

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

T.A. 172 OF 2009

(W.P. (C) No.8851 of 2008 of Delhi High Court)

IN THE MATTER OF:

Maj. Gen. Anil Sarup**Applicant**
Through : Mr. Ashok Chhabra, counsel for the applicant

Versus

The Union of India and others**Respondents**
Through : Mr. R. Balasubramanian, counsel for the respondents

CORAM:

**HON'BLE JUSTICE MANAK MOHTA, MEMBER,
HON'BLE LT GEN Z.U.SHAH, MEMBER**

JUDGMENT

Date: 05 July,2011

1. The applicant had filed WPC 8851/2008 in the Hon'ble Delhi High Court on 12.08.2008 and the same was transferred to this tribunal on 28 Oct 09. The applicant has prayed that the Court of Inquiry(C of I) convened by HQ Western Command vide the order dated 15th Oct,08 (extract at Annexure P3 as stated by applicant) and further proceedings

thereon be quashed. An application (C.M. No. 16975/2008) was also filed along with Writ Petition for interim stay of inquiry proceedings.

2. The respondents filed their reply denying all the allegations and supported the Court of Inquiry and proceedings thereof. Rejoinder to reply was also filed and was perused.

3. The applicant was commissioned in Army Ordnance Corps (AOC) on 31st March 1972. He claims that he had a brilliant record of service and has done important courses like LDMC, NDC and is also the recipient of 3 COAS commendation cards. The applicant was promoted Maj General in Oct 04. The applicant states that on 7 Aug 08 a Special Selection Board was held to consider the applicant for promotion to the rank of Lt Gen. The result of the Selection Board was not declassified. The applicant has, however, learnt that his name was cleared for promotion to Lt Gen and that the case file was sent to the Ministry of Defence (MoD). The MoD, in turn, sent the file to the Appointment's Committee of the Cabinet (ACC). The applicant avers that in Sep/Oct 08 the ACC had also cleared his name for promotion and sent the file back to MoD on 15 Oct 08 for declassification of the results. The applicant

further contends that in Oct 08 the MoD had directed Army HQs to declare the results of the Promotion Board.

4. The applicant states that instead of declassifying the result of Promotion Board, on 15 Oct 08, HQ Western Command ordered a C of I (Annexure P3) against him which was instituted on the basis of an undated complaint from one Sh. V.P. Sharma despite the fact that earlier the Director General of Ordnance Services had carried out an in-house investigation and exonerated him. Sh R K Sinha Addl. Integrated Financial Adviser and Mrs Shivali Chauhan, Joint Integrated Financial Adviser of MoD had also not found any irregularity in the matter, after their investigations (Annex P-2).

5. We have perused the original record and from perusal of record, it is revealed that subject matter of the C of I was to investigate the allegations of irregularities in respect of purchases of stores as indicated in convening order of HQ Western Command dated 15.10.2008. The same is reproduced below :

“The Court of Inquiry shall investigate into the following allegations against IC-25856 Maj Gen Anil Sarup, the then ADG OS (TS), IHQ of MoD (Army) and any other officer :-

- (a) Purchase of Genr Set 100 KVA Company catalogue price of 100 KVA Kirloskar Genr Set is allegedly less than Rs. 6.50 lacs whereas the same has been purchased at a rate of Rs 14.50 lacs.
- (b) Purchase of Power Cables
 - (i) 240 sq mm 3 Core Item has been procured at the rate of Rs.11,000/- per mtr whereas market price is Rs 1,319/- per mtr.
 - (ii) 95 sq mm 3 Core Item has been procured at the rate of Rs 2,950/- per mtr whereas market price is Rs 569/- per mtr.
 - (iii) 70 sq mm 4 Core Item has been procured at the rate of Rs 1,670/- per mtr whereas price is Rs 591/- per mtr.”

6. The applicant states that the very purpose for which the C of I was instituted against him was to block his chances for promotion as there were two vacancies for Lt Gen due to fall vacant i.e. Commandant College of Material Management w.e.f. 1 Jan 08 and Director General of Ordnance Services (DGOS) w.e.f. 1 Nov 08. It is further submitted that as per convening order, C of I was assembled on 27 Oct 2008 onwards and recorded the statements of witnesses in violation of Rule 180 Army Rule.

