

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

**T.A NO. 604 OF 2009**  
(WRIT PETITION (CIVIL) NO. 4797 OF 1993)

FLT. LT. S. MAHENDRA

.. APPELLANT

V.

UNION OF INDIA AND OTHERS

.. RESPONDENTS

**ADVOCATES**

MR. BALBIR SINGH MOR  
FOR THE APPELLANT

MR. AJAI BHALLA WITH WG. CDR. ASHISH TRIPATHI  
FOR RESPONDENTS

**CORAM**

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

**J U D G M E N T**  
**30.09.2010**

1. In exercise of the powers under Section 19 of the Air Force Act, 1950 and Rule 16 of the Air Force Rules, 1969, the Government of India,

vide its order dated 21.9.1993, dismissed the petitioner – Flt. Lt. S. Mahendra from service alleging misconduct, which was challenged by the petitioner before the Delhi High Court by filing W.P (C) No.4797 of 1993. The said writ petition, on transfer from Delhi High Court, has been treated as an appeal under Section 15 of the Armed Forces Tribunal Act 2007.

2. The facts giving rise to this appeal are: The appellant was commissioned in the Indian Air Force on 8.6.1984 in the Flying (Pilot) Branch. From 19.6.1989, he was posted to 151 HUAf, C/o. 32 Wg. AF. On 2.5.1991, as part of Special Heli Borne Operation training, Flight Commander, Sqn. Ldr. HS Sandhu authorised a low level new sortie. He was co-pilot along with Sqn. Ldr. Sandhu. After landing, they noticed an injured 'Blue Bull'. So as not to attract birds, they removed the Blue Bull. The civil police alleged that the Blue Bull was shot at by pilots of the helicopter flown by the appellant and Sqn. Ldr. Sandhu, which created a stir in the unit. A court martial was ordered against the appellant and Sqn.Ldr.Sandhu for having committed a civil offence under Section 51 of the Wildlife

(Protection) Act 1972 and under Sections 62(d) and 65 of the Air Force Act.

The appellant and Sqn. Ldr. Sandhu were held guilty and sentenced.

3. Besides the appellant, Flt. Lt. Zafar Syed and Flt. Lt. DD Sharma were also on the posted strength of 151 HU and were stationed at the same place of the appellant. Flt. Lt. Zafar was an accused in a criminal case for allegedly torturing and threatening a Scheduled Caste woman. He was, therefore, waiting for an occasion to restore the favour of his superior officers. Flt. Lt. Zafar had enmity towards the appellant as he was not helping him to get out of the criminal case. Flt. Lt. Zafar gave a report against the appellant as having had forcible sexual intercourse with his colleague Flt. Lt. DD Sharma's daughter. A Court of Inquiry was ordered, wherein it found prima facie case against the appellant. Thereupon, notice dated 23.7.1992 was issued to the appellant calling upon him to show cause why he should not be dismissed or removed from service under Section 19 of the Air Force Act, evidenced by Annexure 2. The appellant denied all the allegations levelled against him in the show cause notice, by submitting his reply. Thereafter, presumably not being satisfied by the

reasons stated by the appellant, he was served with the impugned order dismissing him from service under Section 19 of the Air Force Act read with Rule 16 of the Air Force Rules.

4. According to counsel for the appellant, the appellant was implicated in the case with ulterior motives. The show cause notice was issued arbitrarily and with mala fides in an attempt to see that the appellant was dismissed from service. Regulation 790 was not properly applied. The appellant was denied the opportunity to examine Flt. Lt. R.S Reddy at the proper time. Further, the findings of the Court of Inquiry were against the evidence on record. The entire evidence was fabricated so as to substantiate the allegations made by Flt. Lt. Zafar in his complaint. Even if the evidence recorded during the course of inquiry is taken on its face value, no prima facie case appears against the appellant.

5. The appeal is resisted by the respondents contending, inter alia, that the appellant and his accomplice, Sqn. Ldr. Sandhu, were held guilty of having committed the offence under Section 51 of the Wildlife (Protection) Act, 1972 and under Sections 62(d) and 65 of the Air Force Act

they were suitably punished for having committed the said offence. The present case is altogether different. It would be untrue to say that Flt. Lt. Zafar falsely implicated the appellant in this case due to enmity. Being satisfied by the recommendations of the Court of Inquiry, the Government of India issued the show cause notice in exercise of the powers vested in it under Section 19 of the Air Force Act read with Rule 16. The impugned order was issued after taking into account his reply to the show cause notice.

