ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No.49 of 2012

Monday, the 22nd day of July 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER-JUDICIAL)
AND
THE HONOURABLE LT GEN (RETD) ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

IC-25415 A, Ex-Col, D.D.Pawar,
S/o Late D.Y. Pawar
aged about 64 years
"Gurukripa", 3rd Main, 7th Cross
Kalyan Nagar, Dharward,
Karnataka, Pin-580007. .. Applicant

By Legal Practitioner:
M/s. M.K. Sikdar
and S.Biju

vs.

1.Union of India
Through the under Secretary
Government of India
Ministry of Defence, South Block
New Delhi-110 011.

2. The Chief of the Army Staff
Army Head Quarters
DHQ – P.O, New Delhi-110 011. .. Respondents

By Mr. B.Shanthakumar, SPC

ORDER

(Order of the Tribunal made by
Hon'ble Lt Gen Anand Mohan Verma,
Member-Administrative)

1. This O.A. has been filed seeking relief to quash dismissal order No.C/06270/SC/76/AG/DV-2/284/D(AG) dated 30th January 2002 as the respondents failed to comply with the order dated 11th June 2010 in T.A.No.53 of 2010 and to direct the respondents to re-instate the petitioner with due promotion to the rank of Brigadier notionally and grant pension to the petitioner with exemplary interest and costs and pass such further or other orders as deemed fit.

2. The petitioner in his W.P.No.20468 of 2002 in Andhra Pradesh High Court which was filed to seek similar relief as this O.A. had raised most of the arguments enumerated in this application. The respondents had filed a detailed counter. The said W.P. was transferred to this Tribunal and was re-numbered as T.A.No.53 of 2010 in which order was passed on 11th June 2010 by this Tribunal. In the order, the arguments by the petitioner and the respondents had been mentioned. However, the order related primarily to the disposal of the statutory complaint and the other arguments were not analysed in detail.

3. For reasons of clarity, it is necessary to summarise the facts chronologically before examining the arguments. The petitioner was posted to 60 Company ASC (Unit) on 13th February 1995. In March 1995, an incident took place in the unit concerning an IOC Challan No.1366 dated 13th March 1995 for supply of 12000 litres of 87 MT Gas which had not been taken on charge. On 17th July 1995, the Local Audit Officer reported irregularities and on 21st July 1995, a Unit Court of Inquiry(CoI) was ordered of which Captain Nirbhay Kumar of the same Unit was the Presiding Officer. The Unit CoI opined that a Staff Court of Inquiry is required. In August 1995, a Board of Officers was convened by HQ Andhra Sub Area to audit the FOL held by the Unit, between 1st January 1995 and 31st August 1995 on the basis of an anonymous complaint. The Board of Officers submitted its report on 30th September 1995 in which it was brought out that the documents had been tampered with by the dealing staff on 8th September 1995 onwards. On 23rd September, 1995, first Staff Court of Inquiry was ordered with a Colonel as Presiding Officer to investigate into irregularities in FOL accounting of 12000 litres of 87 MT Gas. This Court of Inquiry submitted its proceedings and based on its opinion, GOC ATNK&K and G Area directed vide his order dated 26th February 1996 that a fresh Court of Inquiry to investigate the case further be ordered. On 16th January 1996, the petitioner was attached with

Station Headquarters, Secunderabad. On 14th March 1996, the second Court of Inquiry was ordered with Brigadier PKS Prasad as Presiding Officer to investigate into misappropriation/theft of 12000 Ltrs. 87 MT Gas in order to establish culpability or lapses, if any, on the part of officers, JCOs and OR of the Unit. The CoI opined that the petitioner, besides other personnel, was to be blamed for certain lapses. GOC Area on 27th November 1996 directed that disciplinary action be initiated against the petitioner and other personnel who were found blameworthy and another Court of Inquiry be ordered to investigate into involvement of personnel of the Unit in falsification of documents. The third Court of Inquiry was ordered on 17th December 1996 to investigate into involvement of certain other personnel of the Unit in falsifying documents and reveal any other irregularity. GOC directed, based on the opinion of this Court of Inquiry on 21st November 1997, disciplinary action against those who were involved as also gave his recommendation with regard to regularising the loss due to misappropriation. A certain part of the financial loss was to be paid by the petitioner too. D.V. Ban was imposed on the petitioner on 24th December 1996 and he was attached to No.1 EME Centre, Secunderabad. Summary of Evidence was ordered to be recorded on 17th February 1997 following which General Court Martial was ordered on 28th January 1999. In February 1999, the petitioner filed

W.P.No.3859 of 1999 in Andhra Pradesh High Court with a request to stall the trial by GCM as it was time-barred by limitation in terms of Army Act Sections 122 and 121. The petitioner also filed W.P.No.11095 of 1999 requesting the Andhra Pradesh High Court to declare the policy of Army Headquarters regarding imposition of DV Ban in respect of army officers as unlawful, unconstitutional and therefore ultra vires the Constitution. The High Court passed a common order on 25th April 2011 in these two petitions along with Writ Petition No.6583 of 1999 filed by Captain Sukhjinder Singh who had challenged his trial. All three petitions were dismissed. The petitioner filed W.A.No.687 of 2001 against the Court order in W.P.No.3859 of 1999. On 21st June 2001, the High Court directed that the respondents may continue with the GCM and the petitioner was not to be placed under arrest. The GCM commenced on 22nd June 2001. On 3rd July 2001, W.A.No.687 of 2001 was dismissed by the High Court. On 6th July 2001, the petitioner raised a plea in Bar in the GCM which was allowed and which was confirmed by the GOC-in-C, Southern Command on 19th August 2001. A Show Cause Notice under the provisions of Army Act Section 19 read with Army Rule 14 was issued to the petitioner on 12th November 2001 to which the petitioner replied on 24th December 2001. The order dismissing the petitioner without pension benefits was issued on 30th January 2002. The

petitioner filed W.P.20468 of 2002 in Andhra Pradesh High Court requesting the High Court to quash the dismissal order and to direct the respondents to consider the case of promotion for the petitioner and in the alternative declare that the petitioner be entitled to receive his terminal benefits together with interest at the rate of 18% per annum till the date of actual payment. The W.P. was transferred to this Tribunal and it was numbered as T.A.No.53 of 2010 in which the order was passed by this Tribunal on 11th June 2010 directing that the Statutory Compliant of the petitioner be forwarded to the Central Government within one month. The petitioner filed M.A.No.17 of 2011 on 9th February 2011 praying for re-opening of T.A.No.53 of 2010 since the Tribunal's order in T.A.No.53 of 2010 had not been complied with till then. In the order in this M.A. passed on 22nd March 2011, the Tribunal noted that it was unfortunate that neither party informed the Tribunal on 11th June 2010 that the statutory compliant had been returned by the respondents to the petitioner even before the date of passing the order in the above mentioned T.A. During the hearing the petitioner was ready to re-present the complaint dated 24th January 1998 which had been returned to him in February 1998 and the Senior Central Government Standing Counsel was willing to receive the same and forward to the Central Government. The Tribunal reiterated its order in M.A.No.17 of 2011 its earlier order passed in

T.A.No.53 of 2010 that after receipt of statutory complaint, the first respondent was directed to dispose of the complaint within three months. The present O.A. was filed on 25th June 2012 and till then, the Tribunal's order in M.A.17 of 2011 had not been complied with. The respondents had asked for some additional time of three months for disposal of the complaint. Some documents had been asked for by the respondents from the petitioner with regard to the compliant which were provided and statutory complaint was rejected by the Central Government vide its Order dated 7th December 2012.