It is alleged that there were also several lacunae in the conduct of the C of I namely :-

- a. The complainant Sh V P Sharma was not examined.
- b. The Commanding Officer (CO), 5/1 GR, Col Sanjiv Chauhan, an important witness, was not summoned.
- c. The star witness Maj S K Singh was permitted to submit an additional statement on 26 Nov 08 after the C of I had been concluded and the report sent to HQ Western Command on 18 Nov 08.
- d. Two witnesses requested for by the applicant to rebut the stand of Maj S K Singh were not summoned by the Court which ruled that their statements were immaterial to the proceedings.

7. It is submitted that the Hon'ble Delhi High Court passed the interim order on 15.12.2008 on this writ petition by the applicant directing that the allegations made in the petition be duly examined.

The order is reproduced as under :-

**“Learned counsel for the respondents
accepts notice. Counter affidavit, if any, be filed**

within four weeks. Rejoinder, if any, be filed within two weeks thereafter.

Learned Counsel for the respondents states that a decision on the issue of Court of Inquiry is still pending consideration. The pendency of this petition will not preclude a decision being taken on the issue of Court of Inquiry, but on the other hand we expect that while taking such a decision, the allegation made in the petition shall be duly examined."

8. It is revealed from the record that by that time C of I was over. Its report was submitted on 19.11.2008. Thereafter, the matter was again sent back to Presiding Officer of the C of I to examine the grievances of the applicant in view of Hon'ble High Court order. The applicant maintains that after conclusion of the C of I on 17 Nov 2008, Maj S K Singh submitted an application to the HQ Western Command giving further clarifications on his earlier statements before the C of I. HQ Western Command vide the letter dt 20 Dec 08 (page 97) addressed to the Presiding Officer of C of I, Lt Gen P C Katoch returned the C of I proceedings along with photocopy of letter dated 26 Nov 08 from Maj S K Singh. The C of I was directed to rectify the observations. The C of I was again assembled on 30.12.2008 to comply with direction of the convening authority. The statement of relevant witnesses were

recorded. The applicant states that he objected to reassembly of the C of I since Maj S K Singh's fresh averments were totally contrary to his earlier statement made by him before the C of I. On 30 Dec 2008 the Presiding Officer of the C of I ruled that witnesses could make additional statements at any time before conclusion of this C of I (Annex P-3 page 106). The applicant subsequently amended the writ petition adding additional points challenging the C of I and its further proceedings.

9. The applicant stated that he urged before the Presiding Officer that reassembly of the C of I permits only examination of grievances of the applicant as per observation made by the Hon'ble Delhi High Court in their order dated 15.12.2008, but after closure of the inquiry, the C of I cannot re-examine the witnesses who had already been examined or record the statements of new witnesses. The applicant also requested that the record of all earlier statements of Maj S K Singh and his statement recorded on 30 Dec 08 be provided to him to prepare his defence.

10. The applicant further stated that the Presiding Officer refused to furnish these in violation of Delhi High Court Judgment in case of **Maj O P Gupta v/s Union Of India 33(1987) DLT page 322** which rules that :

“Rule 184 provides for copies of the statements and the documents that affect him being made available to such an officer. This rule is primarily intended to enable the officer to defend himself or safeguard his interest that may follow as a consequence of Court of Inquiry. But its terms are wide enough to enable an officer to comply and obtain copies in the course of Inquiry itself. The Respondents were therefore strictly bound to comply these rules.”

11. The applicant has also stated that Army Rule 184 (2) was also violated. It reads as follows:

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

12. The applicant states that in view of his request for the statements of Maj S K Singh, he was only given 3 hours to peruse the statements and his request that he be given reasonable time and adjournment of the C of I by 7 days was not accepted.

13. The applicant further states that on re-assembly the C of I is to be guided by the specific written instructions of the Convening Authority. This was not done and the C of I started re-investigating matters in

violation of the terms of reference of GOC-in-C, HQ WC and in violation of High Court Order dt 15.12.08. Army Rule 179 sub section (1) and (5) read as under :

“The Court shall be guided by the written instructions of the authority who assembled the court. The instructions shall be full and specific and shall state the general character of the information required. They shall also state whether a report is required or not.

The Court may be re-assembled as often as the officer who assembled the court may direct, for the purpose of examining additional witnesses, or further examining any witness, or recording further information.

14. The applicant avers that the C of I summoned Sh. V P Singh on 3.1.09 without prior information to the applicant and after recording the statement the court adjourned the cross-examination for a subsequent date in which Sh. V. P. Sharma never appeared and the full complaint made by the latter was not provided to him. Further instead of summoning the C O 5/1 GR, Col Sanjiv Chauhan his reply was sought through a questionnaire and no opportunity to produce defence witnesses was provided to the applicant. Thus it was submitted that the C of I was bad in law and against the principles of natural justice. During

the course of arguments in support of his contentions learned counsel for applicant cited a number of judgments and we have perused them.