6. In order to appreciate the rival contentions of the parties, it would be useful to extract some of the relevant paragraphs from the complaint made by Flt. Lt. Zafar. They are:

(a) On 14 Jun 91 (Friday) two boys were caught on top of the overhead water tank located in between the GE (Maj Wahis) residence and the AOC No. 32 Wing residence. They were caught by the Mess boy No. 4 Airmen Mess. On questioning by watchman Commander of 32 Wing, the boys admitted that they had come to see "Suman" daughter of Flt Lt D D Sharma. When they were escorted to the sub guard room, one of the boys named Raju Dudi (S/o JWO Dudi, Cipher section Jamnagar) said that Flt Lt Zafar Syed had called me. I got a ring from the

sub guard room and was appraised of the situation. Both the boys maintained that they had climbed the stairs to see the A/C landing, and take off. One telling then to speak truth or else they will be handed over to Civil police, the boy Raju Dudi said that he knew "Suman Didi" and that she had come to his room with a friend of his named Amar Singh and they were together in his room for few hrs without him being there.

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On Sunday the 16 Jun 91, Flt Lt S Mahendra has come over to my house at about 1100 hrs, with the few names viz Amar Singh, Mr. Parvez and others. I kept listening to his stories. He said that on Saturday 15 Jun 91 Sgt Ojha of 116 HU, has come to his house with these names. He has caught them along with the girl Suman in sexual act earlier and on Saturday night around 2045 hrs. He has caught the boys and their names are Amar Singh and Mr. Kanwer : Since you, Flt Lt S Mahendra know Flt Lt D D Sharma very well please inform him (Flt Lt S Mahendra is ex 116 HU and Flt Lt D D Sharma is also ex 116 HU).

I then informed that I have the name with me. I showed them on a piece of paper. But I said let the Sgt Ojha give a written statement in this effect. But Flt Lt S Mahendra maintained that I should report the matter "that Suman was caught by IAF (P). He insisted that I should do this immediately, I refused, he kept trying to convince me and after about two hours he left my house on my refusal that I will not report anything false. Same

afternoon he has come again, Sunday 16 Jun 1500 hrs I gave a ring to F/L D D Sharma from the main guard room requesting him to come over so that I could apprise him of the happenings. From the telephone conversation it appeared to me that he was already aware he insisted that "I do not know anything. I have no complaints, so why should any one else". To this I replied OK. I will put all my findings on paper and forward it. F/L D D Sharma then came over to guard room along with W/C Banerjee, OC116HU. I then apprised the situation to him thus "That D D you are well known to me and you also know my father (Flt Lt Minurriddun Syed VSM retd) so I am bringing this to your notice that some boys are trying to antagonize the good name of your daughter. I insisted that "on the onset itself personally connected with you, I felt I must inform you. I told him the name of some of the civilians and that Suman is a regular visitor to the officers bachelor block "Bhatra Block" near main guard room. After both these officers left F/L Mahendra walked in my office he probably heard all the talk. He asked me as to why I had not told F/L D D Sharma that on Saturday night Suman was caught near sub guard room. I told him again that I will not report anything false. He was visibly annoyed with me and called the names. The same night he has come again to my house and insisted that I take down in writing from JWO Dudi's son that he had come again on Saturday 15 Jun. I had apprised of the whole situation to C Adm O and AOC by 1700 hrs. I was told by the AOC that take down the statements from Raju Dudi and Raju Bhaggirath (son of KV No.2 Army teacher) and

close the case. I told Flt Lt S Mahendra that "AOC desires that I should close the case and no more on this". He then brought of that Suman had come running behind his house on Sat night and that she had gone away. Let me know if anyone reports.