4. There are substantial similarities in the instant O.A. and W.P.No.20468 of 2002. Importantly, the reliefs asked for in the two petitions are the similar. We consider it necessary to enumerate the issues raised by the petitioner in the instant O.A., even though most of them have been covered in the order by this Tribunal in T.A.No.53 of 2010, in order to relate them to the facts of the case and for ascertaining their veracity.

5. The petitioner would plead his case through this O.A. Written Arguments placed before this Tribunal on 8th July 2013 and pleadings of the learned counsel Mr. M.K. Sikdar. He would submit that he had been warned by Major General S.C. Malik during a visit in December 1995 to be part of the system and not be a revolutionary type. He also claimed that he was selected to be posted to the Unit following

request to this effect from Commander sub Area. On the issue of Statutory Complaint, the petitioner would emphasize that the respondents did not redress the Statutory Complaint even after two orders by this Tribunal. He would claim that the Statutory Complaint had been returned to him arbitrarily on 10th February 1998. He would submit that despite the fact that he had provided relevant documents to the respondent, the complaint is yet to be disposed of. In the Written Arguments, the petitioner would submit that the respondents did not comply with the order of the Tribunal within the time given and would claim that rejection of the Statutory Complaint was no more relevant to this case as the petitioner has challenged the dismissal order. The petitioner would submit that Captain Sukhjinder Singh had a relationship with the then Area Commander who dropped grave charges against him, that is Captain Sukhjinder Singh. He would also submit that Major Jai Singh, who played a crucial role in the irregularities, is son of a General Officer and son-in-law of another General Officer. He would submit that the respondents directed many Courts of Inquiry arbitrarily against him and in none of the Courts of Inquiry, there was adequate material to substantiate any of the charges levelled against him. He would claim that the second respondent extended his service by two years from 31st January 2000 as he was maintaining very clean and high service profile. He would

claim that the GCM had closed the trial under the directions of the Hon'ble High Court in W.P.No.3859 of 1999 by accepting the plea in bar. The petitioner would argue that the respondents did not make available to him relevant documents and denied cross-examination of the witnesses and thus prevented him from conducting an effective defence of his case. In the Written Arguments, the petitioner would submit that his case rests on three main issues, viz., the impugned order of dismissal was a colourable and mala fide exercise of power; the impugned order without the proof of the charges beyond reasonable doubt was violative of Principles of Natural Justice, fair play and denial of reasonable opportunity to defend, and ; the impugned order is highly harsh, disproportionate, biased, mala fide and unreasonable. Five charges were inflicted on him, however no F.I.R. was lodged against him and no laboratory test was carried out to prove the charges of mixing of different grades of POL products. He would claim that in spite of several enquiries, there was no blame of direct involvement of the petitioner in causing any misappropriation as mentioned in the Show Cause Notice. He would cite a judgment in the case of **Harjeet Singh Sandhu** in **2001 (5) SCC 595** to further substantiate his claim that the Respondents had erred in initiating action against him under Section 19 AA. While praying for the relief that he has asked for, the petitioner would request for liberty to

approach the respondents for other service benefits such as consideration for promotion.

6. The respondents in a short counter-affidavit would submit that though the petitioner claims to have initiated actions to eradicate corruption, he, after the misappropriation of 12000L of 87 MT Gas came to light, would claim that there was no misappropriation and it was just a result of incomplete documentation which brings out the double standards of the petitioner. The respondents would claim that an incident such as sale of 12000L of 87 MT Gas to a civil petrol bunk cannot be without the knowledge of the petitioner who was the Commandant of the Unit at that time. On issue of the petitioner naming two officers, the respondents would state that no individual who was found blameworthy has been left out. No Court of Inquiry was arbitrarily ordered but were ordered consequent to the opinion of the previous Courts of Inquiry on directions of the competent authority. On issue of Major General S.C. Malik asking the petitioner to be part of the system, the respondents would state that no proof is available and this issue is in no way connected with the instant case. During the investigations, the petitioner had been given full opportunity to cross-examine the witnesses and conduct his defence effectively. The Statutory Complaint had been rejected after

considering the reply of the petitioner. The respondents would pray that the O.A. be dismissed being devoid of any merit.

7. After hearing the two sides, points for determination are,

1) Whether or not the dismissal order is liable to be quashed and the petitioner is entitled to benefits of pension?

2) Whether or not the petitioner is entitled to be re-instated with promotion to the rank of Brigadier notionally and for consequential benefits?

8. Before we embark upon the discussion to determine the points listed above, there are issues which the petitioner has raised in the application which need to be examined for their relevance and veracity.

9. The petitioner mentions in the instant application that he was posted as Commandant of the Unit consequent to discussion between the Sub-Area Commander and the DGST to the effect that a capable officer be posted to the Unit. The respondents in the present counter-affidavit have not touched upon this issue, however, in the counter-affidavit filed before the Andhra Pradesh High Court in W.P.No.20468 of 2002 have stated that this is a routine posting order. We perused

the Tour Notes produced by the petitioner. Para 18 (a) of the Tour Notes reads thus:

> " *18. The DGST called on the Cdr Andhra Sub Area and the following pts were discussed by the Cdr:-*
>
> *(a)The present Comdt of Sup Dept due to ill-health is not capable of Commanding a large size dep in Trimulgherey. He should be posted out and a good capable offr should be posted in his place. The DGST explained that the matter is being given due consideration and the change will be made as soon as possible.* "

The extract of the Tour Notes produced before the Tribunal is a photo-copy of the original document. In the photo-copy, we find that on the left margin of para-18(a), a hand written notation "@" has been made and against a similar notation at the bottom of the page the following has been endorsed in hand, *"Consequent to this problem projected by Cdr HQ Sub Area, Col D.D. Pawar's posting to 60 Coy sup was issued."* While the identity of the person who endorsed this remark in hand is not known, we are of the view that such endorsement is tantamount to altering an original document while producing it before the Tribunal and take a serious view of it.

