Despite the request made to respondents 4 and 5, he was denied the services of an officer out of the three named suitable defending officers. There was no prima facie case against the petitioners for the offence under Army Act Section 52(f) and there was not even the remote intention on the part of the petitioners to defraud the Union of India. They were even denied the opportunity to inspect the authenticated original descriptive rolls to know the discrepancies pointed out. Without any cogent evidence, the petitioners were held guilty. The pre-confirmation and the post-confirmation petitions under Section 164 were rejected. Subsequent appeal filed by the wife of the first petitioner before the second respondent was also rejected.

6. It is further contended that the anomalies in question, which form subject matter of the charges against the petitioners, were not seen by the presiding officer or members of the Court of Inquiry. This fact itself is clear from the statement of Col. S. Prem Kumar. This has resulted in unfair trial of the

petitioners and the identity of those animals were to be fixed before establishing the guilt against the petitioners. The trial of the petitioner with co-accused (Col. Mishra and Lt. Col. K.K Nabh) is also said to be illegal because they are the material witnesses to state all about the method adopted by the Purchase Board or whether they made any departure from the Rules or made any inspections in that regard. Even in the award of punishment, the petitioners were discriminated and were dealt with more severely when their role in the selection was in no way distinguishable with the co-accused who were awarded a lesser punishment.

7. The averments in the petition were resisted by the respondents contending, inter alia, that the selection and purchase of the 1174 mules were not in accordance with the terms and conditions of the agreement dated 23.7.1987. In the schedule to the agreement, the following specifications were laid down with regard to the selection of the mules:

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Age	Height	Girth
(a) 3 years and above but less than 4 years	1300 M minimum 1470 M maximum	1.430 M (minimum)
(b) 4 years and above but upto 5 years old	1,310 M minimum 1,450 M minimum	1,470 M minimum

The board was constituted by the Army Headquarters as per the letter dated 7.8.1987, wherein the first petitioner was the Presiding Officer and the second petitioner was one of the Members. Further, the board comprised of one representative of the Receiving Unit and one representative of the District Remount Officer, Horse and Mule Breeding Area, Jalandhar, who was to act as Accounting Officer. In addition to this, one officer of the Supply and Transport Branch or of the Receiving Unit was required to represent at the time of selection of the mules. The selection board was also under obligation to act in accordance with the terms and conditions of the agreement keeping in view the instructions issued vide letter dated 6/7.8.1987 which contained the mode of selection of the animals, branding of accepted animals, segregation and

disposal of unaccepted animals, despatch of accepted animals to the Receiving Unit and payment of such animals by the District Remount Officer, Jalandhar.

8. From 17.10.1987 to 24.2.1988, the Selection Board convened its meetings at different places. As could be seen from the instructions contained in Annexure R3, the petitioners were not expected to accept animals which did not conform to the specifications and to make payment for such sub-standard mules. Of the total mules, 611 mules costing about Rs.70,26,500/- were supplied to Remount Depot at Hempur (UP). Out of them, 171 were reported to be deficient and not conforming to the specifications made by the Union of India. On complaint, a Court of Inquiry was held to inquire into the matter which disclosed omissions on the part of the petitioners. Charges were leveled against the petitioners and four other officers under Army Rule 25 read with Army Rule 22. Prima facie, offences having been made out under Army Act Sections 52(f) and 63, a joint summary of evidence was recorded. All the accused, including the petitioners, were jointly tried by a General Court Martial at Bareilly from 13.10.1990 to 25.8.1991 in respect of Charges 1 to 20.

Adequate opportunity of being heard was afforded to the petitioners. The first petitioner was held guilty under Charge Nos. 1, 3, 5, 7, 13, 15, 17 and 19 and the second petitioner was found guilty under Charge Nos. 1, 3, 5, 7, 9, 11, 13, 15, 17 and 19. Both the petitioners were cashiered subject to confirmation. Both the pre-confirmation and post-confirmation petitions were duly considered and rejected.

9. All the accused, including the petitioners, were jointly tried. As many as 36 charges were levelled against them. Out of the 36 charges, as stated earlier, Charge Nos. 1 to 20 were to the effect that "with intent to defraud, they together between 23 Nov 87 to 31 Mar 88, when concerned with purchase of Mules GS, to wit selection, branding, despatch, receipt and payment towards the cost of the said mules GS, as per standards laid down vide agreement deed dated 23 Jul 87 between the Government of India and M/s KJ International, 62 Bhandari Bridge, Amritsar, read with Army HQ Letter No. 81449/Q/RV 2(a) dated 6/7 Aug 87, procured sub-standard mule as per Appendix D". Therefore, they were charged for the offence under Army Act

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Sections 52(f) and 63 read with Section 34 of the Indian Penal Code. So far as the other charges are concerned, they referred to the Receiving Unit and they need not be referred.

10. The charges against the petitioners are that they being members of the Selection Board, selected sub-standard mules against the specifications contained in Annexure D agreement and the Army HQ letter dated 6/7.8.1987. In order to appreciate the points in issue, as to how far the petitioners had departed from the terms and conditions in the selection of the mules, it would be appropriate to quote the relevant paragraphs from the agreement, which as under:

"5. The animals selected by the Board of Officers shall be branded by them. Seven copies of descriptive roll shall be prepared for the animals selected. These shall be signed both by the Board of Officers and the supplier or his authorised representative. One copy of the roll shall be retained by the supplier and remaining copies distributed as under:

(a) The District Remount Officer, Horse and Mule Breeding Area, Jalandhar Cantt. .. one copy

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- (b) Three copies will be forwarded to the Commandant, Remount Training School and Depot Saharanpur or Hampur whichever unit the animals are directed to be delivered by the Addl. DG RVS, along with the consignment of the animals. One copy duly receipted will be returned by the Commandant of the receiving unit to the DRO, Horse and Mule Breeding Area, Jalandhar Cantt and one copy given to the supplier/his rep and one copy retained by the unit.
- (c) One copy to Army HQ, RV Dte, West Block 3, RK Puram, New Delhi – 110 066
- (d) One copy to concerned CDA, if required.