..... He then told me that the photographs of Mrs Chandra Devi W/o Mr Totaram of my civil case are taken on 18 or 19 April 91. I can assure you that whatever statement you want from him I will get that we can tell him to give a statement that the photographs were taken on 13<sup>th</sup> April 91 so that the whole case falls through. I, Sqn Ldr J.S Panasar of 151 hrs and many others are aware of a very close friendship between Flt Lt S Mahendra and the owner of Heena Studios. This man at Heena Studio was charged with rape and was sentenced for two years RI and has completed his sentence. He is also suspected of a murder in Pologround by locals for which he was not caught. Lt. S. Mahendra claimed that it was his brainwork and manipulations which has revealed the 'Heena owner'. After promising me help he again insisted that I cook up the story as dictated by him for Saturday the 27 Jun 91. He said that "I have a witness with me who has seen you raping Mrs. Chandra Devi, W/o Totaram, civilian if he is produced in court then you had it. I then got annoyed but he insisted that there is a witness even though well known to me who state but I will help you. I can keep them shut. After this threat and promise he asked me again to manipulate and make a story in Saturday as directed by him. I played along and told him OK but please give me the details. He asked me to tell him if I had any confidence



in any IAF (P) personnel who are stand by me and can face cross examination also. I told him that all are loyal to me. He asked "who had caught Raju Dudi?" to which I replied that "Cpl P Singh. He asked can you trust him". I said yes he asked me to take him in confidence and brief him in the details that he had caught Suman on Saturday 15 Jun 91 behind the bushes, in sexual acts with one boy while the other kept watch when she was caught she started crying and was asked to go home (around 2100 hrs) and that Cpl P Singh gave a ring at officers Mess for security officer. The security officer came to sub guard room and questioned one boy. The other known to you (Cpl P. Singh) from R.K Cycles near AF School. The name of the other person was Amar Singh. That Amar Singh admitted in writing that he and a lot of other people were involved. Flt Lt S. Mahendra has then given me a list of civilian and officers names that should be written in it. I then phoned and called Cpl P. Singh on insisting pressures from Flt Lt S Mahendra Cpl P Singh was also briefed by Flt Lt S Mahendra and later on also at 2023 different occasion my wife Mrs Bharti Syed is also a witness to this coaxing and everything by Flt Lt S Mahendra. Flt Lt S Mahendra went in detail, as to has Amar Singh was dressed his appearance, etc. ....

Monday evening 17 Jun 91 F/L Mahendra has come again. One boy by name Manoj came to the main guard room. He was brought there by Cpl P Singh who knew a list of people. Officers and civilians who were going around with this girl Suman often on payment. I informed AOC. I met this boy later on in the evening. He

gave me the name of Flt Lt S Ansari and F/L S Mahendra. F/O Mishra and few others. He told me issues of a lot of civilians of his own friends, of the involvement of the elder daughter of F/L Sharma also that there were photographs taken of Suman in sexual act with different boys in hostel. Photographs were destroyed but negative were preserved. That there is a govt. dept. which deals with some underground drillings and some miscreants who have made a video film of Suman in sexual act. He says that this is hearsay but he has heard time and again that there is a blue film available of Suman. That he can bring his friend who has the knows of this the photographs can also be produced. Please let me know and give me time I have my exam from 26 Jun 91. I will meet you later if you need me on this on Tuesday afternoon F/L Mahindra came again to my house. I made an excuse and went to Main Guard room.

..... I now came to know that SOA already has your name. I can save you. Just do as I say he F/L S Mahendra has thus given me a threat and a promise to make a false report to AOC and things that have actually not happened.

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On 25 Jun 91 I informed Sqn Ldr Paul of LU while he was sitting in the office of the station Adjutant that Mahendra was using his name as a threat to me to do certain wrong things officially. Sqn Ldr Paul was very annoyed when I told him about the girl Suman that F/L Mahindra has said that Sqn Ldr Paul wants you (viz me F/L Zafar) to manipulate Suman's case in this manner. I told

him that he is pressurizing me to say wrong thing to AOC. Should I inform AOC? What is your opinion “Sqn Ldr Paul was firm that you must inform AOC. Also “come with me we will speak to F/L Mahendra”. I requested Sqn Ldr Paul that please don’t speak to Flt Lt Mahendra as he is in a panic and may damage the girl’s image Suman which may be very hearting to the parents and matter of whole life for the girl. I told him the approximately time I will let you know then we can speak to F/L Mahindra”. Then we can speak to S/L Mahindra together. Not now”.

On the night of 23 Jun on E/D day on phone he told me that I have collected sufficient evidence against Suman Sqn Ldr Verma whose name was familiar was contained by me. Sqn Ldr Varma has already got information that Suman is caught (I had informed F/L Mahindra that Tuesday 18 Jun 91 I had learnt that his name and F/L Ansari’s name have figured out at now after Suman was beaten up by parents. This information was passed by the elder daughter of Flt Lt DD Sharma to one of her boy friends at university New Campus hostel. This had put him in a panic).

