



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: March 18, 2024

+ W.P.(C) 12202/2023

RAJNISH BHANDARI

..... Petitioner

Through: Mr. Shri Singh and
Mr. Gaganjyot Singh, Advs.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Harish Vaidyanathan Shankar,
CGSC, Mr. Srish Kumar Mishra,
Mr. Alexander Mathai Paikaday,
Mr. Krishanan V., Advocates with
Maj. Partho Katayan

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

V. KAMESWAR RAO, J

1. This is a petition which was filed as Criminal Appeal 438/2023 before the Supreme Court against order dated December 07, 2022, of the Armed Force Tribunal ('AFT', for short) which has been transferred by the Supreme Court to this Court vide the order dated July 11, 2023, and signed order dated September 01, 2023, passed in MA No.1826/2023 in Criminal Appeal 438/2023, in view of the judgment of the Supreme Court in the case of *Union of India & Ors. v. Purushotam Dass*, in *Civil Appeal No. 447/2023*. The orders dated July 11, 2023 and September 01, 2023, are reproduced as under:



“Dated July 11, 2023

1. The instant Criminal Appeal is directed against the order dated 07.12.2022 passed by the Armed Forces Tribunal, Principal Bench, New Delhi in OA (Appeal) No.261 of 2021.
2. In view of the recent decision rendered by this Court in Union of India & Ors. vs. Parashotam Dass, 2023 SCC Online SC 314, the appellant has an efficacious alternative remedy to assail the order passed by the Armed Forces Tribunal, before the High Court under Article 226 of the Constitution.
3. Since the appellant is currently posted in Delhi and learned counsel for the respondents also does not oppose it, let this Criminal Appeal be transferred to the High Court of Delhi for being registered as a Writ Petition under Article 226 of the Constitution. The records of the appeal be transferred to the High Court forthwith.
4. The parties are directed to appear before the High Court of Delhi on 17.08.2023.
5. Hon'ble Chief Justice of the High Court of Delhi is requested to assign the matter to a Division Bench for final hearing.
6. In view of the fact that the pleadings are complete and the appellant is left with hardly three years' in service the High Court is requested to decide the matter expeditiously and preferably within six months from the date of receipt/production of a copy of this order.
7. The appeal stands disposed of accordingly.”

“Dated September 1, 2023

1. Perused the Office Report for direction dated 18.08.2023.
2. As per the Office Report, the Order dated 11.07.2023, passed in Criminal Appeal No.438 of 2023, transferring the said appeal for adjudication by the High Court of Delhi, under Article 226 of the Constitution, could not be communicated to the High Court due to oversight. The records of the above-mentioned appeal have also not been transferred to the High Court.
3. The Registry is, accordingly, directed to transfer the records of the appeal forthwith to the Delhi High Court along with a copy of the order dated 11.07.2023.



4. MA No.1826 of 2023 stands disposed of accordingly.”

2. The Armed Force Tribunal, Principal Bench, New Delhi decided the Original Application Appeal (‘OA (Appeal)’, for short) being O.A (Appeal) No. 261/2021 on December 07, 2022, wherein the plea of the petitioner for setting aside the orders of the General Court Martial (‘GCM’, for short) and the Confirming Authority (‘CA’, for short) was dismissed by the AFT.

3. The facts as noted from the record and also urged by the counsel for the petitioner, Mr. Shri Singh, are that the petitioner was commissioned as an officer in the Indian Army in Corps of Engineers on June 11, 1994. The petitioner was awarded Vishisht Sewa Medal by the President of India on January 26, 2014. He was also awarded commendation cards by the VCOAS and Army Commander, Central Command.

4. In July, 2014, one Colonel Rajnish Kumar (Retd.) had sought the petitioner’s help to assist the wife (‘A’) of a Retired Lt. Col (‘B’) (PW2), with regard to the topography and climate of Leh and also to arrange a guest room for her stay at Leh. Thereafter, ‘A’ and ‘B’ contacted the petitioner from time to time seeking some or the other information.