10. The petitioner makes a mention in his O.A. that Major General S.C. Malik while visiting the Unit in December 1995 warned

him to be part of the system and not a revolutionary type. The petitioner has produced no evidence or document to substantiate this remark by Major General S.C. Malik and therefore, such a remark is considered not only totally irrelevant to this case but also unsubstantiated and is to be disregarded. The petitioner claims that his service was extended by two years as he had maintained a good record. Fact is that services of all officers in the Armed Forces were extended by two years and the petitioner's service record had no association with this extension. The petitioner in the application mentions names of two officers, viz., Captain Sukhjinder Singh and Major Jai Singh who were involved in the case of misappropriation of 12000 litres of 87 MT Gas. He claims that Captain Sukhjinder Singh had relationship with the then Area Commander and Maj Jai Singh is son and son-in-law of senior Army officers and therefore the charges against Sukhjinder Singh were dropped. A perusal of the documents indicates that this is far from the truth. Both persons have been found to be blameworthy and disciplinary action against them has been directed by the GOC. In the common order passed, the Andhra Pradesh High Court on 25th April 2001 dismissed Captain Sukhjinder Singh's writ petition challenging his trial. As regards Major Jai Singh, he has been found blameworthy and disciplinary action was directed to be initiated against him. The petitioner has not clarified as to how

being son and son-in law of General Officers has benefited Major Jai Singh in the current case. Both the charges of favouritism in favour of the above mentioned two officers are without any basis and deserve to be not only disregarded, but also condemned.

11. Point No.1: The petitioner has challenged his dismissal order in W.P.No.20468 of 2002 which got transferred to this Tribunal. In the said Writ Petition, he agitates against non-forwarding of his Statutory Complaint to the Central Government by the respondents. The Tribunal in T.A.No.53 of 2010 passed the following order:

" 5(d) Even though the relief sought for at page 19 paragraph 11, in the statutory complaint is against some of the superior officials alleging that they were showing favouritism to their relatives and others in respect of the co-accused and sought for proper investigation by appropriate authorities, in respect of scandal like the one alleged against the petitioner, the statutory complaint is only in respect of and relating to the charges levelled against the petitioner in the Court of Inquiry, we are of the considered view that if an order is passed by the Central Government in the statutory complaint dated 24.01.1998, preferred by the petitioner, ultimately, the petitioner will get redressal in respect of the relief asked for in this petition also.

5(e) We are of the considered view that when an alternative remedy is available under Section 27 of the Army Act, 1950 which has already

been availed by the petitioner, and the same is pending, it is not proper in our part to pass any order in respect of the relief asked for in this petition because we consider that it will tantamount to usurping the jurisdiction of the Central Government. The point is answered accordingly.

6. In fine, the statutory complaint dated 21.01.1998 filed under Section 27 of the Armed Forces Act, is ordered to be forwarded to the Central Government (R1) within one month from the date of receipt of copy of this order by the second respondent and after the receipt of the statutory complaint dated 24.01.1998, the first respondent is directed to dispose of the same within three months thereafter without asking for any further time from this Tribunal. If the redressal sought for under the statutory complaint dated 24.01.1998 is not obtained within the time stipulated above, the petitioner is entitled to approach the Tribunal for further course of action. It is made clear that the petitioner is entitled to file additional affidavit before the Central Government (R1), if necessary. The petition is disposed of in the above terms. "

This order was passed on 11th June 2010. Since the Tribunal's order was not complied with, the petitioner filed M.A.No.17 of 2011 on 9th February 2011 in which he prayed that since the Tribunal's order had not been complied with, T.A.No.53 of 2010 be re-opened and be heard on merits. In the counter-affidavit of this M.A., the respondents stated that the complaint had been returned to the petitioner on 28th

February 1998 itself and since the complaint was not with the respondents, they could not comply with the Tribunal's order. The Tribunal in its order dated 22nd March 2011 stated:

" 2. It is really unfortunate to note that neither the applicant nor the respondents have informed the Tribunal on 11.06.2010, i.e., on the date of the final order in T.A.No.53 of 2010 that the statutory complaint dated 24.1.1998 was returned to the applicant even before the date of passing of the final order in T.A.No.53 of 2010. It is seen from the counter filed by the respondents in M.A.No.17 of 2011 in T.A.No.53 of 2010 that the said statutory complaint dated 24.01.1998 preferred by the applicant was returned by the respondents to the applicant as early as on 28th February 1998. Under such circumstances, now the respondents cannot execute the order passed in T.A.No.53 of 2010 dated 11.06.2010.

3. Now, the learned counsel appearing for the applicant is ready to re-present the complaint dated 24.01.1998, which was returned to the applicant, to the learned Senior Central Government Standing Counsel appearing for the respondents, who is also willing to receive the same with an undertaking that the respondents will see that the applicant's statutory complaint dated 24.01.1998 is forwarded to the Central Government (R1) within one month from today positively.

4. Under such circumstances, we once again reiterate our earlier order dated 11.06.2010 passed in T.A.No.53 of 2010 as to the effect

that after the receipt of the statutory complaint, the first respondent shall dispose of the same within three months from the date of receipt of the same from the 2nd respondent. With these observations, this execution application (M.A.No.17 of 2011) is disposed of. No costs. "

The petitioner had been aware since February 1998 that the complaint was with him and not with the respondents and therefore it could not have been forwarded to the Central Government by the respondents. Yet, the petitioner failed to bring out this fact in his W.P.No.20468 of 2002 and M.A.No.2011. Had he mentioned this fact in the Writ Petition, there is a distinct possibility that decision on the Statutory Complaint could have been passed in a much earlier time frame. Had he mentioned this fact that the Complaint was with him only and not in the respondents during hearing of T.A.53 of 2010, the order of the Tribunal would have been different. In the event, due to wilful suppression of this crucial fact, the decision on the disposal of the Statutory Complaint took inordinately long. We view this wilful suppression of facts with due seriousness and place on record our displeasure. Having said that, we also note that the respondents took inordinately long, well beyond the time frame laid down by this Tribunal, in disposing of the Statutory Complaint.