6. Board of Officers will, after branding the animals, handover the same animals to the supplier for transporting and handing over these selected animals to the Commandant of whichever unit the selected animals are required to be delivered at the risk and cost of supplier. At the receiving unit, a representative of the District Remount Officer/Rep of Unit shall compare these animals with the description as recorded in the descriptive roll and take delivery of the same from the supplier or his representative only when he is satisfied that these animals are the same which were selected and branded by the Board of Officers and are physically sound at the time of delivery. After receipt of animals, one copy duly receipted will be handed over to the supplier/his representative."

Note: Schedule I, which is referred in Para 1 of the agreement, refers about the specifications which were to be followed for the selection by the supplier KJ International."

11. Keeping in view the terms and conditions of the agreement, the Additional Director General, Remount Veterinary, Army HQ, New Delhi vide

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Letter No. 81449/Q/RV-2(a) dated 06/07 Aug 87, referring about the sanction accorded by Government of India as per Letter No. 80261/Q/RV-2(a)/3932/D (QS) dated 23 Jul 87, directed the first petitioner, who is the Presiding Officer of the Board, to purchase 1174 animals within the stipulated time. It was also specified that the mules should conform to the specifications contained in Schedule I of the agreement. From the documents relied upon by the prosecution and also from the statement of PW 5, Lt. Col. J.S Shetty, it is clear that the position regarding purchase of mules is reflected as under:

Ser No.	CRV No.	No of Mules	Exhibit
(a)	CRV/H&M/30 dated 19 Oct 87	45	GGGGG
(b)	CRV/H&M/32 dated 28 Oct 87	35	HHHHH
(c)	CRV/H&M/36 dated 14 Nov 87	31	JJJJJ
(d)	CRV/H&M/39 dated 25 Nov 87	85	KKKKK
(e)	CRV/H&M/45 dated 12 Dec 87	104	LLLLL
(f)	CRV/H&M/47 dated 04 Jan 88	50	MMMMM
(g)	CRV/H&M/50 dated 17 Jan 88	130	NNNNN

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(h)	CRV/H&M/53 dated 29 Jan 88	28	OOOOO
(j)	CRV/H&M/54 DATED 17 Feb 88	74	PPPPP
(k)	CRV/H&M/55 dated 26 Feb 88	26	QQQQQ

12. The list of sub-standard mules selected (difference between the descriptive rolls and noted by the Receiving Unit) is shown below:

COMPARISON RESTRICTED TO CONDITIONS OF CONTRACT AND PURCHASE BOARD

(Wherever the details noted by purchase board conforms to the specifications of contract, the same have been scored off. The findings in respect of these charges are based on the observations made by the Unit Board and/or Departmental Board)

S/ No	Hoof No	Conditions as per contract			Decided by purchase board			Variation from laid down conditions			Remarks
		Age	Height	Girth	Age of foal	Height	Girth	Age	Ht	Girth	
1.	203				198 2	131	145	> 5			Beyond 5 years
2.	204	4- 5	131- 147	145	198 3	131	145				
3.	212	4- 5	131- 147	145	198 3	131	144			-1 cm	
4.	214	4- 5	131- 147	145	198 3	131	143			-2 cm	
5.	215	4- 5	131- 147	145	198 3	131	145				

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6.	216	4- 5	131- 147	145	198 3	130	144		-1 cm	-1 cm	
7.	233	4- 5	131- 147	145	198 3	131	143			-2 cm	
8.	238	4- 5	131- 147	145	198 3	131	148				
9.	239	4- 5	131- 147	145	198 3	130	144		-1 cm	-1 cm	
10.	241	4- 5	131- 147	145	198 3	131	145				
11.	248	4- 5	131- 147	145	198 3	133	144			-1 cm	
12.	251	4- 5	131- 147	145	198 3	130	144		-1 cm	-1 cm	
13.	252	4- 5	131- 147	145	198 3	130	143		-1 cm	-2 cm	
14.	262	4- 5	131- 147	145	198 3	131	143			-2 cm	
15.	268	4- 5	131- 147	145	198 3	134	143			-2 cm	
16.	272				198 2	134	145	> 5			Beyond 5 years
17.	275	4- 5	131- 147	145	198 3	133	143			-2 cm	
18.	283	4- 5	131- 147	145	198 3	130	143		-1 cm	-2 cm	
19.	297	4- 5	131- 147	145	198 3	131	143			-2 cm	
20.	301	4- 5	131- 147	145	198 3	130	144		-1 cm	-1 cm	
21.	305	4- 5	131- 147	145	198 3	130	145		-1 cm		
22.	309	4- 5	131- 147	145	198 3	130	145		-1 cm		
23.	322	4- 5	131- 147	145	198 3	131	148				
24.	326	4- 5	131- 147	145	198 3	130	146		-1 cm		

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25.	329				198 2	132	150	> 5			Beyond 5 years
26.	337	4- 5	131- 147	145	198 3	131	144			-1 cm	
27.	359	4- 5	131- 147	145	198 3	131	146				
28.	361	4- 5	131- 147	145	198 3	131	143			-1 cm	
29.	370	4- 5	131- 147	145	198 3	131	143			-1 cm	
30.	389	4- 5	131- 147	145	198 3	131	143			-1 cm	
31.	401	3- 4	130- 147	143	198 4	130	143				
32.	405	3- 4	130- 147	143	198 4	130	143				
33.	406	3- 4	130- 147	143	198 4	131	143				
34.	409	3- 4	130- 147	143	198 4	130	143				
35.	411	3- 4	130- 147	143	198 4	130	143				
36.	412	3- 4	130- 147	143	198 4	130	143				
37.	413	3- 4	130- 147	143	198 4	130	143				
38.	415	3- 4	130- 147	143	198 4	130	143				
39.	418	3- 4	130- 147	143	198 4	130	143				
40.	420	4- 5	131- 147	145	198 3	130	143		-1 cm	-2 cm	
41.	421	4- 5	131- 147	145	198 3	130	143		-1 cm	-2 cm	
42.	423	3- 4	130- 147	143	198 4	130	143				
43.	424				198 2	132	145	>5			Beyond 5 years