5. It is the case of the petitioner that, on September 19, 2014, ‘A’ telephoned the petitioner seeking some information and the petitioner informed her that he is busy and some other officer would assist her. However, she came to Jammu, called the petitioner and insisted upon meeting him. The petitioner not wanting to offend ‘A’ and out of sheer



courtesy met her in the coffee shop at the hotel.

6. In May, 2015, the petitioner proceeded for the prestigious Higher Defence Management Course ('HDMC', for short), at College of Defence Management ('CDM', for short). In early August, 2015, 'A' telephoned the petitioner and informed him that, she is aware that the petitioner is visiting Srinagar between August 24, 2015 to August 29, 2015. She insisted upon meeting him for one last time before she leaves for Goa. 'A' at her own insistence came to Srinagar to meet the petitioner at hotel Centaur Lake View, where other officers of the course were also staying.

7. On November 25, 2015, 'B' filed a complaint to the Commandant, CDM against the petitioner alleging that the petitioner is guilty of "*stealing the affection of his wife*". On November 30, 2015, 'B' filed a matrimonial petition before the learned Civil Court, Vasco Da Gama, Goa, seeking divorce on the ground of adultery alleging 'A' had extra marital relationship with the petitioner. On January 01, 2016, 'A' wrote a handwritten letter to DG (D, C & W) Army HQ seeking to ignore 'B's' complaint against the petitioner.

8. On January 23, 2016, 'A' withdrew the letter dated January 01, 2016, and requested that formal enquiry and investigation should be carried out with regard to 'B's' complaint. Thereafter, the matrimonial petition was withdrawn at the insistence of the complainant therein. Thereafter, on March, 2016, the Commandant of CDM, Secunderabad initiated a One-Man-Inquiry to investigate the complaint of 'B', wherein 'A' & 'B' were asked to make statement, however, they remained absent and the enquiry remained inconclusive.



9. According to Mr. Singh, on May 18, 2016 a formal Court of Enquiry was ordered by HQ GOC 15 Corp to investigate the complaints/allegations made by 'B'. The Court of Enquiry was held between June 27, 2016 to August 16, 2016, wherein the couple were examined and the statement of the petitioner was recorded. The convening authority i.e., GOC 15 Corp held that, no charge of "adultery" is proved and only an administrative action be taken in the form of 'Censure' against the petitioner on the allegation that his Identity Card was photocopied by the hotel and he shared his travel dates with 'A'.

10. On July 06, 2017, an attachment order was issued, thereby attaching the petitioner to HQ Junior Leaders Wing, Belgaum w.e.f., August 20, 2017 for taking disciplinary-action against him. On August 22, 2017, the petitioner was served with a Tentative Charge-Sheet containing charges of adultery on September 19, 2014 and 24/25 August, 2015 and other incidental charges, respectively. On August 23, 2017, the Commanding Officer (CO) carried out the procedure of hearing of charge and adjourned the matter for summary of evidence, which is the second step of pre-trial procedure for trial by Court Martial.

11. The petitioner being aggrieved by the disciplinary action against him on the charges of committing adultery and consequential attachment has filed an O.A. 450/2017 before the AFT, Regional Bench, Srinagar.

12. On August 11, 2018, the petitioner was issued the Final Charge-sheet (directing the convening of the GCM), with two offences



of adultery and third charge of revealing his HDMC programme with 'A'. On September 08, 2018, the petitioner was placed under open arrest. On November 26, 2018, the petitioner was released from open arrest. On January 08, 2019, the AFT disposed of the O.A. directing the petitioner to approach the GCM under the Army Rules 49 and 50.