12. Turning to the claim of the petitioner that the rejection of his complaint is no longer relevant, he had been agitating for an early disposal of the Statutory Complaint even though it was not with the respondents and this Tribunal in its order dated 11th June 2010 had said that there was an association between the disposal of the Statutory Complaint and the relief sought by the petitioner. However, when the Statutory Complaint was rejected, the petitioner would plead that the rejection is of no relevance. Here it is necessary to go into the Statutory Complaint itself. The Statutory Complaint is directed against senior officers and the case of misappropriation of 12000 litres of 87 MT is the most prominent issue in which case he defends himself. He also mentions the Courts of Inquiry and highlights omissions therein. The Statutory Complaint also lists *"misdeeds"* of Major General R.S. Nagra. The "Redress" sought for by the petitioner in the Statutory Complaint is as follows:-

" It is of no consequence whether Col DD Pawar excels in his career or is dumped. But what is most important is, that the Indian Army system must live without any chronic disease. Maj Gen RS Nagra, VSM, had abused his official powers and shown outright favouritism to his relative and others. The hypocrisy and duplicity of standards adopted by Maj Gen RS Nagra, VSM, and Brig VS Budhwar and the conspiracy behind the whole game for personal interest to other fields are evident. Therefore, it is absolutely essential to ensure uniformity

in administration of justice that every misdeeds mentioned above are investigated by appropriate authorities so that this type of scandals do not occur in future. "

The redress sought is of a general nature. The Rejection Order of Government of India dated 7th December 2012 reads:

" ORDER

WHEREAS, IC-25415A Ex Colonel DD Pawar ex Commanding Officer, 60 Company Army Service Corps (Supply) Type G has submitted a Statutory Complaint dated 24 January 1998 alleging that he had been falsely implicated as Commandant in misappropriation by the then Commander, Andhra Sub Area and the then General Officer Commanding Andhra, Tamil Nadu, Karnataka, Kerala & Goa Area by misusing their official position. He has prayed that allegations against the above officers be investigated and suitable action taken accordingly. In deference to Honourable Armed Forces Tribunal (AFT), Regional Bench, Chennai Order dated 11 June 2010, an additional Petition dated 10 August 2010 submitted by the complainant and the said statutory complaint, have accordingly been processed.

2. AND WHEREAS, the complainant has contended that :-

(a) In a case of deficiency of 12000 litres of Petrol detected by the audit authority, he wrote a letter to Additional Commissioner of Police, Hyderabad to register a case. He also apprised the Sub Area Commander on the possible suspects but his proposed line of action was not agreed by the Area Commander.

(b) Sale of 12000 liters of Petrol to Nav Bharat Petrol Pump, Golcunda was the handy work of Captain Sukhjinder Singh and some Non Commissioned Officers and that all wrongful activities on this issue were carried out without his knowledge or consent.

(c) The eventual Staff Court of Inquiry held was engineered so that his successor could paint false and fabricated stories through unscrupulous and false allegations through those who were the real culprits, to safe guard interest of their well wishers. The Staff Courts of Inquiry ordered earlier were dumped and fresh Court of Inquiry was held whereby Brigadier PK Prasad, the Presiding Officer was given a mandate by Major General RS Nagra, VSM and Brigadier VS Budhwar to implicate the complainant in a contrived and false manner and favour Captain Sukhjinder Singh by intentionally

suppressing essential documentary evidence which could prove his innocence.

3. AND WHEREAS, it is on record that complainant on becoming aware of the loss of 12000 liters of Petrol from the audit authorities did not report the misappropriation to Commander, Andhra Sub Area (higher Headquarters) till it came to light on reporting of the same by the Joint Controller of Defence Accounts, Secunderabad.

4. AND WHEREAS, it is highly contentious and improbable that the alleged misappropriation of government stores and all wrong doings were being done by a subordinate officer and staff and the Commandant/complainant was totally impervious and ignorant of the same.

5. AND WHEREAS, the complainant has failed to establish that the entire system of investigation was biased and vindictive against him. There is indeed no evidence on record to suggest the contention of the complainant that the Presiding Officer, conducting the Court of Inquiry was functioning on a mandate from superior officer to favour Captain Sukhjinder Singh by intentionally suppressing essential documentary evidence at the cost of the complainant.

6. AND NOW THEREFORE, having considered the complaint in its entirety and the additional petition dated 10 August 2010

along with available documents on record, the Central Government finds that the contentions raised by the complainant lack merit. Accordingly, the Statutory Complaint dated 24 January 1998 and the additional Petition dated 10 August 2010 submitted by IC-25415A Ex Colonel DD Pawar, are rejected. "

This order takes into account all aspects of the complaint particularly the case of 12000 ltrs of 87 MT before arriving at its decision. It is evident that there is a close association between the relief sought by the petitioner in the instant O.A. and rejection of the Statutory Complaint which has a significant bearing on the defence of the petitioner in the case of misappropriation of 12000 ltrs of 87 MT Gas in which five (5) charges were framed against him. The petitioner has not challenged rejection of his complaint but has termed it not relevant. We can only conjecture what his stand would have been had the order on the compliant had been favourable to him. The rejection is very relevant and has an impact on the relief sought by the petitioner and the petitioner's argument in this regard fails.

13. The petitioner pleads that in no Court of Inquiry there was sufficient and adequate material to substantiate any of the charges and that the Courts of Inquiry were arbitrarily ordered. We examine

the Courts of Inquiry. The Court of Inquiry of which Captain Nirbhay Kumar was the Presiding Officer gave its opinion thus:

" *Opinion of the Court:*

> *It is opinioned that a Staff Court of Inquiry may be held to pin-point the persons responsible for 12 KL of 87 not found taken on charge. Sub S.S. Verma & Hav T.S. Babu have not taken the produced on charge & rest all other witnesses have said that they have taken the product on charge.* "

Based on this recommendation a Court of Inquiry was ordered headed by a Colonel which submitted its proceedings and the GOC Area gave his direction thereon. The relevant extracts of his directions are:

> " *1. I generally concur with the recommendation of Cdr Andhra Sub Area.*
>
> *2. On consideration of the Court of Inquiry proceedings, and additional statements of offrs and ORs of 60 Coy ASC Sup Type 'G' fwd vide HQ Andhra Sub Area letter No 4232/01/C of I dt 20 Feb 96, I am of the opinion that facts revealed are inadequate to arrive at a definite conclusion and need to be investigated further. In my opinion there is adequate material on record to suggest involvement of IC-254153 Col*

DD Pawar ex Comdt 60 Coy ASC Sup Type 'G' in mishandling/misappropriation of 12 Kilo Litres 87 MT GAS amounting to Rs.2,50,000/- (Rupees Two lakhs Fifty thousand only) issued by IOC Sanathnagar on 13 Mar 95.

3. I therefore direct that a fresh Court of Inquiry be convened to further investigate into :--

(a) The irregularity in accounting or misappropriation of 12000 litres of 87 MT issued by IOC Sanathnagar vide their Issue Voucher No 1366 dated 13 Mar 95.