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44.	425				198 2	132	145	>5			-do-
45.	426				198 2	131	145	> 5			-do-
46.	427	4- 5	131- 147	145	198 3	130	144		-1 cm	-1 cm	
47.	428	3- 4	130- 147	143	198 4	131	143				
48.	429	4- 5	131- 147	145	198 3	130	147		-1 cm		
49.	430	3- 4	130- 147	143	198 4	130	143				
50.	432	3- 4	130- 147	143	198 4	130	145				
51.	434	3- 4	130- 147	143	198 4	130	147				
52.	437	3- 4	130- 147	143	198 4	130	143				
53.	440	3- 4	130- 147	143	198 4	130	143				
54.	442	3- 4	130- 147	143	198 4	132	143				
55.	443	4- 5	131- 147	145	198 3	132	145				
56.	444	3- 4	130- 147	143	198 4	132	145				
57.	446				198 2	133	150	> 5			Beyond 5 years
58.	447	3- 4	130- 147	143	198 4	130	146				
59.	449	4- 5	131- 147	145	198 3	136	145				
60.	451				198 2	134	149	> 5			Beyond 5 years
61.	453	3- 4	130- 147	143	198 4	130	145				
62.	454	4- 5	131- 147	145	198 3	131	150				

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63.	455	3- 4	130- 147	143	198 4	130	143				
64.	457				198 2	131	146	> 5			Beyond 5 years
65.	463				198 2	131	145	> 5			-do-
66.	464				198 2	131	145	> 5			-do-
67.	469	4- 5	131- 147	145	198 3	131	145				
68.	471				198 2	131	145	> 5			Beyond 5 years
69.	474	4- 5	131- 147	145	198 3	131	145				
70.	476				198 2	132	145	> 5			Beyond 5 years
71.	477	3- 4	130- 147	143	198 4	130	143				
72.	478	3- 4	130- 147	143	198 4	130	143				
73.	479	3- 4	130- 147	143	198 4	130	143				
74.	480				198 2	132	145	> 5			Beyond 5 years
75.	486	3- 4	130- 147	143	198 4	131	143				
76.	491	3- 4	130- 147	143	198 4	130	143				
77.	493	3- 4	130- 147	143	198 4	130	143				
78.	495	3- 4	130- 147	143	198 4	130	143				
79.	501				198 2	131	145	> 5			Beyond 5 years
MULES PURCHASED DURING THE YEAR 1988											
80.	503	3- 4	130- 147	143	198 5	131	143				

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81.	506	4- 5	131- 147	145	198 4	130	145		-1 cm		
82.	511				198 3	132	145	> 5			Beyond five years
83.	517	4- 5	131- 147	145	198 4	130	143		-1 cm		
84.	520	4- 5	131- 147	145	198 4	130	143		-1 cm	-2 cm	
85.	527	4- 5	131- 147	145	198 4	131	143			-2 cm	
86.	528	4- 5	131- 147	145	198 4	132	143			-2 cm	
87.	529	4- 5	131- 147	145	198 4	131	143			-2 cm	
88.	533	4- 5	131- 147	145	198 4	130	144		-1 cm	-2 cm	
89.	535	4- 5	131- 147	145	198 4	130	143		-1 cm	-2 cm	
90.	537	3- 4	130- 147	143	198 5	130	143				
91.	538	4- 5	131- 147	145	198 4	130	145		-1 cm		
92.	539	4- 5	131- 147	145	198 4	130	143		-1 cm	-2 cm	
93.	540	4- 5	131- 147	145	198 4	130	143		-1 cm	-2 cm	
94.	542	3- 4	130- 147	143	198 5	130	143				
95.	543				198 3	131	145	> 5			Beyond 5 years
96.	544	4- 5	131- 147	145	198 4	130	143		-1 cm	-2 cm	
97.	545	4- 5	131- 147	145	198 4	130	143		-1 cm	-2 cm	
98.	546	4- 5	131- 147	145	198 4	135	143			-2 cm	
99.	547	4- 5	131- 147	145	198 4	131	143			-2 cm	

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100.	548	4- 5	131- 147	145	198 4	130	143		-1 cm	-2 cm	
101.	550	4- 5	131- 147	145	198 4	131	145				
102.	555	4- 5	131- 147	145	198 4	130	143		-1 cm	-2 cm	
103.	562	4- 5	131- 147	145	198 4	130	145		-1 cm		
104.	570				198 3	134	144	> 5			Beyond 5 years
105.	578				198 3	131	144	> 5			Beyond 5 years
106.	580				198 3	132	144	> 5			Beyond 5 years
107.	581				198 3	132	144	> 5			Beyond 5 years
108.	587				198 3	131	144	> 5			Beyond 5 years
109.	588				198 3	131	144	> 5			Beyond 5 years
110.	599	3- 4	130- 147	143	198 5	130	144				
111.	604				198 3	132	144	> 5			Beyond 5 years
112.	610	4- 5	131- 147	145	198 4	131	144			-1 cm	
113.	612	4- 5	131- 147	145	198 4	131	144			-1 cm	
114.	613				198 3	134	145	> 5			Beyond 5 years
115.	614				198 3	131	144	> 5			Beyond 5 years
116.	620				198 3	131	145	> 5			Beyond 5 years
117.	623				198 3	131	146	> 5			Beyond 5 years
118.	626	4- 5	131- 147	145	198 4	131	143			-2 cm	

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119.	627	3-4	130-147	143	198 5	130	143				
120.	628				198 3	130	143	> 5			Beyond 5 years
121.	630	3-4	130-147	143	198 5	130	143				
122.	633	4-5	131-147	145	198 4	131	143			-2 cm	
123.	634	3-4	130-147	143	198 5	130	143				
124.	635				198 3	131	145	> 5			Beyond 5 years
125.	637	4-5	131-147	145	198 4	131	143			-2 cm	
126.	641	4-5	131-147	145	198 4	130	144		-1 cm	-1 cm	
127.	642	4-5	131-147	145	198 4	130	143		-1 cm	-2 cm	
128.	644	4-5	131-147	145	198 4	131	143				
129.	645				198 3	131	145	> 5			Beyond 5 years
130.	646				198 3	131	146	> 5			Beyond 5 years
131.	647				198 3	130	143	> 5			Beyond 5 years
132.	648				198 3	130	144	> 5			Beyond 5 years
133.	649	4-5	131-147	145	198 4	131	143			-2 cm	
134.	651				-	130	143				
135.	652				198 3	130	143	> 5			Beyond 5 years
136.	653				198 3	131	143	> 5			Beyond 5 years
137.	654	3-4	130-147	143	198 5	130	143				