13. Being aggrieved by the proceeding of the GCM, on May 03, 2019, the petitioner filed the Special Leave Petition before the Supreme Court. The Supreme Court, in view of the fact that the adultery has been decriminalised by it, allowed the GCM to continue, however, restrained the GCM from passing its decision without the permission of the Court. It is the case of the petitioner that, on the day before the Supreme Court was hearing the matter finally, the GCM was convened and preceded till the wee hours in the morning and pronounced the petitioner 'Guilty' of first two charges of adultery and 'Not Guilty' on the third charge (sharing of information). With regard to the third charge, the GCM held that, no proof except the words of 'A' to indicate that the petitioner had shared the tour programme with her.

14. On August 02, 2019, the Supreme Court set aside the finding of the GCM with regard to the charges under Section 69 of the Army Act, 1950, and held that, nothing survives against the petitioner on the charges under Section 497 (Adultery) of the Ranbir Penal Code, 1932. The Court permitted the Competent Authority to proceed with the offence under Section 63 of Army Act and to reach its logical conclusion. On February 08, 2020, the CA directed the GCM to reassemble for fresh evidence and re-appreciate as well as re-evaluate the evidence and to reconsider its finding of 'Not Guilty' on the Third



Charge against the petitioner.

15. On February 19, 2020, the GCM held the petitioner 'Guilty'. On August 18, 2020, the petitioner made a representation to the Chief of Army Staff through GOC-in-C, Southern Command under Section 164(2) of the Army Act, challenging his conviction on Third Charge in the Revision Proceedings. The CA vide order dated May 20, 2020, confirmed the finding and sentence of the GCM. Feeling aggrieved by the same, the petitioner filed an appeal under Section 15 of the AFT Act, 2007.

16. The case of the petitioner was that in the initial Court of Enquiry, the charge of adultery was not proved and it recommended the dropping of the proceedings and for initiation of administrative action in the form of censure against the petitioner on the ground that he shared his identity card photograph and travel plans with 'A'.

17. According to Mr. Singh, the AFT did not address all the issues raised by the petitioner and provided no reasons for upholding the findings of the GCM. In this regard he submitted, despite recording the submission on behalf of the petitioner that, evidence of PW2 (B) clearly indicates that, *firstly* the information was not confidential as it was well known to every other person in the hotel and staff. *Secondly*, PW2 specifically stated that he called the reception and enquired with them regarding stay of the appellant and other officers in the hotel, hence the information was divulged by the hotel staff itself. *Thirdly*, PW2 admits that his course mate who was an instructor at the CDM informed him about the programme and no action was initiated against the instructor. *Fourthly*, the information was openly circulated on the whatsapp group



of 'B^{ns}' regiment. The same has been ignored by the AFT. He also submitted that the AFT has also overlooked the submissions on behalf of the petitioner, inasmuch as, for the purpose of over reach of the Supreme Court judgment, the action was initiated and second that the powers of revision have been misused by the Revisional Authority. He also submitted that the AFT did not deal with the plea raised on behalf of the petitioner as set out above and had only recorded its finding, as follows:-

“...However, after the Court re-assembled based on the order passed by the CA on 8th February, 2020 and based on the evidence that again came on record, the finding was recorded, in our considered view, is a reasonable finding based on appreciation of the material that came on record and a reasonable finding recorded on due appreciation of evidence and the material that came on record, does not call for any interference in the matter particularly in the light of the punishment of severe displeasure recorded against the appellant for his act of commission and omission which clearly is in violation to the mandate of Army Act, i.e. Section 63.”

18. According to the petitioner, the operative portion of the impugned order as extracted above is completely devoid of any reasoning whatsoever. The AFT has not dealt with the various aspects pointed out by the petitioner from the evidence of PW2, which would establish that the information alleged to have been disclosed to 'A' is not sensitive or secret in nature. In this regard, he also stated that, this Court while exercising jurisdiction under Article 226 of the Constitution of India, has wide powers to set aside orders which are non-speaking in nature or where no reasons have been provided in support of findings.



