

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On: 6th January, 2011*
Judgment Delivered On: 17th February, 2011

+ **LPA 603/2002**

MAJ.R.K.SAREEN Petitioner
Through: Ms.Rekha Palli, Advocate

versus

UOI & ORS. Respondents
Through: Ms.Jyoti Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. By May 1992 the appellant had earned promotion as a Major in the Indian Army and was appointed as Presiding Officer of a Board of Officers constituted to take over the possession of buildings constructed by contractors for the Army Aviation Corps at Jhansi.

2. In June 1992 the Initiating Officer of the appellant initiated the recording of the Annual Confidential Report (hereinafter referred to as the "ACR") of the appellant for the year 1991–1992 and graded the appellant 'Above Average Officer'. The problem started for the appellant when

Brig.R.Gopal, respondent No.5, the Senior Reviewing Officer of the appellant, downgraded the appellant to 'High Average Officer' and recorded following adverse remarks in the ACR:-

“Inflated report by the IO and RO. Sareen is an high average officer. He is excessively obese and must reduce his over weight.”

3. Aggrieved by the downgrading of his ACR grading and recording of adverse remarks in the ACR, the appellant made a non-statutory representation before the competent authority, which was rejected by the General Officer Commanding-in-Chief, Central Command by the order dated 20.03.1993.

4. In June 1993 Colonel M.Madhubani, respondent No.6, the Reviewing Officer of the appellant initiated the recording of the ACR of the appellant for the year 1992-1993 and graded the appellant as a 'High Average Officer'. Aggrieved by the grading given to him by respondent No.6, the appellant made a statutory petition dated 23.09.1993 against the respondent No.6 before the competent authority inter-alia primarily alleging that the respondent No.6 had taken bribe from the contractors who had constructed the buildings in question and wanted the appellant not to report the deficiencies in the construction of the said buildings and that upon the refusal of the appellant to do so, out of vengeance the respondent No.6 gave low grading to the appellant in the ACR for the year 1992-1993 as also influenced respondent No.5 to give low grading to the appellant in the ACR for the year 1991-1992. Furthermore, the appellant demanded the initiation of an inquiry against respondent No.6.

5. On 25.05.1994 the appellant wrote a letter to the Secretary, Ministry of Defence, inter-alia, leveling the same allegations against respondent No.6 as contained in the afore-noted statutory complaint dated 23.09.1993 and demanding the initiation of an inquiry against respondent No.6.

6. On the basis of the afore-noted complaint dated 23.09.1993 made by the appellant against respondent No.6 and the letter dated 25.05.1994 written by the appellant to the Secretary, Ministry of Defence, the competent authority convened a Court of Inquiry to investigate into the allegations leveled by the appellant against respondent No.6.

7. The Court of Inquiry assembled for first time on 20.10.1994, on which date the appellant was examined as witness No.1. Thereafter the witnesses No.2 to 6 were examined before the Court of Inquiry on various dates.

8. On 27.10.1994 the appellant wrote a letter to the Presiding Officer of the Court of Inquiry, the relevant portion whereof reads as under:-

“With due respect the witness requests to the Court that his reputation in the Army has been drastically affected due to the acts of Col M Madhubani and hence he be allowed to read his statement and then cross-examine him as per AR 180. Similarly the same procedure may please be allowed for other witnesses whose statements might lead to miscarriage of Justice.

.....”

9. In response thereto, the Presiding Officer of the Court of Inquiry wrote a letter dated 28.10.1994 to the appellant, relevant portion whereof reads as under:-

“....You have already been informed that provisions of AR 180 will be applied whenever applicable. Same has been done where essential.

....”

10. On 21.01.1995 the Court of Inquiry invoked Rule 180 of the Army Rules, 1954. On the said date i.e. 21.01.1995, the Court of Inquiry handed over a copy of the statement of respondent No.6 who was examined as witness No.3 to the appellant and allowed the appellant to cross-examine respondent No.6. Thereafter the statements of witnesses Nos.7 and 8 were recorded in the presence of the appellant who was allowed to cross-examine the said witnesses.