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138.	655	4- 5	131- 147	145	198 4	130	143		-1 cm	-2 cm	
139.	656	3- 4	130- 147	143	198 5	130	143				
140.	658	3- 4	130- 147	143	198 5	131	145				
141.	660	3- 4	130- 147	143	198 5	132	148				
142.	662	3- 4	130- 147	143	198 5	131	144				
143.	665	4- 5	131- 147	145	198 4	130	146		-1 cm		
144.	666				198 3	131	146	> 5			Beyond 5 years
145.	668				198 3	130	145	> 5			Beyond 5 years
146.	670				198 3	131	146	> 5			Beyond 5 years
147.	671	4- 5	131- 147	145	198 4	131	145				
148.	675				198 3	130	147	> 5			Beyond 5 years
149.	676				198 3	131	146	> 5			Beyond 5 years
150.	677				198 3	130	146	> 5			Beyond 5 years
151.	678				198 3	130	146	> 5			Beyond 5 years
152.	679	4- 5	131- 147	145	198 4	130	146		-1 cm		
153.	680	3- 4	130- 147	143	198 5	130	143				
154.	683				198 3	132	145	> 5			Beyond 5 years
155.	686				198 3	131	145	> 5			Beyond 5 years
156.	688				198 3	131	144	> 5			Beyond 5 years

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157.	691	3-4	130-147	143	1985	129	143		-1 cm		
158.	694	4-5	131-147	145	1984	131	144			-1 cm	
159.	699				1983	131	144	> 5			Beyond 5 years
160.	701	3-4	130-147	143	1985	130	143	< 3			Less than 3 years
161.	704	3-4	130-147	143	1985	130	143				
162.	708	3-4	130-147	143	1985	130	143				
163.	711				1983	132	144	> 5			Beyond 5 years
164.	712	4-5	131-147	145	1984	132	144			-1 cm	
165.	714				1983	131	145	> 5			Beyond 5 years
166.	715				1983	131	145	> 5			Beyond 5 years
167.	718				1983	131	144	> 5			Beyond 5 years
168.	719	4-5	131-147	145	1984	131	144			-1 cm	
169.	720	3-4	130-147	143	1985	130	143				
170.	722	3-4	130-147	143	1985	129	143		-1 cm		
171.	723				1983	131	144	> 5			Beyond 5 years
172.	724	4-5	131-147	145	1984	131	144			-1 cm	
173.	725				1983	130	144	> 5			Beyond 5 years
174.	726	3-4	130-147	143	1985	130	143				
175.	729				1983	132	145	> 5			Beyond 5 years

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176.	730	3-4	130-147	143	1985	130	143				
177.	731				1983	132	145	> 5			Beyond 5 years
178.	734				1983	131	145	> 5			Beyond 5 years
179.	736	4-5	131-147	145	1984	130	145		-1 cm		
180.	737	4-5	131-147	145	1984	131	144			-1 cm	
181.	739				1983	131	145	> 5			Beyond 5 years
182.	740	3-4	130-147	143	1985	130	144				
183.	742				1983	131	144	> 5			Beyond 5 years
184.	743				1983	130	144	> 5			Beyond 5 years
185.	744	3-4	130-147	143	1985	130	144				
186.	745				1983	131	145	> 5			Beyond 5 years
187.	746	3-4	130-147	143	1985	130	144				
188.	747	3-4	130-147	143	1985	130	143				
189.	748	4-5	131-147	145	1984	131	144			-1 cm	
190.	749	3-4	130-147	143	1985	130	143				
191.	750	4-5	131-147	145	1984	130	144		-1 cm	-1 cm	
192.	751	3-4	130-147	143	1985	130	145				
193.	753	4-5	131-147	145	1984	131	145				
194.	754	3-4	130-147	143	1985	130	143				

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195.	755	3- 4	130- 147	143	198 5	130	143				
196.	756	3- 4	130- 147	143	198 5	130	145				
197.	757	4- 5	131- 147	145	198 4	132	145				
198.	759	3- 4	130- 147	143	198 5	130	143				
199.	760	3- 4	130- 147	143	198 5	130	143				
200.	761	3- 4	130- 147	143	198 5	130	144				
201.	764	3- 4	130- 147	143	198 5	130	143				
202.	765	3- 4	130- 147	143	198 5	130	143				
203.	767	3- 4	130- 147	143	198 5	130	143				
204.	768	4- 5	131- 147	145	198 4	130	143		-1 cm	-2 cm	
205.	769	4- 5	131- 147	145	198 4	130	143		-1 cm	-2 cm	
206.	770	4- 5	131- 147	145	198 4	130	143		-1 cm	-2 cm	
207.	771	3- 4	130- 147	143	198 5	130	143				
208.	776	4- 5	131- 147	145	198 4	131	144			-1 cm	
209.	772	3- 4	130- 147	143	198 5	130	143				
210.	773	3- 4	130- 147	143	198 5	130	143				
211.	774	3- 4	130- 147	143	198 5	130	143				
212.	775	3- 4	130- 147	143	198 5	130	143				
213.	776	4- 5	131- 147	145	198 4	131	144			-1 cm	

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214.	778				198 6	129	143	< 3			Below 3 years
215.	780	3- 4	130- 147	143	198 5	130	143				
216.	781	3- 4	130- 147	143	198 5	130	143				
217.	782	4- 5	131- 147	145	198 4	130	144		-1 cm	-1 cm	
218.	783	3- 4	130- 147	143	198 5	129	143		-1 cm		
219.	785				198 3	133	145	> 5			Beyond 5 years
220.	786				198 3	131	145	> 5			Beyond 5 years
221.	789	3- 4	130- 147	143	198 5	130	143				
222.	790	3- 4	130- 147	143	198 5	130	143				
223.	795	4- 5	131- 147	145	198 4	130	146		-1 cm		
224.	797	3- 4	130- 147	143	198 5	130	145				
225.	801	3- 4	130- 147	143	198 5	130	143				
226.	803	3- 4	130- 147	143	198 5	130	143				
227.	808				198 3	131	145	> 5			Beyond 5 years
228.	810				198 3	131	146	> 5			Beyond 5 years
229.	814				198 3	131	145	> 5			Beyond 5 years
230.	815				198 3	131	146	> 5			Beyond 5 years
231.	816				198 3	135	147	> 5			Beyond 5 years
232.	819				198 3	131	147	> 5			Beyond 5 years

13. On an earlier occasion, when discrepancies were noticed with regard to the assessment of age, certain guidelines were issued as per Ext. XX.