19. The requirement to provide reasons is applicable even to appellate and revisional authorities. The Supreme Court has characterized “reasons” as the “*links between the materials on which certain conclusions are based and the actual conclusions.*”. He also stated that, in this case, the AFT has expressed its conclusion that the finding of the GCM is reasonable and does not call for any interference. However, the reasons for such a conclusion, being the “links”, have not been provided. In fact, he relied upon proviso to Section 15(4) to state that the requirement to record reasons in writing is incorporated in the AFT Act. He also stated that, non-consideration and non-application of mind by the AFT to the submission made on behalf of the petitioner, on the nature of the information allegedly disclosed and whether it was confidential or not would also render the impugned order manifestly erroneous. He also stated that the impugned order suffers from non-application of mind by relying upon the conclusion of AFT in paragraph 10 of the impugned order as under:-

“The third charge was pertaining to the appellant's sharing the forward area tour itinerary of the higher defence management course on social media and handing over his identity card which was photocopied by the staff of the Hotel Asia, Jammu to the lady and for this he has been imposed with the punishment of severe reprimand on revision by the CA.”

20. The plea of petitioner before the AFT was also that the evidence on record does not warrant conviction of the petitioner for the third charge under Section 63 of the Army Act. Similar are the submissions in this regard that the AFT has unfettered powers to re-appreciate the evidence on record in order to decide, whether the



decision of the GCM requires interference. Whereas in the present case, neither the GCM nor the AFT has considered the relevant portions in the evidence of PW2 which would indicate that the information allegedly disclosed by the petitioner to 'A' was not sensitive or secret information to begin with.

21. He submitted that the statement made by PW2 quite clearly discloses that the information pertaining to the stay of defence officers at Hotel Centaur Lake View, Srinagar was not sensitive in nature. The hotel was a civilian installation, and its staff had no qualms about confirming the presence of the officers to PW2 being a third party and also in naming the petitioner as being a member of the group. Further, PW2 also checked about the tour program of the group from one of his coursemates who was an instructor at the College of Defence Management (CDM). So, there was no material before the GCM that would lead to a conclusion that the information pertaining to the stay of the defence officers was sensitive or secret in nature. It is not a case, where two views are possible over the same evidence and hence the AFT could have concluded that its interference is not warranted.

22. He stated that a complete failure to give relevant material would render the finding of GCM legally unsustainable. His submission is also that this Court is not denuded of the power to sift through evidence while exercising writ jurisdiction and to hold that the conclusion drawn by the GCM and the AFT as a perverse finding, on a material which cannot be construed as evidence, so as to be read against the petitioner herein. He also stated that the GCM has changed the stance in the revision proceedings without recording a reason for such a



change. In this regard, he stated that in the first GCM which concluded with a finding that the petitioner was '*Not Guilty*' of the third charge, the Court inter alia observed that, even taking judicial notice of the security situation prevalent in Srinagar during the relevant period, sharing information to the extent of course stay for particular dates in a particular hotel with '*A*' cannot strictly fall within the meaning of an act prejudicial to good order and discipline.

23. According to him, the GCM also found that '*A*' was not aware of the entire itinerary of the petitioner and other officers participating in the course. The petitioner had not told her about the sequence in which the group would visit various places. The Court found that '*A*' was only aware of the fact that the petitioner and other officers who were participating in the course would be staying in Hotel Centaur Lake View, Srinagar on 24-25 August, 2015 and no more details about the entire tour plan.

24. According to Mr. Singh, GCM re-assembled for the second time and changed its view and observed that, though the hotel was a civilian installation and the staff may have been aware of the stay of the officers, however, the accused, being a member of the Armed Forces, was well aware that he should not have divulged the information to an unauthorised recipient. This conclusion would indicate that no reasons have been provided by the GCM for the change in its view regarding finding and sentence of the petitioner. In fact, a perusal of the findings in the revision proceedings would reflect that the GCM has merely followed the observations of the CA and had not applied independent mind on the issue. He also stated that, this vitiates the findings of the



GCM and calls for the interference of this Court.