15. The respondents in the counter affidavit have stated the in view of the Hon'ble Delhi High Court directions on 15.12.08 the issues/allegations raised in the petition were duly examined and the directions of the convening authority were duly complied with. As per court observation dated 6 Jan 2009, the C of I proceedings had not been published after the conclusion of C of I on 28 Jan 09.

16. The C of I was ordered by HQ Western Command on 15 Oct 08 after preliminary investigations revealed the involvement of the applicant in financial irregularities. In its report of 30 Sep 08, it found substance in allegations of financial irregularities by the applicant. The applicant was considered for promotion to Lt Gen by Special Selection Board on 7 Aug 08 and the results of the same have not yet been declassified because before the results were declassified, clearance of Discipline and Vigilance Directorate had to be obtained. Since the results were never declassified the applicant can not claim that his name has been approved for promotion by the ACC. The applicant must explain how he has claimed that his name was cleared for promotion by the

MoD and the ACC. This is confidential information and is not made public before the results of the Board are declassified.

17. The respondents state that the C of I was instituted after the complaint of Sh. V . P. Sharma was investigated as per Army order 4/2000. It was submitted that during preliminary investigation the applicant submitted a detailed reply on the alleged allegations. The record of the same was produced for the perusal of the court. Sh V P Sharma was summoned as witness. Sh V. P. Sharma was provided an opportunity to make a statement and after that duly stated "I have given everything in writing in respect of the complaint made by me. I have nothing more to state in this regard." The applicant was given an opportunity to cross examine the witness under Army Rule 180 and has signed that the same was complied with. The applicant stated that before C of I he requested that the complete complaint of Sh. V P Sharma be provided to him so that he could cross examine the witness. The Court brought out that it was only investigating alleged impropriety in procurement of 100 KVA Generator set and power cables and all relevant documents pertaining to these procurements had already been provided to the applicant. The Court ruled that:

“The request of Maj Gen Anil Sarup to get a signed copy of the full complaint of Shri Vijay pal Sharma is irrelevant to this court where in extracts of the relevant portions of the allegations have been received along with the convening order issued by HQ Western Command. As regards his request for tallying signatures are concerned Shri Vijay Pal Sharma stated that he has put his initials in the complaint, which is an issue not relevant to the court. Maj Gen Anil Sarup is being afforded yet another opportunity to cross examine Shri Vijay Pal Sharma under AR 180.”

18. The respondents state that the applicant was given an opportunity to cross examine Sh V P Sharma but he declined on the pretext that credentials of Sh V P Sharma had not been verified. At a subsequent date however, the applicant desired to cross examine Sh V P Sharma and efforts were made to secure his presence. The C of I had limited writ to secure attendance of Sh V P Sharma for repeated cross examination by the applicant. The applicant, however, was asked to submit a questionnaire for Sh V.P. Sharma. That he never submitted.

19. The respondents have stated that the physical presence of CO 5/1 GR was not possible as he was serving abroad on a UN assignment. The court had sent him a questionnaire. The reply of CO 5/1 GR was

shown to the applicant who refused to put any question by way of cross-examination.

20. On the matter of reassembly of Court of Inquiry the respondents have stated that the directions issued by the GOC-in-C, HQ Western Command were clear and specific, as was required under Army Rule 179 and the grievances of the Petitioner were addressed. A C of I can be assembled as often as the convening authority may direct, for the purposes of examining additional witnesses. The C of I permitted Maj S K Singh to bring on record additional documents and facts. This did not in any way violate Army Rule 179. The Respondents state that the applicant was allowed to cross examine Maj S K Singh exhaustively and he had rendered a certificate that Army Rule 180 had been complied with.

21. The respondents state that the applicant had requested two additional witnesses namely Lt Col Amit Sandhu OS Directorate and Maj Sameer Bhatnagar Adjutant CMM Jabalpur. The C of I ruled that these were not relevant witnesses as they were in no way involved in procurement of UN Additional Stores and the said witnesses were not posted in OS Directorate during the period in question. The C of I

therefore declined permission for examination of these witnesses. The C of I also ruled that other documents, requested for by the applicant, were not relevant to the Court of Inquiry as they pertained to the period prior to 02 Aug-08 and the applicant himself was the originator of the documents in question. Hence, there was no requirement to procure these documents.