11. After considering the statements of the witnesses as also other facts and circumstances of the case, the Court of Inquiry came to the conclusion that there is no substance in the allegations leveled by the appellant against respondent No.6.

12. Vide Office Order No.36501/510/Arty/93/MS Compl/42/D (MS) dated 04.01.1995, Ministry of Defence, Government of India rejected the statutory complaint dated 23.03.1993 made by the appellant however it expunged the assessment made by respondent No.6 in the ACR of the appellant for the year 1992-1993 on the ground that the same was based on the subjectivity of respondent No.6.

13. On 28.04.1995 the GOC, Army Headquarters issued a show cause notice to the appellant and the same reads as under:-

“SHOW CAUSE NOTICE

1. A staff C of I was ordered vide this HQ investigate into the allegations leveled by you against IC-19622W Col M Madhubani ex Co of 664 R & O Sqn in your statutory complaint dated 23 Set. 93 and complaint to Secy Boot of India (Min. of Def.) forwarded vide 4 Fd Regt letter No.27350/RKS/SC/22 dated 20th May 94.

2. The proceedings of the staff C of I were placed before GOC 1 Corps, who after having perused the same and after due consideration found you blameworthy of having leveled the following false allegation against your then CO, Col M. Madhubani:-

a) Pressurized you, as Presiding Officer of bd of offrs, to take over buildings of Army Avn Base, Jhansi with no obsn.

b) The CO having taken undue favors from the civ contractors.

c) The CO having denied you annual/casual/ lve to look after your handicapped mother.

d) On 29 Oct 92, out of vengeance CO raised an incident report in violation of paras 19 and 21 of SAO4/S/87.

e) CO is anti national, above the law and that he has falsified documents.

3. You have also leveled following unfounded allegations:-

a) letters with your forged signatures have been sent to various places, to defame you.

b) Laid down procedures to process statutory complaint were flouted.

c) That you were not ex for comd criterion report.

4. Accordingly, in pursuance with the directions of GOC 1 Corps, you are asked to show cause as to why administrative action by way of award of an appropriate censure by him, should not be taken against you for the aforesaid lapses, on your part.

5. Your reply, to this show cause notice, should this HQ within 30 days of receipt of this letter, failing which it shall be presumed that you have nothing to urge in your defence against the proposed actions an ex-parte decision will be taken.

6. A copy of the ibid C of I proceedings less findings, recommendations and directions is forwarded herewith for your perusal. The same may please be returned to this HQ along with your reply.

7. Please acknowledge receipt.” (*Emphasis Supplied*)

14. In response thereto, the appellant submitted his reply. Vide Office Order 22500/16/A1 (PC) dated 25.08.1995 the GOC rejected the reply of the appellant and awarded the punishment of ‘severe displeasure (recordable)’ upon the appellant. The Office Order dated 25.08.1995 reads as under:-

“CENSURE

I have considered the reply to show cause notice submitted by you vide your letter NO 37350/RKS/SC/29 dated 11 Jun 95. You have merely confined your reply to tech aspects of the C of I and have apparently preferred yourself to the lapses mentioned in the show cause notice, despite the opportunity having been provided to you.

2. Being dissatisfied about the substantial compliance of AR 180 and other technical aspects of the C of I, I find you blameworthy for the lapses as mentioned in the show cause notice.

3. I, therefore, hereby convey to you my "Severe Displeasure (To be recorded") for the same."
(*Emphasis Supplied*)

15. After the penalty was levied, at three consecutive selection boards, where the ACRs of the petitioner were considered and the penalty inflicted was taken note of, appellant could not earn a promotion to the next higher rank of Lt.Colonel.

16. Aggrieved by the action of the Selection Board of not promoting him to the rank of Lt. Colonel, the appellant filed a writ petition which was registered as W.P.(C)No.463/1998, inter-alia praying that: - (i) the appellant be promoted to the rank of Lt.Colonel from a retrospective date; (ii) the order dated 25.08.1995 awarding punishment of severe displeasure upon the appellant be quashed or not looked into by the Selection Board while considering the appellant for promotion to the rank of Lt.Colonel; and (iii) ACRs of the appellant for the years 1991-1992 and 1992-1993 be quashed or not looked into by the Selection Board while considering the appellant for promotion to the rank of Lt.Colonel.