25. Mr. Singh stated that the GCM proceeded to ignore the same and in an unconnected manner, altered its judgment and opinion from “*Not Guilty*” to “*Guilty*”. There was no additional evidence brought on record to justify the change in opinion of the GCM.

26. He stated that, it is only because the Supreme Court has set aside the findings and the sentence of the GCM and the petitioner being exonerated from all charges, the respondents in pure vendetta mode and with a sole intention to put the petitioner in the dock under one pretext or the other has initiated the revision proceedings resulting in its finding and sentence. He also stated that the consequence of the reprimand for a period of 10 years ahead is that, he will not be considered for any promotion without first considering the penal action. The Board for his empanelment as ‘Brigadier’ took place and his name was not cleared for empanelment despite having an excellent comparative merit.

27. According to him, the orders passed are non-speaking in nature and without any support to the findings therein. In support of this, he has relied upon the judgment of the Supreme Court in *Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India & Anr. (1976) 2 SCC 981*.

28. It is his submission that the AFT while examining the correctness of GCM was bound to deal with the submission(s) of the petitioner and provide reasons for its decisions, which it did not have. In support of this submission, he has relied upon the following judgments:

i. *Assistant Commissioner Commercial Tax Department,*



- Works Contract and Leasing, Kota v. Shukla & Brothers, (2010) 4 SCC 785.*
- ii. *Gurdial Singh Gijji v. State of Punjab, (1979) 2 SCC 368.*
- iii. *State of Rajasthan v. Rajendra Prasad Jain, (2008) 15 SCC 711.*
- iv. *State of NCT of Delhi & Anr. v. Sanjeev @ Bittoo, (2005) 5 SCC 181.*
- v. *Naik Gian Chand & Ors. v. Union of India & Ors., Civil Writ Nos. 75 & 122/1981, Civil Writ Nos.2582/1981 and 587/1982 decided on March 15, 1983.*

29. It is his submission, that the impugned order(s) suffers from non-application of mind. He also stated that the charge against the petitioner in the GCM proceedings has nothing to do with the facts recorded by the AFT. The AFT has passed the impugned order in a mechanical manner without proper understanding of the charge against the petitioner.

30. According to him, the AFT has unfettered power to re-appreciate the evidence on record in order to decide whether the decision of the GCM is justified. In support of his submissions with regard to the powers of AFT, he has relied upon the judgment of the Supreme Court in *Union of India & Ors. v. Major R. Metri, No.08585N, (2022) 6 SCC 525*, wherein the Supreme Court held that the re-appreciation of evidence is permissible under Section 15 of the Armed Force Tribunal Act, 2007, to find out whether the finding of the Court Martial are legally sustainable, due to any reason.

31. He stated that, in view of the judgments of the Supreme Court in *Ranjit Singh & Ors. v. Union of India, (1980) 4 SSC 311* and



Rampur Distillery Co. Ltd. v. Company Law Board & Anr., (1969) 2 SCC 774 if relevant factors are not being considered by the relevant authority, its decision is considered to be vitiated.

32. In support of his submission, he has relied upon the following judgments:-

- i. ***Maj. R. K. Sareen v. Union of India & Ors., ILR (2011) Delhi II 684.***
- ii. ***Arvind Ghildiyal v. Union of India & Ors., 2019 SCC OnLine Del 9945.***
- iii. ***Union of India v. H.C. Goel, AIR 1964 SC 364.***
- iv. ***B.S. Hari Commandant v. Union of India & Ors. 2023 SCC OnLine SC 413.***

33. Lastly, Mr. Singh submitted that the GCM has hastily completed the first GCM proceedings because of the pending litigation, which was listed before the Supreme Court for the final disposal. He submitted that, such an exercise is in violation of Army Rules in view of the judgment of this Court in ***Ex-Haveildar K. P. Pandey v. Union of India & Ors., 2002 SCC OnLine Del 1135.***

34. He seeks prayers as sought in the petition.

35. The case of the respondents before the AFT was that the powers of revision available to the CA under Section 160 of the Army Act, 1950 have been exercised in the matter, in accordance with the requirement of law. There is no reason to disbelieve the same and, therefore, no interference into the matter is called for. As far as the third charge is concerned, the petitioner was exonerated of the said charge on the ground of the same has not been proved. The third charge was



pertaining to the petitioner sharing the Forward Area Tour Itinerary of the HDMC on social media and handing over his Identity Card which was photo copied by the staff of the Hotel and also sharing his travel dates with 'A' and for this, he has been imposed the punishment of severe reprimand on revision by the CA.