22. The respondents state that the applicant wanted to prove that Maj S K Singh was mentally unstable and thus was an unreliable witness and he therefore requested that Maj S K Singh be medically examined. The C of I ruled that medical examination of Maj S K Singh was not necessary as he was on duty and discharging his duties. The Learned Counsel for the respondents also cited judgments in support of his contentions.

23. In a rejoinder submission the applicant had stated that the respondents did not consider the observation of Hon'ble Delhi High Court which directed the authorities that grievances of the applicant be considered by the C of I. The Convening Authority, GOC-in-C HQ WC, had directed the Presiding Officer to "rectify the observations at the earliest in compliance of the court order". There were no instructions

on the reassembly of the C of I. In violation of these directions the Court was reassembled on 29.12.2008. The applicant also reiterated the points given earlier with regard to violation of Army Rule 179.

24. The applicant further submits that on 29 Dec 08 the statement of Maj S K Singh was again recorded and he made a statement totally contrary to his earlier statements of 30 Oct 08 and 17 Nov 08. The applicant avers that Maj S K Singh gave his medical condition as reasons for change of his statement. This was the reason why he (applicant) requested for a medical examination of Maj S K Singh to ascertain his mental condition. The C of I however, passed the order that "witness can make an additional statement at any time. This court sees no reason to ask for medical examination".

25. The applicant avers that copies of documents requested for by him were not given. He was only permitted to inspect the required files.

26. The applicant states that the court fixed 12 Jan 09 for cross examination of Sh V P Sharma but he did not appear and instead he (V P Sharma) requested that a questionnaire be forwarded to him with necessary questions.

27. We have heard the arguments and perused the C of I and other records as well. We have also perused the judgments cited by both sides keeping in view the relevant Army Rules and Regulations. First of all, we should discuss the judgments cited by the applicant.

- (i) **HANUMAN RAM V/S STATE OF RAJASTHAN AND OTHERS** (2008) 15 SCC 652 is related to section 311 Cr.P.C. with regard to scope of recalling of the witnesses.
- (ii) **S K DAHIYA (LT GENERAL) VS UNION OF INDIA & ORS** 2007 AD (DELHI) 699 is related to scope of Army Rule 180 and 184(2).
- (iii) **WASIM BEG AND STATE OF UP AND OTHERS** 1998 FLR, PAGE 910 is with regard to principle of natural justice. It has been observed that before discharge an opportunity of being heard be given.
- (iv) **MOHANLAL SHAMJI SONI V/S UNION OF INDIA AND ANR.** 1991 (3) RCR, 182 is related to section 311 Cr.P.C. This case is with regard to scope of production of additional evidence. It has been observed that power should not be used for filling up lacuna.
- (v) **HARI SINGH V/S STATE OF HARYANA** 2002 (2) RCR (CRIMINAL) 316 is also related to section 311 Cr.P.C. The same ratio has been reiterated that power should not be exercised to fill up the lacuna.
- (vi) **VADIRAJ NAGGAPPA VERNEKAR V/S SHARADCHANDRA PRABHAKAR GOGATE** (2009) 4 SCC 410 is related to Order 18 Rule 17 CPC for recalling of the witnesses after examination is completed. It has been observed that it is not intended to fill up the omissions in the evidence.
- (vii) **MAJOR O P GUPTA V/S UNION OF INDIA & ORS** 33 (1987) DLT 322 is related to Army Rule 184 which is already narrated above.

- (viii) **MANJEET SINGH (NAIB SUBEDAR) VS UOI & ORS.** 2008 AD (DELHI) 83 in this case, petitioner was granted opportunity of cross-examination after the enquiry was concluded. But no opportunity was granted to him at the time of enquiry and later on he was awarded punishment for severe displeasure and it was observed that Army Rule 180 had not been complied with.
- (ix) **MEENGLAS TEA ESTATE, V/S THE WORKMEN,** AIR 1963 SUPREME COURT 1719 is related to industrial dispute in which a disciplinary enquiry consisting putting questions to workmen that was found with reference to context against principle of natural justice.
- (x) **RAKESH & ANOTHER V/S STATE OF HARYANA** 2005 (3) RCR PAGE 757 is related to criminal law. In this case it was held that cross-examination without there being any examination in chief is not permissible.
- (xi) **SUB VED PRAKASH V/S UNION OF INDIA** IN COURT NO.2 ARMED FORCES TRIBUNAL M.A. NO. 121/10 IN O.A. NO. 108/10, it was observed in this case that there were 25 witnesses whose statements were given at the Court of Inquiry. Out of these witnesses, 5 witnesses deposed their statements, one witness did not appear and sent his statement by post and remaining witnesses no. 7 to 25 merely handed over written submissions. Statements were not recorded in the presence of petitioner nor right to cross-examine was properly given. With that background, it was found that provisions of Army Rule 180 had not been complied with.
- (xii) **STATE OF MAHARASHTRA AND OTHERS V/S RAVI PRAKASH BABULALSING PARMAR AND ANOTHER** (2007) 1 SCC 80 is related to appreciating and adducing of evidence in administrative side.
- (xiii) **SUBODH SHUKLA V/S UNION OF INDIA & OTHERS** 2008 (7) SLR 766, it was observed that a Govt. Servant can not be punished without giving him proper opportunity to defend himself in violation of principle of natural justice. In this case request of