They are as follows:

"ASSESSMENT OF AGES – ARMY ANIMALS (EQUINES)"

The present system of accounting ages of Army animals, based on the actual date of foaling has resulted in multiplicity in assessing age groups. The following procedure for fixing age will, therefore, be brought into force from 1 Jan 70 in respect of all class of Equines.

- (a) The age of a youngstock will be one year on 1 Jan irrespective of the date of its weaning.
- (b) The age of an adult animal will be increased by one year on 1 Jan each year.

2. In so far as weaning, accounting for rtions and transferring of young stock to 'On Command' strength is concerned, the date of foaling will, however, be the guiding factor and the present system will continue.

3. In order to ensure that this system works efficiently the age of all young stock and adult animals will be corrected suitably on 1 Jan 70 and recorded in Red ink on the relevant documents on the right hand top corner as under:

Age _____ years
(on 1 Jan 70)

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Similarly the first record of age should be shown as above on the document in respect of young stock/new draftings into service.

4. The following examples are given for clarification:

(a) EXAMPLE 1

Date of birth	- 1 May 69
Date of weaning	- 1 Nov 69
Age of foal	- 1 year on 1 Jan 70

(b) EXAMPLE 2

Date of foaling	- 1 Dec 69
Date of weaning	- 1 Jun 70
Age of the foal	- 1 year on 1 Jan 70

5. The return showing ages as on 1 Jan each year will be submitted so as to reach this HQ by 1 Mar every year. The present period of submission of this return, will be treated as cancelled. The half yearly return due during May 1970 will however be sent as required vide our letter even no. dated 10 Mar 70.

6. The return will be compiled by you on the attached proforma. The first return for the year 1970 should reach this HQ by 1 Jun 1970 indicating position as on 1 Jan 70. Subsequent returns will be sent by 1 Mar each year.

7. Sanctioned by ASD. The return bears Regn No AA/245, which will invariably be quoted on the left hand corner of all returns and used in all correspondence relating thereto.

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8. Please acknowledge."

But these guidelines have nothing to do with regard to the purchase of mules. PW 1 (Capt. B.R Chandrasekhar), on the basis of these guidelines, appears to have made a complaint with regard to the age of the mules when he himself was not aware as to how it was to be assessed. The extract of the guidelines issued for the information of the officers to be followed while purchasing animals for the Army, as contained in Ext. XXX is quoted below:

PART I

General Instructions For All Purchases

1. xx xx xx
2. The various tables giving height, leg, girth, etc. measurements are only intended to serve as a guide to purchasing officers. Animals, especially young stock cannot be bought by the tape. Many animals may be fully up to the various measurements given in the tables, which are nevertheless totally unfit for the service. Conversely, certain young stock may barely reach the minimum measurements laid down, but the general conformation may indicate that they will develop with proper care and attention useful remounts at maturity and purchasing officers must learn to rely on their eye and should use the measurements given in the tables only

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as a useful guide and check. A slavish adherence to measurements is to be deprecated.

xx

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xx"

Reference of these guidelines also finds place in the statement of PW 2. It is quoted below:

"It is incorrect that the purchase board reflected the age of animal in terms of year in which it foaled whereas the unit board had reflected the actual age in terms of years. It is also correct that the method of calculating the age is contained in letter No 31842/Q/RV-2(a) dated 17 Mar 70 (Exhibit 'XX'). As per the letter the age of the animals required to be shown in the year the animal is required to be shown in the year the animal was born. The age of the animal will be assessed as full year and not in fraction of a year after knowing the year of foaling. In case of the year of foaling being 1984, the age should be 3 years. It is correct to say that the unit board has assessed the age by examining the teeth".

14. From the Handbook on Animal Management, it could be ascertained that starting at 2 years of age the horse's front teeth (incisors) are the way to tell age. There are three sets of incisors, central, intermediate and

corners. Open the horse's lips and look to see if all are baby teeth or adults. The central pair are adult (permanent at 2 – 2 ½ years, the intermediate at 3 – 3 ½ years and the adult corner incisors at 4 – 4 ½ years. At 4 ½ - 5 ½ years of age some horses (mostly males) grow canine teeth which is that fang-like tooth just behind the incisors. Now starting at six years old, you need to look at the flat (table) surface of the lower incisors. There is a pit called the infundibulum that is easily seen in the center of each incisor's flat surface. At six years of age the pits of lower central permanent incisors are worn out (disappear). At 7 years the lower central incisors lose their pit and the upper corner incisor develops a hook off the back edge. By 8 years, all the lower adult incisors have lost their pit but a new small depression (dental star) appears in the lower central incisors. At 9 years of age, the horse's lower central and intermediate and intermediate and upper central incisors will have a dental star but the infundibulum (pit) of the upper corner incisor is still present – they do not disappear until the horse is eleven years old. From the age of eleven on, the incisors become more triangular and the teeth begin to project out toward the front of the mouth more with each additional year. The best way to get good at aging horses is by

practice. Look at as many horses of know age and test yourself. As is clear from the above, there can be variation of six months in the appearance of the central, intermediate and corner pair of teeth. It is dependent upon experience. The best way of getting correct assessment of age is by practice.