(b) To establish lapses if any on part of offrs, JCOs & OR of 60 Coy ASC Sup Type 'G' Secunderabad in this regard.

(c) To investigate and establish lapses in any other case of irregularity of account revealed during the course of such investigation.

4. The Court of Inquiry shall be constituted and convened in accordance with the provisions of Para 518 Regulations for the Army (1987 Revised Edition) read with Army Rules 180 and 181.

5. I further recommend that IC-25415A Col DD Pawar ex Comdt GO Coy ASC Sup 'G' be attached to AOC Centre, Secunderabad for the purposes of this Court of Inquiry. "

Now, the GOC while stating that the facts revealed in the Court of Inquiry are inadequate to arrive at a definite conclusion states that there is adequate material to suggest involvement of the petitioner in misappropriation. Consequent to the directions of the GOC second Court of Inquiry with Brigadier PSK Prasad as Presiding Officer was ordered to investigate into the misappropriation/theft of 12000 litres of 87 MT Gas. Relevant findings of this Court of Inquiry are:

> *" Reconstruction of Docus*
>
> *28. After raising of the audit obsn in Jul 95 and realisation of the fact that the product had not been taken on charge, the Comdt called a conf of all offrs, JCOs and concerned NCOs to decide on the course of action to be taken to resolve the issue. A consensus decision was taken to take the product on charge and reconstruct all connected docus. The reconstruction of docus got facilitated by the non-completion of the BPI Register since Nov 94. This register was first completed upto 12 Mar 95, the product was then taken on charge as on 13 Mar 95, and was shown as transferred to the FOL Pack on 02 Sep 95 by means of an IGTV.*
>
> *(Witnesses Nos 1, 3, 5, 6, 8, 10, 12, 13 and Exhibit AC)*
>
> *29. The entire reconstruction of docus was done under the orders of the Comdt, Col DD Pawar, issued after a consensus*

among all offrs, JCOs and concerned NCOs. It was done through the wholehearted participation of all concerned staff and all the docus were reconstructed in one day on 06 Sep 95. The following pers carried out the reconstruction:-

(a) Maj Jai Singh
(b) Capt Sukhjinder Singh
(c) Sub Maj Randhir Singh
(d) Sub SS Verma
(e) Sub BR Mouli
(f) Sub MBB Prasad
(g) Sub Rajbir Singh
(h) Nb Sub AN Singh
(j) Sub RS Yadav
(k) Nb Sub HB Singh
(l) Hav DS Pillai
(m) Hav Manoharan
(n) Hav PJ Rao
(o) Nk A. Pentaiah
(p) Nk VL Narayana
(q) Nk AC Mandal
(r) Hav TS Babu

Witnesses Nos 1,3,5,6,8,10,12,13 and Exhibits Ac, AF 1 to AF9, AG, AH)

The reconstruction of docus was done with full knowledge of the fact that sufficient surplus of 87 MT was not

available. However, approx 10 KL of total surplus of various main grades of FOL was available.

Witnesses Nos 1, 5, 6, 8, 13 and Exhibits Z, AB)

Capt Nirbhay Kumar did not make adequate effort to carry out proper investigation during the unit C of I. He recorded pre-determined statements with a view to covering up the discrepancy without fixing any responsibility on any one. The officer could not do his job properly either for cover up or to find facts. He just wanted to delay the submission of the court of inquiry proceedings as he felt that this Court of Inquiry may assist the Comdt in stalling the staff court of inquiry likely to be ordered by HQ Andhra Sub Area. "

The CoI found the petitioner blameworthy of the following lapses:

" *<u>IC 25415A Col DD Pawar</u>*

(i) Not ensuring thorough investigation of the circumstances leading to the audit objection for not taking 87 MT qty 12 KL on charge on 13 Mar 95.

(ii) Ordering reconstruction of documents so as to take 87 MT qty 12 KL on charge with full knowledge that the quantity being taken on charge was not held in stock.

(iii) Ordering mixing up of various grades of FOL products to make up the deficiency of 87 MT which resulted from taking 12 KL of the item on char ge. "

We also note that this Court of Inquiry found Captain Sukhjinder Singh and Major Jai Singh blameworthy of certain lapses. Based on this Court of Inquiry, GOC Area issued his directions on 27th November 1996. The relevant extracts are:

4. I further direct HQ Andhra Sub Area to convene another Court of Inquiry to investigate the involvement of certain other persons of 60 Coy ASC (Sup) Type C, Secunderbad in falsifying official documents revealed by this Court of Inquiry and to investigate into any other irregularity relating to the theft of 12 KL 87 MT GAS may be revealed during the course of that inquiry.

This order stated that the petitioner was to be prima facie blamed for the following:

IC-25415A Col DD Pawar

(i) For commiting an act with intent to defraud as is envisaged by Army Act Section 52 (F) by ordering mixing of different grades of FOL to prevent disclosure of deficiency of 12 KL of 87 MT GAS.

(ii) For falsifying official documents an offence specified in Army Act Section 57. "

The GOC also directed that disciplinary action be initiated against all persons stated in the order for lapses stated against their names. Those who were blamed included Major Jai Singh and Captain

Sukhjinder Singh. Following this order, the third Court of Inquiry was ordered to investigate into involvement of certain other personnel of 60 Company ACS Supply in falsifying official documents. Based on the opinion of the Court of Inquiry, GOC Area issued his directions on 21st November 1997 in which he directed disciplinary proceedings against some more personnel of the Unit and recommended that the loss of 12000 litres of 87 MT Gas due to misappropriation amounting to Rs.2,01,022/- be regularised by making the personnel involved in this misappropriation pay proportionately in which 50% of the total amount to be paid was to be shared equally by the petitioner and 12 others including Major Jai Singh and Captain Sukhjinder Singh. Balance 50% was to be paid by the personnel directly involved and the Local Audit officers and staff. Thus it is evident that the Courts of Inquiry did find adequate material to suggest involvement of the petitioner in the case of misappropriation of 12000 litres of 87 MT Gas contrary to what the petitioner avers in his application. We regard petitioner's claim that there was no material brought out by any CoI to substantiate the charges as an attempt to mislead the Tribunal.

14. The respondents ordered Summary of Evidence to be recorded on completion of the investigation by the Courts of Inquiry following which the GCM was ordered on 28th January 1999. The

petitioner filed W.P.No.3859 of 1999 challenging the trial by GCM on account of limitation under Army Act Section 122 which reads:

> *122. Period of limitation for trial:- (1) Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years (and such period shall commence, --*
>
> *(a) on the date of the offence; or*
>
> *(b) where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier; or*
>
> *(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.)*
>
> *(2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in Section 37.*

(3) In the computation of the period of time mentioned in sub-section (1), any time spent by such person as a prisoner of war, or in enemy territory, or in evading arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army. "

This writ petition was dismissed and the appeal against this was also dismissed and thereafter, the GCM allowed his plea in bar. The petitioner submits in his application that the GCM was stopped on orders of the High Court which is contrary to facts of the case and the petitioner is well aware of it despite which he makes this false claim in his application.