delinquent for examination of witnesses and supply of documents was rejected.

- (xiv) **M/S TRITON VALVES LTD V/S LABOUR COURT, MYSORE AND ANOTHER** 1999 (81) FLR 577(KARNATAKA HIGH COURT) was related to domestic enquiry. In that case despite direction by the inquiry authority, management refused to produce documents. In that reference inquiry was held invalid.
- (xv) **BODH SINGH THAKUR V/S STATE AND OTHERS** 2001 (88) FLR 420, it was observed that in absence of statutory rules, principal of natural justice are to be followed.
- (xvi) **KUMAON MANDAL VIKAS NIGAM LTD V/S GIRJA SHANKAR PANT & OTHERS**, SC 2000 (87) FLR 877, it was observed that doctrine of natural justice is not only to secure justice but also to prevent miscarriage of justice. In that case supported documents were not made available.
- (xvii) **SOUTH BENGAL STATE TRANSPORT CORPN V/S SAPAN KUMAR MITRA AND OTHERS** (2006) 2 SCC 584, in this case it was found that relevant documents were not supplied. Scope of supply of domestic enquiry report before punishment is awarded, dealt with.
- (xviii) **C. NAGARAJA BHAT V/S THE CANARA BANK** 1988 (57) FLR PAGE 722. This case was related to Canara Bank Officer Employees' (Discipline and Appeal) Regulations 1976. It was observed that the principle of natural justice in conducting enquiry by Enquiry Authority is required.
- (xix) **SHANKAR GOPAL PAGIRE V/S STATE TRANSPORT CO-OPERATIVE BANK LTD AND OTHERS** 2004 (103) FLR 770 was related to domestic enquiry in banking institution. The conduct of enquiry was found biased in conducting enquiry and on that ground it was quashed.
- (xx) **MOHD YUNUS KHAN V/S STATE OF UTTAR PRADESH AND OTHERS** (2010) 10 SCC 539, it was found that Authority initiating disciplinary proceedings, becoming a witness therein,

accepting enquiry report and imposing punishment. That was held to be not permissible.

- (xxi) **ASHUTOSH SEN GUPTA V/S W.B. BOARD OF SECONDARY EDUCATION AND OTHERS** 1999 FLR 335, it was observed that doctrine of natural principle is applied also to administrative proceedings.
- (xxii) **THE WORKMEN OF MADURA CO. LTD V/S THE LABOUR COURT, QUILON AND ANOTHER** AIR 1966 KERALA 167 was related to industrial dispute. The scope of natural justice has been explained in domestic enquiry. In that reference it was held that enquiry officer should not begin the enquiry by a close examination of the workman charged.
- (xxiii) **EMPLOYERS OF FIRESTONE TYRE AND RUBBER CO. (PRIVATE) LTD V/S THE WORKMEN** AIR 1968 SC 236 relates to Industrial Dispute Act. The scope of natural justice has been dealt with.
- (xxiv) **BHARAT SINGH AND OTHERS V/S STATE OF HARYANA AND OTHERS** AIR 1988 SC 2181 was related to Land Acquisition Act while dealing with the scope of Order 6 Rule 1 CPC. It was observed that facts first must be pleaded and then to be proved by documentary evidence. It was observed that party raising the point must plead and annex to the petition not only the facts but also evidence in proof of the facts.
- (xxv) **ATUL CASTING LTD V/S BAWA GURVACHAN SINGH** (2001) 5 SCC 133 was related to Rent Control and Eviction suit. It was observed that findings were not based on necessary pleading and not sustainable in law.
- (xxvi) **NITYANANDA GHOSE V/S (B.C.) AND OTHERS**, matter no. 146 of 1961 decided on 19.01.1962 by Hon'ble Calcutta High Court was related to domestic enquiry with regard to railway servant. In that case it was found that evidence of opportunity of examining the witnesses of the same railway administration was denied on the ground that their evidence would be irrelevant. In this case, the petitioner was found guilty of destroying some pages of the cigarette stock register Sealdah North Station Cigarette Stall. It appears that the petitioner in

the course of inquiry asked for examination of the two witnesses, namely, Superintendent of Catering and Chief Catering Inspector. In that respect observation was made.