17. A perusal of the impugned judgment passed by the learned Single Judge evidences that three grounds were advanced on behalf of the appellant before the learned Single Judge:- (i) The grading awarded in the ACRs to the appellant being below benchmark were required to be communicated to the appellant and being not communicated could not be considered by the Selection Boards; (ii) the findings and directions of the Court of Inquiry is illegal for the reason the

proceedings of the Court of Inquiry were held in violation of Rule 180 of Army Rules 1954 which mandatorily requires that whenever any inquiry affects the character or military reputation of an officer, full opportunity must be given to such officer of being present throughout the inquiry and of cross-examining any witness whose evidence affects his character and military reputation; while in the instant case the statements of the witnesses Nos.2 to 6 were recorded by the Court of Inquiry in the absence of the appellant and that the Court of Inquiry did not give an opportunity to the appellant to cross-examine witnesses Nos.2,3,4 and 6 and as consequence thereof the show cause notice dated 28.04.1995 issued to the appellant as also the order dated 25.08.1995 awarding the punishment of severe displeasure upon the appellant is also illegal inasmuch as the findings and directions of the Court of Inquiry formed the very basis of the said show cause notice and the order; (iii) while issuing the show cause notice dated 28.04.1995 it was incumbent upon GOC to have supplied the findings and directions of the Court of Inquiry to the appellant as the said documents formed the very basis of the case set up against the appellant; that the non-supply of said documents to the appellant has resulted in violation of rules of natural justice and thus the order dated 25.08.1995 awarding punishment of severe displeasure by way of censure to the appellant is liable to be quashed.

18. Vide judgment dated 15.02.2002 the learned Single Judge dismissed the petition filed by the appellant. With respect to ground (i), it was held by the Single Judge that in

view of the fact that the department allowed the statutory complaint dated 23.09.1993 made by the appellant to a limited extent and expunged the adverse remarks contained in the ACR of the appellant for the year 1992-1993 the question of communication of adverse remarks contained in the ACR to the appellant does not arise at all in the present case. With respect to ground (ii), it was held by the Single Judge that the Court of Inquiry was held to inquire into the conduct of respondent No.6 and not the appellant and thus it was not necessary to give an opportunity to the appellant to remain present throughout the inquiry or to cross-examine all the witnesses examined before the Court of Inquiry. However when the witnesses made statements which had a tendency to affect the character or military reputation of the appellant it was obligatory on the part of the Court of Inquiry to give an opportunity to the appellant to cross-examine the said witnesses, which opportunity was given and availed by the appellant. In such circumstances, it cannot be held that the proceedings of the Court of Inquiry were held in violation of Rule 180 of Army Rules 1954. With respect to ground (iii), it was held by the Single Judge that Rule 184 of Army Rules 1954 when read in light of dictum of law laid down by Supreme Court in the decision reported as Major General Inderjit Kumar v Union of India (1997) 9 SCC 1 shows that the appellant was not entitled to be supplied with the findings, recommendations and directions of the Court of Inquiry along with the show cause notice dated 28.04.1995 and thus there is no violation of the rules of natural justice. In any case, the order dated 25.08.1995 awarding punishment of severe displeasure upon

the appellant was not “merely” based on the findings of the Court of Inquiry; the appellant was given a full opportunity to defend himself and put forward his case before the competent authority and the order dated 25.08.1995 was passed by the competent authority after due consideration of the reply submitted by the appellant in response to the show cause notice dated 28.04.1995.