15. In support of the contention, the respondents have examined PW 1 (Capt. B.R Chandrasekhar, Remount Training School and Depot, Hempur), who produced the board proceedings for local purchase of mules GS held on 17.10.1987 and on subsequent dates along with the connected documents before the GCM as Exhibit 'LL', from 26.8.1987 to 28.10.1987 as Exhibit 'MM', from 12.11.1987 to 14.11.1987 as Exhibit 'NN', from 23.11.1987 to 25.11.1987 as Exhibit 'OO', from 10.12.1987 to 12.12.1987 as Exhibit 'PP', from 1.1.1988 to 4.1.1988 as Exhibit 'QQ', from 15.1.1988 as Exhibit 'RR', from 27.1.1988 as Exhibit 'SS', from 15.2.1988 as Exhibit 'TT', and from 24.2.1988 as Exhibit 'UU' and also seven minute sheets put up to the Commandant, R & V Depot, Hempur by the officiating Assistant Remount Officer preparing board proceedings along with photostat copies, as Exhibits 'VV to VV6'. It was also

clarified by the witness that from the date of his posting in November 1989, the procedure on receipt of animals was to segregate for a maximum period of three months and compare with the descriptive roll and take measurement of height, girth and bone. Further, they are allotted remount numbers, regularly de-wormed, serum samples collected for examination to check for disease, get mulleining test done to check whether they are carriers of glanders, which is a disease communicable to human beings. The descriptions of the animals are entered in the register. Even the history card also contains animal's description, age, sex, colour, breed and other particulars. In cross examination, it was also clarified by him that the data of the mules, which were found below specifications during the period from 17.10.1987 to 27.2.1988, were prepared by him on the basis of the documents held at Hempur depot and given by HQ UP Area. The data was prepared on the basis of purchase board proceedings, unit board proceedings prepared at Hempur and the Court of Inquiry proceedings and at no stage, he could see and examine the animals physically as they were all mixed up. He prepared the details of the animals on the basis of the data furnished. He further said that he is a novice having put in three years

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of service and has no experience to make assessment of age of the mules. In his cross examination, he further made it clear that the date of birth of the mules could be known by its birth certificates and in the absence of birth certificates, an expert would assess the age by dentation. As per the calculation based on Para 954 of the Regulations for the Army, the age of the animal as on 1.1.1983 will be one year and even if the date of birth of the mule is shown as 17.10.1982, its year of foaling shall be considered to be 1982.

16. The inefficiency of PW 1 is clear from the admission made by him. It is further clear that he prepared the data on the basis of the records and the report of the board. Highlighting the shortcomings in the mules selected by the purchase board, the GCM appears to have allowed premium on such ignorance, incompetence and consequential inefficiency of PW 1. From the statement of PW 1, it is clear that dentation would be the yardstick for ascertaining the age. The purchase board had made the assessment of age, height and girth of the animals. There appears to be nothing on record to controvert the expert opinion. PW 1 is swayed only by the report of the unit board.

17. PW 2 (Maj. S.K Sarangi, 16 Mobile Veterinary Hospital) was associated with the Board assembled at Mukerian on 13.8.1987 and at Karnal on 21.8.1987. As per the guidelines each and every mule was examined and the animals which were found below the specifications were rejected. Finally description of the animals was recorded. He has also stated that the age of the mule is determined by teeth and there can be variation of $\frac{1}{2}$ to 2 years in age. Further, the difference in measurement of height is dependent on the posture of the animal. The evidence of this witness lends support to the appellants.

18. PW 4 (Nk (Clerk) J. Sebastian, 2 Army Dog Unit) is a formal witness who simply stated that when the animals were received by him, the details were entered in the receipt issue control register.

19. PW 5 (Lt. Col. J.S Sethi, Horse and Mule Breeding Area, Jalandhar) made it clear that at the relevant time, he was working as Assistant Remount Officer, Army Stallion Stable, Amritsar and was performing the duties of

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Veterinary Officer at Horse and Mule Breeding Area, Jalandhar. He had received 45 mules purchased on 17.10.1987 (Exhibit 'LL') and got compared with the original record and found them to be correct.

20. PW 6 (Lt. Col. B.S Hans, 52 Advance Field Veterinary Hospital) made it clear with regard to the age of the animals that "if anyone say Hoof No.207 was ... on 20.10.1982, its actual age would be two months and 11 days on 1.1.1983 and its age would be 5 years on 1.10.1987. It is evident from his statement that there was no difference with regard to the age of the animals. The evidence of the above witness does not support the prosecution case.

21. The petitioners had put in about 30 years of service. The assessment of age made by them was challenged by a new entrant in the profession who himself had stated about his inexperience in the assessment of age of the mules. As has been referred to above, the wisdom and experience of the officer would be helpful in the ascertainment of age. It has been made clear in the course of arguments that the exact age cannot be ascertained from the

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adult corner teeth. The approximate assessment can be made by stating the year. It is also submitted that from the basis of the year described, the purchase was within the specifications.

22. It is next argued that as regards height, measurement is to be made by using a measuring stick, with a cross-piece and preferably a level. The level, where the animal is to stand, is very much material as is clear from the statement of PW 2 (Maj.S.K Sarangi). Further, the measurement stick must be in order. In this connection, it would be useful to take into consideration the Hand Book on Animal Management, which unequivocally canvassed that one must use a measuring stick, with a cross-piece and preferably a level. Stand the animal on a hard, level surface (a drive, aisle, or sheet of plyboard). A muddy field or uneven ground will not give an accurate reading. Place the level/crossbar at the withers. The stick should be straight up-and-down and not leaning. Measure at the top of the withers (the last hair of the mane on most equines). If it is not sure where to measure, put a small treat like a bit of apple or carrot on the ground in front of the animal. Look at the shoulders when they

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put their head down. The part of the shoulders that sticks up highest when their head is down is where one measure to. If tried to measure just using a flexible tape measure one would not get an accurate measurement. A version of using the tape used to be called "Jackstock Measuring" and resulted in additions of fractions of an inch to more than 2" to an animal's height. Measure three times and average the readings. It could be found that it is very hard to make an animal measure up exactly the same every time. Remember, too, that measuring should be done when the animal's hooves are freshly trimmed, or at least of proper length. Long toes and the addition of shoes can add to a height. Height measurements should not be given in most cases in fractions of anything smaller than 1/8 of an inch. A thick winter coat or a little extra hoof can cause that much difference with ease.