- (xxvii) **A. K. KRAIPAK AND OTHERS V/S UNION OF INDIA & OTHERS**, AIR 1970 SC 150, it was observed that principle of natural justice are also applicable to administrative enquiries.
- (xxviii) **HARYANA FINANCIAL CORPORATION AND ANOTHER V/S JAGDAMBA OIL MILLS AND ANOTHER** (2002) 3 SCC 496, it was observed that doctrine of fairness is complementary to the principles of natural justice, which quasi-judicial authorities are bound to observe.
- (xxix) **D K YADAV v/s M/S J.M.A. INDUSTRIES LTD**, 1993 (67) FLR 111 SC, the scope of natural justice explained. It was observed that there is no distinction between quasi-judicial and administrative function. In this case it was found that no opportunity was given to applicant and no enquiry was held. He was penalized and this was found violative of principle of natural justice.
- (xxx) **UNION OF INDIA & ANR V/S CHARANJIT S. GILL & ORS** 2000 (4) SCALE, PAGE 221 was related to court martial proceedings. Relevant provisions of Army Act were dealt with.
- (xxxi) **CANARA BANK AND OTHERS V/S DEBASIS DAS AND OTHERS** (2003) 4 SCC 557 was related to Bank Officers Employees Conduct Regulations Act. The importance of principle of natural justice in such proceeding was dealt with.
- (xxxii) **STATE OF UTTARANCHAL AND OTHERS V/S KHARAK SINGH** (2008) 8 SCC 236 was related to departmental enquiry. It was held that enquiry should not be an empty formality. A witness should not be the enquiry officer and evidence should be held in the presence of charged employee.
- (xxxiii) **DELHI TRANSPORT CORPORATION V/S 1. PRESIDING OFFICER, ADDITIONAL INDUSTRIAL TRIBUNAL 2. SHRI MOHINDER SINGH** 1979 DLT 220, it was observed that if the evidence

consists of the statement of a witness, then the witness should be made available for being cross-examined.

- (xxxiv) ***SURJIT KAUR V/S D. S. KAPOOR AND OTHERS*** 2009 AD (DELHI) 322 was related to Indian Penal Code wherein scope of section 33 of Evidence Act with regard to previous statement of dead person has been dealt with.
- (xxxv) ***KHARAITI LAL & SONS HUF V/S HARI SINGH & ORS.*** 97 (2002) DLT 303 (DB), furnishing copy of questions proposed to be asked from Defendant with a view to conclude the cross-examination expeditiously was not approved.
- (xxxvi) ***SHREE KRISHNA AGRO INDUSTRIES V/S NORTH DELHI POWER LTD.*** 122 (2005) DLT 568, the scope of opportunity of cross-examination and providing copies of the documents to make effective defence has been dealt with.

28. We have also gone through the judgments cited by the Ld. counsel for the Respondents :

- (i) ***MAJOR SURESH CHAND MEHTA VERSUS THE DEFENCE SECRETARY (Union of India) AND OTHERS*** AIR 1991 SC 483, in this case it was observed that enquiry under Army Rule 177 (1) can not be equated with trial. That enquiry is in nature of preliminary investigation.
- (ii) ***MAJOR G S SODHI VERSUS UNION OF INDIA*** (1991) 2 SCC 382, it was observed that object and effect of rules should be considered bearing in mind the general principle whether such incomplete compliance has caused any prejudice to the delinquent officer. However, if there is any violation of mandatory rules necessary benefit of the same should be given to the delinquent.
- (iii) ***UNION OF INDIA AND OTHERS V/S MAJOR A HUSSAIN*** (1998) 1 SCC 537, it was observed that mere want of proper and adequate pre-trial investigation would not, in absence of prejudice to the accused or violation of a mandatory provision, vitiate the court-martial proceedings.