19. Aggrieved by the judgment dated 15.02.2002 passed by the Single Judge the appellant has filed the present appeal.

20. During the hearing of the appeal, learned counsel appearing for the appellant challenged before us the decision of the Single Judge with respect to grounds nos. (ii) and (iii). As regards ground (i) learned counsel conceded that as regards members of the Armed Forces the law laid down by the Supreme Court is that below benchmark ACR gradings have not be conveyed to the officer concerned. With respect to ground (ii), it was urged by learned counsel for the appellant that the Single Judge failed to appreciate that since the Inquiry in question was conducted to investigate into the allegations leveled by the appellant against respondent No.6, it was implicit that if the allegation was held to be without any basis the effect thereof would have been affecting the military reputation of the appellant, wherefrom adverse consequences could flow; and indeed subsequent events have shown that adverse consequences did flow and thus counsel urged that qua the appellant Rule 180 of the Army Rules 1954 was liable to be fully complied with. In support of the said plea, particular emphasis was placed by the learned counsel on the

decision dated 3.9.2007 of a Division Bench of this Court in W.P.(C) No.4393/2007 'Major General B.P.S. Mander v Union of India & Ors'. With respect to ground (iii), learned counsel for the appellant urged that the learned Single Judge has not correctly appreciated the tenor of Rule 184 of Army Rules 1954 and the dictum of law laid down by Supreme Court in Major General Inderjit Kumar's case (supra) and has wrongly come to the conclusion that the petitioner was not entitled to be supplied with the findings, recommendations and directions of the Court of Inquiry along with the show cause notice dated 28.04.1995.

Ground No. (ii)

21. As evident from the foregoing paras, the ground (ii) advanced by the learned counsel for the appellant is predicated upon Rule 180 of the Army Rules, 1954, which reads as under:-

"180. Procedure when character of a person subject to the Act is involved – Save in the case of a prisoner of war who is still absent whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence in his directions, affects his character or military reputation and producing any witnesses in defence of his character or military reputation.

The presiding officer of the court shall take such steps as may be necessary to ensure that any such person so affected and not previously notified

receives notice of and fully understands his rights, under this rule.”

22. A bare reading of Rule 180 shows that the sine qua non for application of Rule 180 in respect of a person in an inquiry is that the inquiry must affect or likely to affect the character or military reputation of that person. The necessary corollary thereof is that Rule 180 should be applied from the time when the inquiry affects or is likely to affect the character or military reputation of a person. Where an inquiry is directed against a specific person Rule 180 should be applied in respect of said person from the very inception of the inquiry for in such a case the character or military reputation of the said person would be affected or likely to be affected from the very inception of the inception of the inquiry. However where an inquiry is a general inquiry and not directed against any individual but affects or likely to affect character or military reputation of a person Rule 180 should be applied in respect of such person from the time the inquiry affects or is likely to affect his character or military reputation for in such a case the character or military reputation of the said person would be affected or likely to be affected only during the course of the inquiry and not from the very inception of the inquiry. Similarly where an inquiry is directed against a person but affects or is likely to affect the character or military reputation of another person Rule 180 should be applied in respect of such other person from the time the inquiry affects or likely to affect his character or military reputation.

23. In W.P.(C) No.11839/2006 'Lt.Gen.Surender Kumar Sahni v Chief of Army Staff & Ors' decided on 11.01.2007 a general Court of Inquiry was convened to investigate into the irregularities committed in the procurement of rations for the army. The petitioner who was working as Director General of Supply and Transport Service of Army Corps was summoned as a witness in the said inquiry. The Court of Inquiry recommended the initiation of the disciplinary proceedings against the petitioner. The petitioner filed a petition under Articles 226 and 227 of Constitution of India before a Division Bench of this Court challenging the recommendations of the Court of Inquiry primarily on the ground that the Court of Inquiry did not apply Rule 180 qua the petitioner. It was held by the Division Bench that the Court of Inquiry committed an illegality in not applying Rule 180 in respect of the petitioner during the inquiry even though the inquiry in question affected the character and military reputation of the petitioner. While interpreting Rule 180, the Division Bench observed as under:-

“26. Holding of a court of enquiry may not be essential and would be at the discretion of the competent authority but once the authority exercises its powers to hold such an enquiry and where the enquiry affects or is likely to affect the character or military reputation of a person subject to the Act, then compliance to the requirements of Rule 180 would be mandatory. The language of the Rule is certain and unambiguous, capable of only one interpretation i.e. that to afford a full opportunity in terms of this provision is the responsibility of the competent authority. This obligation and burden is incapable of being shifted at the initial stage. Once an opportunity is afforded at the initial stage then it is for the concerned