23. With regard to girth, measurement is to be made from the base of the withers down to a couple of inches behind the horses from front leg under the belly then up to the opposite side from where the measurement is started. Here also, the horse/mule is required to stand on the level surface. The tape is

to pass where the girth will rest (between its elbows and wither – make the two ends meet. There are also chances of variation and its accuracy would depend upon the experience and the wisdom of the officer. Whatever be the discrepancies in the assessment of age, height and girth, no cogent evidence has been adduced. To the contrary, the discrepancies noted are negligible.

24. It is notorious and one can take the judicial notice when in the case of ascertainment of human age, the margin of error in age ascertained by radiological examination is two years on either side. (see **Jayamala v. Home Secretary, Govt. of J & K and others** – AIR 1982 SC 1297). On such analogy, variation in the matter of animals is quite possible. The selection board comprised of very senior officers. The complaint was made by the Receiving Unit. Capt. B.R Chandrasekhar did not have knowledge on the subject, as is clear from his own statement.

25. When an expert board of members selected the mules, the Court Martial ought to have evaluated the expert opinion before accepting the

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prosecution version. No difference as such in the age could be pointed out. When the assessment is made by an expert board, the GCM should have been doubly cautious while interfering with the decision of the expert selection body which is akin to fact finding authority. In this regard, it would be appropriate to refer to the decision in **Collector of Customs, Bombay v. Swastic Woolens (P) Ltd and others** (1988 Supp SCC 796), wherein, while considering the statutory appellate powers under Section 130-E(b) of the Customs Act, 1962, the apex Court held thus:

“We are, however, of the view that if a fact finding authority comes to a conclusion within the above parameters honestly and bona fide, the fact that another authority be it the Supreme Court or the High Court may have a different perspective of that question, in our opinion is no ground to interfere with that finding in an appeal from such a finding. In the new scheme of things, the Tribunals have been entrusted with the authority and the jurisdictions decide the questions involving determination of the rate of duty of excise or to the value of goods for purposes of assessment. An appeal has been provided to this Court to oversee that the subordinate Tribunals act within the law. Merely because another view might be possible by a competent Court of law is no ground for interference under S. 130-E of the Act though in relation to the rate of duty of customs or to the value of goods for purposes of assessment, the amplitude of appeal is unlimited. But because the jurisdiction is unlimited, there is inherent limitation

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imposed in such appeals. The Tribunal has not deviated from the path of correct principle and has considered all the relevant factors. If the Tribunal has acted bona fide with the natural justice by a speaking order, in our opinion, even if superior Court feels that another view is possible, that is no ground for substitution of that view in exercise of power under Cl. (b) of S. 130-E of the Act".

From the materials on record and also from the statements of the witnesses, particularly that of PW 1 (Capt. B.R Chandrasekhar), it is clear that the measurements with regard to the height and girth by the purchase board do not suffer from any glaring infirmity. Further, there is nothing to show that PW 1 (Capt. B.R Chandrasekhar) had any expertise to assess the age, etc. of the mules and, therefore, it would be improper to rely upon his evidence. There is no doubt, under Section 45 of the Indian Evidence Act, 1987, though veterinarians can appear as witnesses, their qualification alone is not sufficient to render them to be experts in the field, as is also clear from the statement of PW 1.

26. It is next contended that the animals in question were not produced before the Court of Inquiry. This fact is clear from the statement of Col. S. Prem Kumar, who was a witness in the GCM proceedings. Non-production of the animals before the Court of Inquiry vitiated the trial as the identity of the animals could not be fixed. It has already been found that the proceedings of the Court of Inquiry under Rule 180 were drawn in the absence of the petitioners and even at that stage the withholding of the material evidence would render the Court of Inquiry to be invalid. In this regard, reliance has been placed on the decisions in **Hiralal and others v. Badkulal and others** (AIR 1953 SC 225), **Gopal Krishnaji Ketkar v. Mohamed Haji Latif and others** (AIR 1968 SC 1413), **S.P Chengalvaraya Naidu v. Jagannath and others** (AIR 1994 SC 853) and **CitiBank N.A v. Standard Chartered Bank and others** (AIR 2003 SC 4630). However, from the side of the respondents, it is contended that unless there is anything to show that the production of the animals during Court of Inquiry was obligatory on the respondents, no adverse inference can be drawn. It may be appropriate to quote the observations made by the apex Court in **Gopal Krishnaji Ketkar's case** (supra). It reads:

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"Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to reply upon the abstract doctrine of onus of proof."

There appears to be no justification from the side of the prosecution to withdraw the material evidence from the Court of Inquiry.

27. It is vehemently argued by learned counsel for the petitioners that Army Rule 180 was not followed during the Court of Inquiry. The petitioners were not afforded the opportunity of being heard. The Court of Inquiry is in the nature of a fact finding inquiry committee. Army Rule 180 provides, inter alia, that whenever an enquiry affects the character or military reputation of a person subject to the Army Act, full opportunity must be afforded to such a 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 cross examining

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any witness whose evidence, in his opinion, affects the character or military reputation. The Presiding Officer of the Court of Inquiry is required to take such steps as may be necessary to ensure that any such person so affected receives notice of and fully understands his right under the rule. The petitioners were admittedly not informed about the Court of Inquiry and they were not present to cross examine the witnesses who were examined during Court of Inquiry. Army Rule 180, however, gives adequate protection to the person affected even at the stage of the Court of Inquiry. In the present case, the petitioners were not given that protection. Their presence was not sought by the Presiding Officer and evidence was recorded in their absence. The petitioners are entitled to a fair investigation. Fair investigation and trial are concomitant to protection of fundamental right of an accused guaranteed under Article 21 of the Constitution of India.