15. Since trial by GCM was not expedient, the respondents initiated action under Army Act Section 19 and Army Rule 14. Army Act 19 and Army Rule 14 read:

"19. Termination of service by Central Government:- Subject to the provisions of this Act and the rules and regulations made thereunder

the Central Government may dismiss, or remove from the service, any person subject to this Act.

14. Termination of service by the Central Government on account of misconduct:- (1) When it is proposed to terminate the service of an officer under section 19 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in sub-rule (2) against such action—

Provided that this sub-rule shall not apply—

(a) where the service is terminated on the ground of misconduct which has led to his conviction by a criminal court; or

(b) where the Central Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

(2) When after considering the reports on an officer's misconduct, the Central Government or the Chief of the Army Staff is satisfied that the trial of the officer by a court-martial is inexpedient or impracticable, but is of the opinion, that the further retention of the said officer in the service is undesirable, the Chief of the Army Staff shall so inform the officer together with all reports adverse to him

and he shall be called upon to submit, in writing, his explanation and defence:

Provided that the Chief of the Army Staff may withhold from disclosure any such report or portion thereof if, in his opinion, its disclosure is not in the interest of the security of the State.

In the event of the explanation of the officer being considered unsatisfactory by the Chief of the Army Staff, or when so directed by the Central Government, the case shall be submitted to the Central Government, with the officer's defence and the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-rule (4)

(3) Where, upon the conviction of an officer by a criminal court, the Central Government or the Chief of the Army Staff considers that the conduct of the officer which has led to his conviction renders his further retention in service undesirable a certified copy of the judgment of the criminal court convicting him shall be submitted to the Central Government with the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-rule (4).

(4) When submitting a case to the Central Government under the provisions of sub-rule (2) or sub-rule (3), the

Chief of the Army Staff shall make his recommendation whether the officer's service should be terminated, and if so, whether the officer should be—

(a) dismissed from the service; or

(b) removed from the service; or

(c) Compulsorily retired from the service.

(5) The Central Government after considering the reports and the officer's defence, if any, or the judgment of the criminal court, as the case may be, and the recommendation of the Chief of the Army Staff, may—

(a) dismiss or remove the officer with or without pension or gratuity; or

(b) compulsorily retire him from the service with pension and gratuity, if any, admissible to him.]]

16. We now turn to the question of legality of the action of the respondents under Army Act 19. Here we turn to the case of **Chief of the Army Staff and Others** vs. **Major Dharam Pal Kukrety** cited in **1985 AIR 703** and **1985 SCR (3) 415** in which it was held :

"2. Whether the Chief of the Army Staff was competent to issue the impugned notice of show cause depends upon the relevant provisions of the Army Act 1950 and the Army Rules 1954. Under Section 153 of the Army Act, no finding or sentence of a general, district or summary general, court martial shall be

valid except so far as it may be confirmed as provided by the Army Act. Under Section 160 of the Army Act, the confirming authority has the power to direct a revision of the finding of a court martial only once. There is no power in the confirming authority, if it does not agree with the finding on revision, to direct a second revision of such finding. In the absence of any such confirmation, whether of the original finding or of the finding on revision, by reason of the provisions of Section 153 the finding is not valid. Therefore, in the case of the respondent, the finding of the general court-martial on revision not having been confirmed was not valid. Equally, there is however, no express provision in the Army Act which empowers the holding of a fresh court-martial when the finding of a court-martial on revision is not confirmed.

3. Though it is open to the Central Government or the Chief of the Army Staff to have recourse to Rule 14 of the first instance without directing trial by a court-martial of the concerned officer, there is no provision in the Army Act or in Rule 14 or any of the other Rules of the Army Rules which prohibits the Central Government or the Chief of the Army Staff from resorting in such a case to Rule 14. In the present case, the Chief of the Army Staff had, on the one hand, the finding of a general court-martial which had not been confirmed and the Chief of the Army Staff was of the opinion that the further retention of the respondent in

the service was undesirable and, on the other hand, there were three difference conflicting decisions of different High Courts on this point which point was not concluded by a definitive pronouncement of this Court. In such circumstances, to order a fresh trial by a court-martial could certainly be said to be both inexpedient and impracticable and the only expedient and practicable course, therefore, open to the Chief of the Army Staff would be to take action against the respondent under Rule 14, which he did. The action of the Chief of the Army Staff in issuing the impugned notice was, therefore, neither without jurisdiction nor unwarranted in law. Cap. Kashmir Singh Shergill v. The Union of India & Another, Civil Writ No.553 of 1974 decided on November 6, 1974 by Prakash Narain, J., approved.

G.B. Singh v. Union of India and Others, (1973) Crl. L.J. 485; Major Manohar Lal v. The Union of India and Anr., 1971 (1) S.L.R. 717; J.C. 13018 Subedar Surat Singh v. The Chief Engineer Projects (Becon) C/o 56 A.P.O. AIR 1970 J & K 179 referred to. "

Since trial by GCM was not expedient, action initiated by the respondents in terms of Army Act Section 19 is in accordance with law. The petitioner would cite the case of **Harjeet Singh Sandhu in Civil Appeal No. 2001 (5) SCC 593** in which it has been held:

" In illustration (i) the expiry of the period of limitation prescribed by Section 122 renders the trial by court-martial

impracticable on the wider meaning of the term. There is yet another reason to take this view. Section 122 prescribes a period of limitation for the commencement of court-martial proceedings but the Parliament has chosen not to provide any bar of limitation on exercise of power conferred by Section 19. We cannot, by an interpretative process, read the bar of limitation provided by Section 122 into Section 19 of the Act in spite of a clear and deliberate legislative abstention. However, we have to caution that in such a case, though power under Section 19 read with Rule 14 may be exercised but the question may still be –who has been responsible for the delay? The period prescribed by Section 122 may itself be taken laying down a guideline for determining the culpability of delay. In spite of power under Section 19 read Rule 14 having become available to be exercise on account of a trial by a court-martial having been rendered impracticable on account of bar of limitation created by Section 122, other considerations would assume relevance, such as—whether the facts or set of facts constituting misconduct being three years or more old have ceased to be relevant for exercising the power under Section 19 read with Rule 14? If there was inaction on the part of the authorities resulting into delay and attracting bar of limitation under Section 122 can it be said that the

authorities are taking advantage of their own inaction or default? If the answer be yes, such belated decision to invoke Section 19 may stand vitiated, not for any lack of jurisdiction but for colourable or malafide exercise of power."