Officer whose character or military reputation is being affected or is likely to be affected, to exercise the option in regard to what evidence he wishes to give, which witnesses he wishes to cross-examine and what defense, if any, he wishes to lead. These are the matters which squarely fall for decision within the domain of the concerned person subject to the Act. The arguments advanced on behalf of the respondents that the obligation and onus lies upon the delinquent to ask for the protection or opportunity in terms of the provisions is ex facie contrary to the spirit of the provision. Neither the Rule does attempt such an interpretation nor does it suggest such a course of action. Even in normal course such an approach is incapable of being implemented in actual practice. Initiation of an enquiry as contemplated under Rule 180 lies in the discretion of the competent authority and there would be no occasion for an Officer to ask for a protection or rights available to him under this rule, without notice. Thus, to notify the officer concerned of initiation of such proceedings or the likelihood of his reputation or character being affected in the process of the enquiry would undoubtedly be the duty of the competent authority.

27. The language used by the framers of the Rule in no way supports the contention raised on behalf of the respondents that on its correct dissection, the Rule places a mandatory obligation upon the person subject to the Army Act to ask for the grant of protection specified in the Rule. The Rule enjoins upon the concerned authorities an unequivocal duty to give notice and provide full opportunity to the person whose character or military reputation is likely to be affected by the enquiry in terms of Rule 180. Of course, it also places a burden upon such an officer as to what extent and how he wishes to exercise the opportunity provided to him. The option to cross-examine the witnesses produced, which witnesses he wishes to examine and what evidence he wishes to lead as defense, are the basic features in relation to which he has to

exercise his choice and to that extent the Rule does place an obligation upon the delinquent person. This burden no way displaces or reduces the significance of the duties of the authorities and protections available to the Officer. The one in no way destroys or diminishes the obligatory value of the other. Whatever be the stage of the proceedings and whenever the enquiry is likely to affect or affects the character or military reputation of a person, at that very moment, it is required of the authority to sincerely and objectively comply with the requirements of the Rule." (*Emphasis Supplied*)

24. The aforesaid decision, particularly the observations emphasized by us, brings out that Rule 180 is to be applied in respect of a person in an inquiry only from the time such inquiry affects or is likely to affect the character of military reputation of said person.

25. In the backdrop of aforesaid anvil of law, we proceed to examine that whether the Court of Inquiry was required to apply Rule 180 qua the appellant throughout the inquiry?

26. In the instant case, the Court of Inquiry was convened to investigate into the allegations leveled by the appellant against the respondent No.6. The main allegation leveled by the appellant against the respondent No.6 was that the respondent No.6 had taken bribe from the contractors who had constructed the buildings for the defence personnel and wanted the appellant to not to report the deficiencies in the construction of the said buildings and that upon the appellant refusal to do so out of vengeance the respondent No.6 gave low grading to the appellant in his ACR for the year 1992-1993

as also influenced the respondent No.5 to give low grading to the appellant in his ACR for the period for the year 1991-1992. Thus, the primary task of the Court of Inquiry was to probe whether the respondent No.6 had indulged in corrupt practices by taking bribe from the contractors. While probing the same, some material came to the knowledge of the Court of Inquiry pointing towards the fact that the appellant had leveled false allegations against the respondent No.6 with an ulterior motive and to harass the respondent No.6. In that view of the matter, the inquiry conducted by the Court of Inquiry can be divided into two distinct periods. During the first period, the Court of Inquiry was probing into the allegations of acceptance of bribery leveled against the respondent No.6. During that period, the inquiry only affected the character and military reputation of the respondent No.6 and in no way whatsoever, whether directly or indirectly, affected or was likely to affect the character or military reputation of the appellant and thus the Court of Inquiry was not required to apply Rule 180 qua the appellant. During the second period, the inquiry invariably was likely to affect the character or military reputation of the appellant thus the Court of Inquiry was duty bound to apply Rule 180 qua the appellant during that period of the inquiry and the needful was done by the Court of Inquiry.