- (iv) **MAJOR GENERAL INDER JIT KUMAR VERSUS UNION OF INDIA AND OTHERS** (1997) 9 SCC 1, it was observed that Court of Inquiry are in the nature of a preliminary enquiry. Further it was observed that adequate protection is given to the person affected under Army Rule 180.
- (v) **RAM SUNDER RAM VERSUS UNION OF INDIA AND OTHERS** (2007) 13 SCC 255, in the case, it was found that on the basis of evidence collected during Court of Inquiry appellant was found guilty in a racket of clandestine sale of petrol. Order of discharge from army service passed under Rule 20 was maintained.
- (vi) **UNION OF INDIA AND OTHERS V/S FILIP TIAGO DE GAMA OF VEDEM VASCO DE GAMA**, (1990) 1 SCC 277, it was observed that court should adopt a construction which would advance the object and purpose of the provision or the statute.
- (vii) **STATE BANK OF PATIALA AND OTHERS VERSUS S K SHARMA** (1996) 3 SCC 364, it was observed that validity of orders has to be tested on the touch stone of prejudice

29. Keeping in mind the principles enumerated in the aforesaid judgments given by the Hon'ble Courts, we examined the facts and circumstances of the case.

30. The contentions of the applicant that the Director General of Ordnance Services had exonerated the applicant in the in-house investigation is not factually correct. On the contrary, the investigation report dated 30 Sep 08 substantiated the allegations with regard to procurement of 100 KVA Generator Set and power cables. On the basis

of this report, a C of I was convened after due consideration by the COAS. Thus contentions raised in this respect are not tenable.

31. Maj Gen Anil Sarup was considered by a special Selection Board for promotion to the rank of Lt Gen held on 07.08.2008. On that date he was not on a disciplinary/vigilance ban and, thus, “the sealed cover procedure” was not applicable. The submissions made in the main petition and judgments cited in this respect are of no help to the applicant. The results of the board were never declassified and it is apparent that the applicant has quoted classified information, which could only have been obtained by underhand means, as brought out by the respondents during the course of arguments. The applicant failed to disclose the source of his information and thus such an averment does not help his contention. The applicant thereafter had filed separate writ no. 879/09 in this respect before the Hon’ble Delhi High Court, which has also been transferred to this Tribunal and is still pending.

32. Before the declassification of the results, the respondents had received a written complaint submitted by Sh. V.P. Sharma, Advocate, Supreme Court, alleging financial irregularities on the part of the

applicant in procurement of stores for troops proceeding on UN assignment.

33. A Court of Inquiry was ordered by GOC-in-C, HQ Western Command, vide convening order dated 15.10.2008. The C of I commenced on 27.10.2008 and initially concluded on 18.11.2008 when the presiding officer forwarded the C of I to HQ Western Command.

34. While the C of I was being processed in HQ Western Command, Hon'ble Delhi High Court issued order on 15.12.08 (supra) and an important witness, Maj S.K. Singh, submitted an additional statement on 26.11.2008. HQ Western Command returned the C of I to the presiding officer on 20.12.2008 (page 97) along with photocopy of letter dated 26.11.2008 written by Maj S.K. Singh, wherein the officer had stated that he had been requested by the applicant to appear in his defence, but later shifted the complete responsibility for procurement of stores on him (Maj S.K. Singh). It is apparent that sending of this letter dated 26.11.2008 was itself a direction to C of I to further investigate the matter.

35. On receipt of directions from HQ Western Command, the C of I was reassembled in accordance with Army Rule 179(1), which specifies that

“The Court shall be guided by the written instructions of the authority who assembled the court. The instructions shall be full and specific and shall state the general character of the information required. They shall also state whether a report is required or not.”

36. Army Rule 179 (5) further dealt with scope of reassembly which reads as under :

“The Court may be reassembled as often as possible as the officer who assembled the Court may direct for the purpose of examining additional witnesses, or further examining any witness, or recording further information”.

37. We have seen the order of GOC-in-C dated 20.12.2008 in which there is reference of Maj S K Singh’s letter dated 26.11.2008. Further it was indicated in that order that detailed instructions would follow shortly. The said order is reproduced as under :

“1. Ref your letter No DGIS/COI dt 18 Nov 08.

2. Three copies of subject C of I proceedings (Original Copy, Copy No 3 and Copy No 4) recd vide your letter under ref are returned herewith along with photocopy of letter No 54365/SKS/Pers/C of I

dt 26 Nov 08 written by IC-54365H Maj S K Singh, DDOS TS (Coord) and W.P.(C) No. Filed by the Maj Gen Anil Sarup in Delhi High Court. You are requested to rectify the obsns at the earliest in compliance of the Court Order. Copy No 2 has been retained by this HQ for necessary action.

3. Due to shortage of time, detailed obsns have not been made so far. However Lt Col A K Chandra, Offg Dy JAG this HQ (Tele No 2808 and 2809) will be briefing your staff on as reqd basis.