36. According to Mr. Vaidyanathan, the HDMC is based on a predefined curriculum, the course commences each year in May and a Forward Area visit to various operational locations is conducted. During the course, the course officers are divided into smaller groups and each group visits a specific Forward Operational Area. The petitioner would have come to learn that, he was to visit Srinagar only upon commencement of the course. Further, the itinerary of such visits is dynamic and finalised only a few days before the visit. Therefore, it can be presumed that the petitioner and 'A' were in contact after he had joined HDMC-11 and the exact date and time was communicated to 'A'.

37. He would submit that the AFT was justified in upholding the action taken by the respondents of severe reprimand imposed on the petitioner. In this regard, he submitted that, given the situation which was prevailing in J&K during the period by pointing out the terror attacks and the disclosure of such a vital information to 'A' by the petitioner would have been fatal and as such an information could not have been divulged. The relevant date on which incidents of terror attack in J & K is reproduced as under:

**“INCIDENT OF TERRORIST ATTACK IN J&K
YEAR 2013 ONWARDS**



<u>S. No.</u>	<u>Incident</u>	<u>Date / Year</u>
1.	<i>Srinagar Attack</i>	<i>13 March 2013</i>
2.	<i>Srinagar Attack</i>	<i>24 June 2013</i>
3.	<i>Blast in Budgam District</i>	<i>28 April 2014</i>
4.	<i>Jammu Attack</i>	<i>20 March 2015</i>
5.	<i>Gurdaspur attack in Dina Nagar, Gurdaspur</i>	<i>27 July 2015</i>
6.	<i>Pathankot attack in Pathankot Air Force Station</i>	<i>02 January 2016</i>
7.	<i>Pampore Attack (Kashmir)</i>	<i>25 June 2016</i>
8.	<i>Uri Attack</i>	<i>18 September 2016</i>
9.	<i>Baramulla Attack</i>	<i>03 October 2016</i>
10.	<i>Handwara Attack at RR Camp</i>	<i>06 October 2016</i>
11.	<i>Nagrota Army Base Attack</i>	<i>29 November 2016</i>

38. He submitted that the GCM, on revision was convinced that 'A' was aware of the fact that the petitioner and other officers of the course will be staying at 'Hotel Centaur Lake View, Srinagar' on 24-25 August 2015. This information, as per her deposition was provided by the petitioner as they wanted to meet each other at that time. He also stated that the deposition of 'A' was found to be consistent, reliable and truthful and is supported by the testimony of PW-4 (Ghulam Mohi-ud-din Bhat) that the booking of the hotel had been made by 'A' on August 15, 2015.

39. He seeks dismissal of this petition.

ANALYSIS:-

40. Having heard the learned counsel for the parties, at the outset we may reproduce the conclusion drawn by the AFT in the impugned order by stating in Paragraph 13 onwards as under:-

"13. ...In our considered view as the Hon'ble Supreme Court has only quashed the punishment of the Court Martial



proceedings pertaining to the. offence relatable to Section 497 of the Ranbir Penal Code, there was no error on the part of the Department in proceeding with the matter and taking action against the appellant from the stage of confirmation for the offence under Section 63 of the Army Act and when the proceeding and finding of the Court was placed before the CA, the CA in exercise of its power under Sections 155, 158 and 160 of the Army Act which reads as under, exercised the jurisdiction under Section 163 and took the impugned action:

“155. Power to confirm finding and sentence of district court- martial- The findings and sentences of district courts- martial may be confirmed by any officer having power to convene a general court martial or by any officer empowered in this behalf by warrant of such officer.