27. In view of the above discussion, we find no merit in the ground No. (ii) advanced by the learned counsel for the appellant.

Ground No. (iii)

28. Whether the non-supply of the findings, recommendations and directions of the Court of Inquiry to the petitioner along with the show cause notice dated 28.04.1995 has resulted in the violation of rules of natural justice and vitiated the said show cause notice?

29. The punishment of censure by way of severe displeasure has not been prescribed as a punishment in the Army Act. The source of punishment of censure by way of severe displeasure is to be found in the instructions contained in the letter No.32908/AG/DV-1 dated 05.01.1989 issued by the Adjunct General, the relevant portion whereof reads as under:-

"2. The award of censure to an Officer or JCO is an administrative action, in accordance with the customs of the service. It takes form of "Severe Displeasure (either recordable or otherwise) or "Displeasure" of the officer awarding the censure, as specified in the succeeding paragraphs.

....

5. Censure is awardable where the act, conduct or commission is of minor nature, both in nature and gravity. An offence of serious nature under the Army Act will not be disposed of by award of censure but will be dealt with by initiating a disciplinary action. Attention, in particular, is invited to para 432 of the Regulations for the Army, 1962, which stipulates that persons committing offences involving moral turpitude, fraud, theft, dishonesty and culpable negligence involving financial loss to public or regimental property must be tried by a court martial or prosecuted in a Civil court. Such cases will not be disposed summarily or by administrative action. In view of the foregoing, there should be no occasion for offences involving moral turpitude, misappropriation, financial or other

offences of serious nature being dealt with by award of censure when disciplinary action is feasible/possible. If for some reason, a case of this nature does come across, where trial is inexpedient or impracticable, administrative action for termination of service of the delinquent person should be initiated.

6. Cases which are not of minor nature and which do not involve moral turpitude, fraud, theft and dishonest and where trial by GCM is either not practicable either being time-barred or is not expedient due to other reasons may in appropriate cases at the discretion of the GOC-in-C be forwarded to Army Headquarters for consideration to award of censure by the COAS, so as to avoid resorting to the extreme step of action under the provisions of Army Act Section 19 read with Army Rule 14." (*Emphasis Supplied*)

30. The validity of the afore-noted letter dated 05.01.1989 came up for consideration before a Division Bench of Himachal Pradesh High Court in the decision reported as Brigadier J.S. Sivia v Union of India & Ors (1994) 1 LLJ 906 HP wherein it was held that the aforesaid letter has no legal sanction and thus Chief of Army Staff or other senior officers has no power to award punishment of censure to any officer or Junior Commissioned Officer.

31. The correctness of the afore-noted decision of Himachal Pradesh High Court came up for consideration before Supreme Court in the decision reported as Union of India & Ors v Brigadier J.S. Sivia 1996 MLJ SC 3. After examining various provisions of Army Act, 1950 and Army Rules, 1954, it was held by the Court that the view taken by the Himachal Pradesh High Court that the aforesaid letter dated 05.01.1989 issued

by Adjunct General is incorrect. The relevant observations of Supreme Court are being noted herein under for a ready reference:-

“8. It is obvious from various documents mentioned above that the award of censure is being regulated by ‘Customs of the service.’ The Army Order dated January 24, 1942 takes us to August 26, 1927 and as such there is reasonable basis to assume that the award of censure is being governed by the “Customs of the service” right from the inception of the Indian Army. That being the position the award of censure is the binding rule of the army service. Section 3(v) of the Act and Regulations 9 of the Regulations recognize the existence of “customs of the service”. The definition of “Commanding Officer” clearly says that in the discharge of his duties as a Commanding Officer, he has to abide by the “customs of the service”. Similarly Regulation 9 which lays down the duties of the Commanding Officer, specifically says that the Commanding Officer has to discharge his functions keeping in view the regulations and the ‘customs of the service’. From the scheme of the Act, Rules, Regulations and the various Army orders issued from time to time, it is clearly beyond doubt that the award of censure is a part of the custom of the Army and has the binding force.” (*Emphasis Supplied*)

32. From the aforesaid, it is clear beyond doubt that the award of punishment of censure by way of severe displeasure to an officer or Junior Commissioned Officer is an administrative action.