4. This letter may pl be downgraded to UNCLAS after detaching its encls."

38. On the basis of aforesaid material, the reassembly of the C of I by the convening authority and its examination of additional witnesses and documents was in order and in accordance with Army Rule 179. The contentions raised in this respect that there was lack of specific direction for further investigation are not having legal force in light of Hon'ble Court direction and directions of GOC-in-C dated 20.12.2008. Judgments cited in this respect are of no help.

39. From a perusal of the C of I, it is clear that the complainant Sh V.P. Sharma appeared as witness No.20 on 03.01.2009 and stated ***"I have given everything in writing in respect of the complaint made by me. I have nothing more to state in this regard"***. The applicant was given an opportunity to cross-examine Sh V.P. Sharma, but chose not to do so till

a copy of the complete complaint was provided to him. The C of I clarified to the applicant that it was only investigating alleged impropriety in procurement of 100 KVA generator set and power cables and that all relevant documents pertaining to these items had already been provided to the applicant. The C of I again provided another opportunity to the applicant to cross-examine the witness explaining that since the latter was a Supreme Court lawyer it would be difficult to summon him again. Maj Gen Anil Sarup declined and maintained his earlier stand. Subsequently, the C of I could not obtain the presence of Sh V.P. Sharma and the applicant was provided an opportunity to forward a questionnaire to him but declined. We are of the opinion that demand by the applicant for the full complaint by Sh V P Sharma was not relevant as the matter under investigation pertained only to procurement of 100 KVA Generator and power cables. Relevant material portions pertaining to these items had already been given to the applicant and full opportunity to cross-examine Sh V P Sharma was also provided. During the course of arguments, it was also submitted by the Learned Counsel for the respondents that copy of complaint was provided to the applicant and he submitted a long reply. Thus he was

fully aware of the facts. These facts were not rebutted by the applicant during arguments. Apart from this, an opportunity for cross-examination was provided to him. Therefore, the contentions are not sustainable. We do not find any violation of principle of natural justice in this respect.

40. The presence of C.O. 5/1 GR Col Sanjeev Chauhan could not be obtained by the C of I as the officer was serving abroad with his unit on an UN assignment. In such a situation, in C of I, as per Army Order 21/2000 reply can be obtained by sending questionnaire. A questionnaire was sent to him in accordance with Army Order 21/2000 Sub-Para 1(f) and his reply was received. The applicant was asked to put any questions on the same but declined to do so. The contentions raised in this regard are not sustainable. The Army Order 21/2000 para (f) is quoted as under :

“In investigations by courts of inquiry, whenever possible, signed statements of witnesses from outside the station or command will be obtained and attached to the proceedings instead of such witnesses being called to the place where the court of inquiry is held, to give oral evidence. In the event, however, of cross-examination being desired after receipt of such statements by persons whose character or military reputation is affected, the witnesses may be moved only after

examining the desirability of getting answers to the questionnaire by post.”

41. The two additional witnesses Lt Col Amit Sandhu and Maj Sameer Bhatnagar, requested for by the applicant in his defence, during the C of I were not relevant to the case and thus, the request of the applicant was disallowed by the C of I on justifiable grounds.

42. On the basis of aforesaid discussions, we are of the opinion that Court of Inquiry has properly followed the principle of natural justice and relevant directions. The judgments cited by the appellant side are not helping his contentions. Ample opportunity for cross-examination had been provided. Questionnaires to the relevant witnesses were provided as per above mentioned circulars. Such procedure is not found arbitrary. We do not find any illegality or infirmity in the C of I proceedings which warrants any interfere. Thus, no material irregularity has been committed which has caused prejudice to the applicant.

43. We have perused the C of I proceedings and on the basis of aforesaid discussions, we are of the opinion that due importance has been given to comply with Hon'ble Delhi High Court's direction as well the direction given by GOC-in-C on the letter of Maj S K Singh and the C

of I has given full opportunity to the applicant in compliance with Army Rule 180. The applicant has rendered a certificate that Army Rule 180 was complied with.

44. From a perusal of the C of I, which is in the nature of preliminary investigation and is to be seen accordingly. The principle of natural justice had been adhered to. It is apparent that at every stage the applicant adopted delaying tactics. The Presiding Officer of the C of I has endorsed this aspect in the C of I proceedings.

45. Thus, on the basis of aforesaid material, all the contentions placed by appellant side for quashing the order of convening C of I and further proceedings are not sustainable and liable to be rejected. In view of the above, we do not find any merit in the application. The same is dismissed. Interim orders on the subject stand vacated. No costs.

Z.U. SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on 5th day of July, 2011