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Now I have sufficient evidence against Suman I want to fix Flt Lt D DSharma. He is not worth bashing up but I will produce the evidence in front of his daughters. 2 or 3 days before marriage of the elder daughter you see, I anticipated that F/L DD Sharma will take the father in law (would be) in who is a JWO to SOA. SOA will clarify that Suman is good that security officer was trying to spoil her

name due to personal reasons we caught him in time and he has been removed as security officer. It will be then that I will produce this evidence which I have even if any name figures out anywhere. I can say out. If it is insisted that I had sex with Suman I will accept it and say that I also had sex with the elder daughter and the mother too. You take my name to AOC now one can harm me if DD tries to take my name to my wife she will laugh it off you see.”

A court of inquiry was conducted, wherein the extracts of “weekend register” (Exhibit A), “entry Sl. No.15 OO weekend register” (Exhibit B), leave application of Flt Lt S. Mahendra (Exhibit C), list of names of civilians written by Flt Lt S. Mahendra (Exhibit D), statement of Raju Dudi (Exhibit E), statement of Rajju Chowdhory (Exhibit F), statement of JWO IS Chauhan (Exhibit G), Letter No. 815 SU/1132/1/See (Exhibit H), correspondences between AOC No. 32 Wing and Flt Lt S. Mahendra (Exhibits J1 to 5), Letter No. 32 W/C 1227/1/61/92, questionnaire for Flt Lt GRS Reddy (Exhibit L) and Letter No. 32 W/C 1204/1/P1 (Exhibit M) were taken on record. That apart, the statements of F/L Sanjiv Mahendra (Witness No.1), Dharmendra (Witness No.2), Cpl. Parvinder Singh (Witness No.3), MWO PL Choudhari

(Witness No.4), Cpl. Biju (Witness No.5), Sgt. Choudhary (Witness No.6), Wg. Cdr. B Banerjee (Witness No.7), Amar Singh (Witness No.8), Raju Dudi (Witness No.9), F/L DD Sharma (Witness No.10), F/L Ajay Mishra (Witness No.11), Sqn. Ldr. JS Paneswar (Witness No.12), Nopa Ram (Witness No. 13), Flt Lt Zafar Syed (Witness No.14), Suman Sharma (Witness No.15), Wg. Cdr. RS Gill (Witness No.16), Flt. Lt S Ansari (Witness No. 17), JWO IS Chauhan (Witness No.18) and Flt Lt S. Srivastava (Witness No. 19) were examined in the course of inquiry. Full opportunity, as envisaged under the Rules, was given to the appellant to cross examine the witnesses.

7. After sifting the entire evidence, the Air Officer Commanding came to the following conclusions:

“1. The terms of Reference required the Court of Inquiry to primarily investigate the allegations made in Flt Lt Zafar Syed’s application. These allegations amount mainly to his being pressurized to make false statements and to produce/raise evidence against Miss Suman Sharma, the daughter of Flt Lt DD Sharma.

2. The Court has uncovered the fact that Flt Lt S Mahendra had sexual relations with Miss Sharma on 15 Jun-21 sometime around 2030 h. Her statement stands true because no girl in such circumstances will give false evidence which would taint

her own character. It is corroborated by her father who was told by her of the happening immediately after it occurred.

3. Thereafter, Flt Lt Mahendra has tried to set up a smoke screen by attempting to obtained false evidence through the Station Security Officer by coaxing, cajoling and coercing him in order to prove that the aforesaid occurrence did not take place. This cover up was probably to prevent his wife (who was away that time) from believing Flt Lt DD Sharma who had threatened to bring it to her notice.

4. By virtue of the fact that Flt Lt Mahendra had intercourse with Miss Sharma and that he attempted to cover up the happening, the allegations in Flt Lt Zafar Syed's application stand largely proved.

5. It therefore follows that Flt Lt Mahendra has given false evidence under oath, may be to protect himself. I am not surprised a this because in an earlier instance, for similar reasons, he has told lies personally to me.

6. In view of the above broad facts, I agree with the findings of the Court. However, in regard to the recommendations of the Court, my views are as follows:-

(a) The lapse cited against Sqn Ldr Panesar is of a minor nature and can therefore be overlooked. As it is I have already firmly told him of his wrong action.

(b) I feel that the evidence of Flt Lt Mishra giving false evidence is not conclusive. Therefore, he be given the benefit of doubt. Nevertheless, I have taken note of this

instance for reference in all future dealings with this officer.