33. Rules of “natural justice” are not embodied rules. The phrase “natural justice” is also not capable of a precise definition. The underlying principle of natural justice evolved

under the common law, is to check arbitrary exercise of power by the State and its functionaries. Therefore, the rules of natural justice imply a duty to act fairly i.e. fair play in action. Initially, it was the general view that the rules of natural justice would apply to judicial or quasi-judicial proceedings and not to an administrative action. However, in the decision reported as State of Orissa v Dr. Binapani Dei AIR 1967 SC 1267 the distinction between quasi-judicial and administrative decisions was perceptively mitigated and it was held that even an administrative order or decision in the matters involving civil consequences, has to be made consistent with rules of natural justice. Since then the concept of natural justice has made great strides and is invariably read into administrative actions, involving civil consequences.

34. Rules of natural justice require that an adjudicating/administrative authority should afford a reasonable opportunity of being heard to a party. The expression “reasonable opportunity of being heard” implies that the authority should: - (i) give all information as to the nature of the case which the party has to meet; (ii) supply all information, evidence or material which the authority wishes to use against the party; (iii) receive all relevant materials which the party wishes to produce in support of its case and (iv) give an opportunity to the party to rebut adverse information, evidence or material appearing against such party.

35. In the instant case, in view of the fact that the award of punishment is an administrative action it was incumbent upon

the GOC to observe the rules of natural justice while awarding said punishment to the appellant. A bare reading of the show cause notice dated 28.04.1995 and the order dated 25.08.1995, extracted in foregoing paras, shows that the findings, directions and recommendation of the Court of Inquiry weighed heavily with the GOC in awarding punishment of censure to the appellant. In such circumstances, the rules of natural justice require that the GOC ought to have supplied the findings, directions and recommendations of the Court of Inquiry to the appellant along with the show cause notice dated 28.04.1995. The non-supply of the said documents to the appellant implies that the appellant has not been granted a reasonable opportunity of being heard and has resulted in violation of rules of natural justice.

36. Before proceeding further, let us analyze Rule 184 of Army Rules relied upon by the Single Judge to justify non-supply of the findings, recommendations and directions of the Court of Inquiry to the appellant. Rule 184 of the Army Rules reads as under:-

“184. Right of certain persons to copies of statements and documents – (1) Any person subject to the Act who is tried by a court-martial shall be entitled to copies of such statements and documents contained in the proceedings of a court of inquiry, as are relevant to his prosecution or defence at his trial.

(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." (*Emphasis Supplied*)

37. As noted in foregoing paras, clause (1) of Rule 184 was read by the Single Judge to mean that a person is not entitled to receive the findings/recommendations of the Court of Inquiry. In this regards, suffice would it be to state that the learned Single Judge failed to note that Rule 184 is applicable in cases where a person is tried by the Court Martial, which was not the position in the instant case.

38. The sum and substance of the above discussion is that the order dated 25.08.1995 passed by the GOC awarding punishment of censure by way of severe displeasure to the appellant is liable to be quashed as the same is violative of rules of natural justice. Ordered accordingly.

39. It would be open to the respondents to take corrective action by supplying to the appellant the findings, recommendations and directions of the Court of Inquiry including the evidence recorded during the Court of Inquiry and thereafter permit the appellant to file a response to the show cause notice issued to him and in light of the response filed to pass a fresh order.

40. Should the respondents choose to proceed ahead as aforesaid, depending upon the final order passed further action would be taken. If the final order inflicts an administrative punishment upon the appellant, that would be the end of the matter as regards the respondents. But, should the respondent choose not to proceed ahead or after

proceeding ahead inflict no administrative punishment upon the appellant, Review Selection Board be constituted to consider the candidature of the appellant for promotion to the rank of Lt.Colonel and needless to state the Review Selection Board would not consider the penalty imposed upon the appellant.

41. The appeal is allowed in terms of paras 38 to 40 above.

42. There shall be no order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

FEBRUARY 17, 2011
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