The petitioner would claim that the respondents had deliberately delayed the proceedings so as to make it time-barred and then initiated action under Army Act Section 19. A scrutiny of the actions taken by the respondents to thoroughly investigate the case of misappropriation indicate that purposeful and methodical efforts in accordance with the provisions of law were made to arrive at a definite conclusion with regard to involvement of personnel in this case of misappropriation with a view to bring out the lapses and persons responsible for them. We are not inclined to ascribe the delay as deliberately caused by the respondents and therefore, the petitioner cannot take shelter of this judgment.

16. Since the trial by the Court Martial was barred by limitation and the respondents were of the view that the charges were grave enough to take action under Army Act Section 19, a Show Cause Notice was issued to the petitioner. The Show Cause Notice mentioned five charges while asking the petitioner to show cause as to why should his services not be terminated under the provisions of Army Act Section 19 read with Rule 14 of the Army Rules. The charges were:

(a) First Charge under AA Sec 52 (f) : Such an offence as is mentioned in clause (f) of Sec 52 of the Army Act with intent to defraud, in that he at Secunderabad, on 13 Mar 95, which came to the knowledge of authority competent to initiate action on 27 Nov 96 but in respect of which the proceedings could not be instituted between the period 08 Mar 99 and 25 Apr 2001 due to a stay granted by Hon'ble High Court of Andhra Pradesh, as Comdt 60 Company ASC (Supply) Type 'B' with intent to defraud caused diversion and decantation of 12 KL of 87 MT, which was despatched by IOC Sanathnagar for 60 Company ASC (Supply) Type 'G' in BPL Registered No APFT 2790, at Nav Bharat Petrol Pump, Lunger House, Golconda, thereby causing a loss of Rs.2,19,000/- (Rupees two lakhs and nineteen thousand only) to the Government.

(b) Second charge under AA Sec 52 (f): Such an offence as is mentioned in clause (f) of Sec 52 of the Army Act Sec 52 of the Army Act with intent to defraud, in that he at Secunderabad, between 01 and 02 Sep 95, which came to the knowledge of authority competent to initiate action on 27 Nov 96 but in respect of which the proceedings could not be instituted between the period 08 Mar 99 and 25 Apr 2001 due to a stay granted by Hon'ble High Court of Andhra Pradesh, as Comdt 60 Company ASC (Supply) Type 'G' with intent to

defraud, caused mixing up of different grades of POL products held by the said unit.

(c) <u>Third charge under AA Sec 52 (f)</u> : Such an offence as is mentioned in clause (f) of Sec 52 of the Army Act Sec 52 of the Army Act with intent to defraud, in that he at Secunderabad, between 05 and 06 Sep 95 which came to the knowledge of authority competent to initiate action on 27 Nov 96 but in respect of which the proceedings could not be instituted between the period 08 Mar 99 and 95 Apr 2001 due to a stay granted by Hon'ble High Court of Andhra Pradesh, as Comdt 60 Company ASC (Supply) Type 'G', with intent to defraud, caused making of false documents to show receipt of 12 KL of 87 MT as on 13 Mar 95 in Bulk Petroleum Installation (BPI) Group and transfer of the same from said Group to FOL Pack Group as on 02 Sep 95, well knowing that no such transactions had in fact taken place.

(d) <u>Fourth charge under AA Sec 63:</u> (Alternative to third charge) An Act prejudicial to good order and military discipline, in that he, at Secunderabad, between 05 and 06 Sep 95, which came to the knowledge of authority competent to initiate action on 27, Nov 96 but in respect of which the proceedings could not be instituted between the period 08 Mar 99 and 25 Apr 2001 due to a stay granted by Hon'ble High Court of Andhra

Pradesh, as Commandant 60 Company ASC (Supply) Type 'G' improperly caused making of false documents to show receipt of 12 KL of 87 MT as on 13 Mar 95 in Bulk Petroleum Installation (BPI) Group and transfer of the same from said Group to FOL Pack Group as on 02 Sep 95 well knowing that no such transactions had in fact taken place.

(e) Fifth charge under AA Sec 63: An act prejudicial to good order and military discipline, in that he, at Secunderabad, between 25 Sep 95 and 20 Feb 96, which came to the knowledge of authority competent to initiate action on 27 Nov 96 but in respect of which the proceedings could not be instituted between the period 08 Mar 99 and 25 Apr 2001 due to a stay granted by Hon'ble High Court of Andhra Pradesh, while appearing as a witness before a Court of Inquiry, improperly stated that as per the report given to him, BPL carrying 87 MT qty 12 KL had reported at the main gate of the Supply Depot on 13 Mar 95, or words to that effect, well knowing the said statement to be false. "

17. The petitioner responded to the Show Cause Notice by providing a very detailed reply in which he defended himself against five charges. The reply was considered and then the order of dismissal was issued on 30th January 2002 which is as follows:

" ORDER

WHEREAS ic-25415 Col DD Pawar had held the appointment of Commandant 60 Coy ASC (Supply) Type 'G' from February 1995 to December 1995.

AND WHEREAS based on a complaint regarding illegal sale of 12 kilo litre 87 MT Gas amounting to Rs.2,50,000/- (Rupees Two lakhs fifty thousand only) issue by IOC Sanathnagar, a Special Audit Board was convened by HQ Andhra Sub Area which revealed irregularities in the transactions.

AND WHEREAS a Court of Inquiry convened by HQ Andhra Sub Area on 14 Mar 1996 investigated the aforesaid issue of illegal sale and based on its report GOC ATNKK & G Area directed disciplinary action against the said Col DD Pawar for three specific lapses relating to intent to defraud and two lapses concerning acts prejudicial to good order and military discipline.

AND WHEREAS the said Col DD Pawar was tried by a Court Martial on five charges under Army Act Sections 52 (f) and 63. The said officer raised a "Plea in bar" on all the charges before the General Court Martial which was upheld by the Court. GOC-in-C Southern Command confirmed the findings of the Court on 19 Aug 2001.

AND WHEREAS the facts of the case were placed before the Chief of the Army Staff who was of the opinion that further retention in service of the said Col DD Pawar is not desirable. A Show Cause Notice was issued vide No.C/06270/SC/76/AG/DV-2 dated 12 Nov 2001 giving the said Col DD Pawar an opportunity to represent against the proposed action of termination of his service under Army Act Section 19 read with Army Rule 14.