(c) No useful purpose will be served by having a separate Court of Inquiry on the conduct of Sqn Ldr Ansari. Therefore, this recommendation of the Court is not agreed to.

(d) In the light of the serious nature of Flt Lt Mahendra's activities and proclivities. I strongly recommend that he be removed from the Air Force under Section 19 of the Air Force Act."

It is evident that the court of inquiry made a recommendation to remove the appellant from service by resorting to the provisions of Section 19 of the Air Force Act. On the basis of the findings and conclusions arrived at by the court of inquiry, show cause notice was issued to the appellant, wherein the facts revealed from the court of inquiry were quoted at paragraphs 5 and 6, which read:

5. AND WHEREAS, the said Court of Inquiry reveals the following:

(a) On 15 Jun 91 at about 2000 hrs Miss Suman Sharma aged about 17 years, daughter of Flt Lt DD Sharma (16524) AE(L) was sent by her father to

search their dog and she went towards the servant quarter of Flt Lt S Srivastava (16786) F(P). On her return she saw you standing on the verandah of your house close to the door leading to the bedroom.

(b) You called Miss Suman Sharma on the pretext of offering her a video cassette. When she approached, you pulled her hands and pushed her on the bed inside the bedroom, closed the door and switched off the lights. By over-powering her by use of force, you had sexual intercourse with her.

(c) In order to shadow your own guilt, you tried to defame Miss Suman Sharma and also asked Flt Lt Zafar Syed, the then Security Officer, to fabricate a false case against said Miss Suman Sharma that she was caught on 15 Jun 91 at about 2045 hrs by 706644 Cpl Singh P, IAF/P of 32 Wing, AF having sex with a civilian named Shri Amar Singh, and also with the owner of a shop M/s RK Cycle, which is located near the Camp area behind the SSQ. However, both Flt Lt Zafar Syed and Cpl Singh P refused to implicate Miss Suman Sharma in any false case without any substantial evidence against her;

6. AND WHEREAS, the said Court of Inquiry also brings out the following acts and omissions on your part:-

(a) While on medical disposal on LD2, you proceeded on a week-end on 21 Jun 91 at AD hours to Udaipur and Mount Abu, beyond Municipality limits of Jodhpur against the instructions of AOC 32 Wing, AF and returned only 24 Jun 91 at about 2200 hrs.



(b) Knowing the instructions of AOC 32 Wing, AF not to leave the Station, you willfully obtained the permission of your CO to remain absent without leave for one day on 24 Jun 91.

(c) you signed a blank leave application without mentioning dates of leave and address while on leave.

(d) You failed to attend station farewell party on 15 Jun 91 at about 2015 hrs without sufficient reasons and permission of the superior authority;"

8. In response to the show cause notice, reply was given by the appellant on 23.9.1992 stating that the findings of the Court of Inquiry were arbitrary, mala fide and unfair and the entire proceedings were initiated to ensure that the appellant was harassed and proceeded against. Throughout, the Court of Inquiry adopted a biased attitude against the appellant. The evidence adduced against the appellant is not worth credence and would not even make out a prima facie case against him.

9. The moot point raised by counsel for the appellant is that even if the entire evidence is taken on its face value, that would not make out any offence against the appellant. The evidence is full of discrepancies and distorted. Further, the witnesses could not stand to cross examination.

Even the statement of Flg. Offr. DD Sharma in regard to the alleged misconduct on the part of the appellant does not inspire confidence. He has not lodged any report as regards the msiconduct reported to him by his daughter. Continuous silence of the victim (daughter of Flg Offr Sharma) would attribute more falsehood in the allegation than substantiating the complaint against the appellant. Moreover, Witness No.15 Suman did not depose on her own volition, but her deposition against the appellant was the result of compulsion, as is clear from the statement of Witness No.10 Sharma. Such evidence lacks credence to prove the misconduct on the part of the appellant. When two views are possible, one as was taken by the COI and the other in favour of the accused proving his innocence, the rule of prudence should guide the Court to arrive at the inescapable conclusion which is in favour of the accused. Here, in this case, to give that benefit to the appellant, it has to be taken into account as to whether the appropriate authority was justified in dismissing the appellant based on the recommendation made by the COI? The apex Court, in **Kumari Shrulekha Vidyarthi and others v. State of U.P and others** (AIR 1991 SC 537), the apex Court held that the true import of the expression “arbitrariness” is more

easily visualized than precisely stated or defined and that whether or not an act is arbitrary would be determined on the facts and circumstances of a given case. The apex Court further observed thus:

“The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the ice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that ‘be you ever so high, the laws are above you’. This is what men in power must remember, always.”