28. It is further submitted that the Court of Inquiry was conducted improperly since it was conducted by a junior rank officer. The constitution of the Court of Inquiry was said to be invalid as it adversely affected the

disciplinary proceedings and the GCM. Reliance has been placed on the decision in **Union of India and others v. Major A. Hussain** (1998(1) SCC 537), wherein it was held:

"If a court martial has been properly convened and there is no challenge to its composition and the proceedings are in accordance with the procedure prescribed, the High Court or for that matter any court must stay its hands. If one looks at the provisions of law relating to court martial in the Army Act, the Army Rules, Defence Service Regulations and other Administrative Instructions of the Army, it is manifestly clear that the procedure prescribed is equally fair if not more than a criminal trial provides to the accused. When there is sufficient evidence to sustain the conviction, it is unnecessary to examine if pre-trial investigation was adequate or not. Requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate the court-martial unless it is shown that the accused has been prejudiced or that a mandatory provision has been violated. One may usefully refer to Rule 149 of the Army Rules. The High Court should not have allowed the challenge to the validity of conviction and sentence of the accused when evidence was sufficient, court martial had jurisdiction over the subject-matter and had followed the prescribed procedure and was within its powers to award punishment."

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In this case, as has been referred above, the Court of Inquiry was not conducted in accordance with the procedure prescribed. There is no denial of the fact that the petitioners were not present and that the Court of Inquiry was conducted at their back. Witnesses were also examined in the absence of the petitioners. They had been denied the opportunity of cross examining the witnesses. Army Rule 180 gives adequate protection to the person affected even at the stage of Court of Inquiry. In the present case, the Court of Inquiry was conducted in the absence of the petitioners and that would vitiate the GCM proceedings.

29. It is next argued that the pre-confirmation petitions submitted by the petitioners to the Chief of Army Staff have not been disposed of under Army Act Section 164(ii). Non-disposal of the pre-confirmation petitions would not materially affect the rights of the petitioners and in no way he is prejudiced. There is no requirement under the law to submit pre-confirmation petition.

30. It is also submitted that the objection made by the petitioners against the joint trial with accused 3 to 6, since Col. Mishra and Lt. Col. Nabh (accused 3 and 5), who were members of the purchase board, were the material witnesses to support the defence version of the petitioners regarding purchase of mules, was rejected in violation of Army Rule 35, which resulted in substantial miscarriage of justice. Army Rule 35 makes it clear that 'any number of accused persons may be charged jointly and tried together for an offence averred to have been committed by them collectively. All persons falling under any offence or different offences committed in the course of the same transaction can be charged and tried together. There appears to be no justified cause prejudicial to the petitioners since they were said to be involved in committing the offence with the petitioners.

31. It is next contended on behalf of the petitioners that Col. Y.S Ahlawat was appointed as member of the Departmental Station Board when he himself was an interested party, being Commandant of the Receiving Unit, i.e. RTS Depot, Hempur. He was not even competent to be appointed as Member

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of the Departmental Station Board, in view of Para 518 of the Defence Service Regulations, 1962, which 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, 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 a 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"

As is clear from the above, the person detailed to constitute the Court of Inquiry or the Station Board should have no personal interest, direct or indirect, in the subject matter of investigation. Col. Y.S Ahlawat was in the Receiving Unit and was equally responsible for having received the sub-standard animals. Further, Col. Y.S Ahlawat himself was an interested party, in violation of the well known maxim "a person cannot be a judge of his own cause". The principle



of natural justice is based on two basic pillars viz. (i) nobody shall be condemned unheard (*audi alteram partem*); and (ii) nobody shall be judge of his own cause (*nemo debet esse iudex in propria sua causa*). As per the instructions contained in the agreement, the following obligations were there on the part of the Receiving Unit:

- (i) The Receiving Unit would check and compare all the animals received from the supplier with the descriptive rolls;
- (ii) The Receiving Unit would take delivery of the same when it is satisfied that the animals were selected by the Purchase Board;
- (iii) After satisfying the correctness as per the descriptive rolls, receipted copy would be given by the Receiving Unit to the supplier in token of the receipt of the animals as detailed therein.

It would be useful to extract some of the observations of the apex Court in **Siddhivinayak Realities Pvt. Ltd v. Tulip Hospitality Services Ltd and others** (AIR 2007 SC 1457 at page 1465):

"30. In support of his aforesaid submission, Mr. Singhvi first referred to the decision of the Court of Appeal in Metropolitan Properties Co. (F.G.C) Ltd vs. Lannon and Ors. Reported in (1968) 3 WLR 694, wherein in considering a question of bias it was observed that a man may be disqualified from sitting in a judicial capacity on one of two grounds. First, a 'direct pecuniary interest' in the subject-matter. Second, 'bias in favour of one side or against the other'. In that context, it was inter alia observed by Lord Denning as follows:-

"So far as bias is concerned, it was acknowledged that there was no actual bias on the part of Mr. Lannon, and no want of good faith. But it was said that there was, albeit unconscious, a real likelihood of bias. This is a matter on which the law is not altogether clear, but I start with the oft-repeated saying of Lord Heward C.J in *Rex v Sussex Justices, Ex parte McCarthy*, (1924) 1 KB 256 at 259. It is not merely of some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done" (at page 707).

31. Reference was also made to a decision of this Court in the case of *Rattan Lal Sharma vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and Ors.* Reported in

(1993) 4 SCC page 10, where the maxim 'Nemo debet esse judex in propria causa' (no man shall be a judge in his own cause) was considered and it was held that the deciding authority must be impartial and without bias which could take the form of an apprehend bias even though such bias had not in fact taken place."

32. Learned counsel for the appellants, Mr. Srivasthava, finally made a fervent but an exuberant plea that the petitioners were dragged into the present situation in the year 1990 and that more than 19 years have elapsed since then. We find some force in that submission. The facts and circumstances of the case demand awarding of compensation. Moreover, this Tribunal is duty bound to interfere, when the judgment appealed against suffers from illegality or manifest error or perversity.

33. The petition is allowed with cost of Rs.50,000/- and the impugned order is set aside. The petitioners shall be deemed to be in service till attaining the age of superannuation. They are entitled to all the pecuniary benefits and backwages by calculating the period from the date of dismissal till the date they

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attained the age of superannuation. This period shall also be counted for the purpose of pensionary benefits.

(S.S DHILLON)
MEMBER

(S.S KULSHRESHTHA)
MEMBER