AND WHEREAS the said Col DD Pawar has submitted his reply dated 24 Dec 2001. In his reply, he has alleged bias on the part of superior officers and denial of documents to him which prevented him from putting up effective defence. He has contended that after his "Plea in bar" was allowed by the court and confirmed by the competent authority he could not have been proceeded against administratively and has also contended that the issuance of show cause notice to him was illegal which also suffered from vagueness.

The reply submitted by the said Col DD Pawar and the issues raised therein vis-à-vis the evidence available on record have been duly considered. It is concluded that the officer was provided with all the relevant documents for preparation of his defence. The allegations of bias on the

part of superior officers are unsubstantiated. There is no legal impediment to proceed administratively as trial has become impracticable and inexpedient. The Show Cause Notice is explicit and does not suffer from vagueness.

AND WHEREAS the issues raised by the said Col DD Pawar in his reply to the Show Cause Notice are devoid of merit and substance. The acts of omission and commission committed by the officer are grave involving moral turpitude. Hence, his further retention in service is not desirable.

NOW, therefore, in terms of provisions of Army Act Section 19 read in conjunction with Army Rule 14(5) dismissal of the said Col DD Pawar is ordered without pensionary benefits with immediate effect. "

18. In the written arguments, the petitioner would rest his case on three issues: Dismissal order was colourable and mala fide ; Charges were not proved beyond reasonable doubt; Order was harsh, disproportionate, mala fide and unreasonable.

19. As regards the first issue whether the dismissal order was colourable and mala fide, we are of the view, having considered all the relevant facts, that there is no infirmity in the action initiated by the respondents under Army Act Section 19, there is no bias and the

action is not mala fide. Regarding the second issue that the charges were not proved beyond reasonable doubt, verily the charges were not proved in a court of law since no trial took place. However, the charges were framed after a very detailed process of investigation and the respondents would have had enough evidence to prove these had a trial taken place. In the event, even though trial did not take place, rejection of the Statutory Complaint and consideration of petitioner's reply to the Show Cause Notice are indicative of sufficient opportunity to him to conduct his defence. Therefore, the charges, though not proved beyond a reasonable doubt in a court of law, do stand firmly established. We turn to the third issue whether the order was harsh, disproportionate, mala fide and unreasonable. In the entire investigation and the charges, we have found no evidence of the petitioner wrongfully gaining anything personally from this misappropriation. A loss was caused to the Government. The petitioner has been found blameworthy of lapses but has derived no financial benefit from it. Here we turn to the order passed by this Tribunal in T.A.No.36 of 2009. The relevant extract of which are:

> *" 6(d) The only point which harps upon our minds is the forfeiture of entire pension after the issuance of the second show cause notice dated 21.10.1993 by the respondents. Even though the petitioner has not specifically challenged the order of*

forfeiture of full pension in lieu of the issuance of the second show cause notice dated 21.10.1993, we are of the considered view that the imposition of punishment of termination of service under Section 19 of Army Act r/w Rule 14 of Army Rules and also forfeiture of entire pension of the petitioner is not in proportion to the charges levelled against the petitioner in the absence of any full-fledged trial against the petitioner. We could not infer anything from the CBI report as to the effect that the petitioner has wrongfully gained anything from out of the overpayment of Rs.12,15,022/-. According to the charge against the petitioner, as per CBI report there was a criminal conspiracy hatched between the petitioner, Sri ML Khatri then AGE, Sri VK Malik then SA, Sri R.S. Gohlote contractor and his representative Shri J.P. Upadhyaya. Absolutely there is no material placed before this Tribunal to show when the criminal conspiracy was hatched and whether the same was put into action and if so, when? Unless and until a full-fledged trial with regard to the criminal conspiracy is held and proved, we cannot come to a conclusion that the petitioner alone is responsible for the loss of alleged amount of Rs.12,15,022/- to the Government. There is no explanation forthcoming from the petitioner for the inordinate delay in challenging the impugned order after a lapse 8 years and 4 months. In his reply to the show cause notice, the petitioner in away would admit that only

due to his lack of experience and with an anxiety to complete the work entrusted to him, the alleged loss had incurred. Since there is no material placed on record before us to show that the petitioner has wrongfully gained anything from the total alleged loss of Rs.12,15,022/- to the exchequer of the Government, we are of the considered view that the punishment imposed on the petitioner is not proportionate but disproportionate to the alleged charge levelled against him. So, we are of the view that the punishment of dismissal from service is to be modified to that of compulsory retirement from 25.01.1993. "

In the petitioner's case too, we find that no full-fledged trial had been held and the petitioner alone was not responsible for the loss of alleged amount of Rs 2,19,000/- as stated in the first charge and Rs 2,50,000/- as stated in the Dismissal Order. The petitioner has not wrongfully gained anything personally and therefore the dismissal could be considered disproportionate and the forfeiture of entire pensionary benefit appears to be harsh and we are inclined to grant relief to the petitioner. We are of the view that the charges against the petitioner have been established given the fact that there is substantial evidence to indicate his involvement in the case for which he has been blamed. Since he has not gained any benefit from this misappropriation and considering his long unblemished service we are of the view that the order of dismissal merits modification to

compulsory retirement from service with consequent pensionary benefits from the date of filing this O.A. i.e. 25th June 2012. Point No.1 is answered accordingly.

20. Point No.2: The petitioner has prayed for notional promotion to the rank of Brigadier and the consequent pension benefit. As we have stated in the determination of Point No1, the charges are established but ,the order of dismissal is considered harsh. Accordingly, since his involvement in the case of misappropriation cannot be denied, we are of the view that he does not deserve to be notionally promoted to the rank of Brigadier and consequent benefits cannot be granted to him. The Point No.2 is answered accordingly.

21. In fine, the O.A. is partially allowed. The order of dismissal from service is modified to compulsory retirement from service with effect from the date of issue of the Dismissal Order, i.e., 30th January 2002. We direct the respondents to grant him pensionary benefits with effect from 25th June 2012. Time for compliance, three months. No costs.

Sd/ Sd/

LT GEN (Retd) ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)

JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)

22.07.2013
(True copy)

Member (J) – Index : Yes / No Internet : Yes / No
Member (A) – Index : Yes / No Internet : Yes / No
Vs

1.The Under Secretary
Government of India
Ministry of Defence, South Block
New Delhi-110 011.

2. The Chief of the Army Staff
Army Head Quarters
DHQ – P.O, New Delhi-110 011.

3. M/s.M.K. Sikdar
and S.Biju,
for petitioner
4. Mr. B.Shanthakumar, SPC
For respondents.

5. OIC, Legal Cell, ATNK & K Area,
Chennai.

6. Librarian, AFT/RBC

HON'BLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER-JUDICIAL)
AND
HON'BLE LT GEN (RETD) ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

O.A. No.49 of 2012

Dt: 22.07.2013