While issuing show cause notice, the authority had considered the report of the COI, extract of which was made in the show cause notice. The assessment made by the competent authority invoking Section 19 of the Air

Force Act on the basis of the materials cannot be subjected to judicial review. It may be useful if we refer to the observations made by this Tribunal at Para 13 of the judgment dated 20.11.2009 in T.A No. 173 of 2009 (Wg. Cdr. Sushil Kumar v. Union of India and others), which read:

“Here the authority has passed the order in exercise of the powers conferred to it. It is the responsibility of such authority as the custodian of service discipline to maintain service discipline by interfering with for the sake of justice. The Tribunal cannot interfere or make judicial review of the decision given by that authority. In *Jamshed Hormusi Wadia v. Board of Trustees* (AIR 2004 SC 1815), the apex Court observed that the Courts are concerned with substantial justice and prevent to perpetuate grave injustice to the parties and whenever the order is one which shocks the conscience of the Court or suffers on account of disregard to the form of legal process or with violation of the principles of natural justice by the statutory provisions, the Court would interfere. The Court would never do injustice nor allow injustice to perpetuate which is in the sake of upholding technicalities. Here the order of the authority does not suffer from any illegality.”

10. It has next been argued on behalf of the appellant that in response to the show cause notice, a comprehensive reply, based on facts and evidence, was given by the appellant. Moreover, the impugned order is

issued without giving any reason which itself would speak about non-application of mind. To find out whether there is any substance in such contention, we have gone through the entire case records. We find that while passing the impugned order, the authority took into consideration all the relevant aspects, including the report of the COI and the recommendations made by the Chief of Air Staff. We may hasten to add that application of mind to the materials available to the competent authority is an essential pre-requisite for the making of a valid order. There is no quarrel with the well settled proposition of law that an order passed by a public authority exercising administrative or executive statutory powers must be just by reasons stated in the order or any record or file contemporaneously maintained. It follows that the infirmity arising out of absence of reasons cannot be cured by the authority passing order stating such reasons in the order or any record contemporaneously maintained. Here, in this case, reasons have been shown in the record contemporaneously maintained which is suggestive of taking into consideration all aspects to prove the misconduct on the part of the appellant. The act complained of must bear a forbidden quality and its

ambit has to be construed with reference to the service discipline. In **Union of India and others v. Harjeet Singh Sandhu** (2001(5) SCC 593), in the background of Rule 14 of the Army Rules, it was held that any wrongful act or any act of delinquency which may or may not involve moral turpitude would be 'misconduct' under Rule 14. Further, it was held by the apex Court in **Baldev Singh Gandhi v. State of Punjab and others** (2002(3) SCC 667) that the expression 'misconduct' means unlawful. Similarly, in **State of Punjab and others v. Ram Singh** (AIR 1992 SC 2188), apex Court held that the term 'misconduct' may involve moral turpitude. It must be improper or wrong behavior, unlawful behavior, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of duty; the act complained of bears forbidden quality or character. 'Misconduct', as stated in **Batt's Law of Master and Servant (4<sup>th</sup> Edition)** at **page 63**, is 'comprised positive acts and not mere neglects or failures'. The definition of the word, as given in **Ballentine's Law Dictionary (148<sup>th</sup> Edition)** is 'a transgression of some established and definite rule of action,

where no discretion is left except what necessity may demand, it is a violation of definite law, a forbidden act. It differs from carelessness’.

11. It is further argued on behalf of the appellant that the impugned order passed by the Government of India is without any reason and this itself is sufficient to construe non-application of mind in awarding extreme punishment. But the counsel for the appellant failed to bring to our notice any provision with regard to the necessity to give reasons in passing the order. It would be sufficient, as stated above, if reasons are stated in the record or file contemporaneously maintained. In this case, a comprehensive inquiry was conducted. Show cause notice was given and reasons were recorded on the contemporaneous record. No further reason therefore was required to be recorded separately.

12. In view of the above, we do not find any reason to interfere with the matter. The appeal is dismissed.

**(S.S DHILLON)**  
**MEMBER**

**(S.S KULSHRESTHA)**  
**MEMBER**