158. Power of confirming authority to mitigate, remit or commute sentences -(1) Subject to such restrictions, reservations or conditions as may be contained in any warrant issued under section 154 or section 155 and to the provision of sub- section (2), a confirming authority may, when confirming the sentence of a court- martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any punishment or punishments lower in the scale laid down in section 71.

(2) A sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the Court.

160. Revision of finding or sentence --- (1) Any finding or sentence of a court- martial which requires confirmation may be once revised by order of the confirming authority and on such revision, the Court, if so directed by the confirming authority, may take additional evidence.

(2) The Court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably



absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the Court shall proceed with the revision, provided that, if a general court- martial, it still consists of five officers, or, if a summary general or district court- martial, of three officers.

We find from the proceedings that have been placed before us that the revision proceedings commenced at 1000 Hrs. on 15th February, 2020 to consider the revision petition vide orders passed by the CA on 8th February, 2020, available at page 195 of the paper book and ordered for re-assembly to record additional evidence and re-consider the finding of 'not guilty' with regard to the third charge and the reasons recorded by the CA from para 2 onwards upto para 5 read as under

"2. In thus ordering the Court to re-assemble to record additional evidence and reconsider their Findings of 'Not Guilty' on the third charge' as arrived at in respect of the accused and while in no way wishing to interfere with the discretion vested in the Court to accept or reject any part of evidence before it, I, as confirming officer, having carefully gone through the entire record of the proceedings in the light of the law on the subject, am of the view that findings of the Court in respect of the third charge is against the weight of the evidence, which has come on record during the General Court Martial proceedings. I wish to point out that the Court appears to have correctly appreciating and evaluating the evidence on record, as set out in the subsequent paragraphs.

3. Primarily, there were following three, issues which were required to be analysed and deliberated upon, before drawing any conclusion about the guilt or innocence of the accused:-

(a) Whether between May 2015 to August 2015, the accused improperly shared tour programme of



Higher Defence Management Course-11 as regards date and place of stay at Hotel Lake View Centaur, Srinagar with XXXX, wife of Lieutenant Colonel XXXX (Retired), a civilian.

(b) whether the aforesaid act came to the knowledge of authority competent to initiate action on 06 December 2016.

(c) whether sharing of such information by the accused amounted to an act prejudicial to good order and military discipline.

4. Adverting to the issue, whether between May 2015 to August 2015, the accused improperly shared tour programme of higher Defence Management Course-11 as regards date and place of stay at Hotel Lake View Centaur, Srinagar with XXXX, it is in the deposition of XXXX (PW-1) that "The accused said words to that effect "had I known earlier that you are planning to go to Leh again, I could have opted for Leh instead of Srinagar. Then the accused told me about his HDMC course travel plan, dates and where all they will be travelling. He asked me if I can come and meet him in Srinagar. He also gave me the name of hotel"

"Since, the accused had given me the date of his arrival in Srinagar and the name of his Hotel, I booked a room on my name in the same hotel before leaving Leh for Srinagar".

"On 22 August 2015, I left for Srinagar. On 23 August early morning, I reached Srinagar hotel Centaur Lake View"

"Next day, on 24 August 2015, at around 1530 hours in afternoon, the accused called me up for informing about his arrival at the hotel and told me that after quick lunch, course briefing, cocktail and dinner, he



would come and meet me".,

"The accused had informed me about his stay in Srinagar while I was in Goa, I think it was sometimes in the month of July 2015"

"I was informed about his tour programme verbally by the accused";

5. While appreciating the evidence, the Court ought to have considered and taken holistic view of the security situation which was prevalent in Srinagar during that period and then drawn conclusion, if the information related to the accused would have jeopardised the life of the accused and other officers so accompanying. Apparently, the Court has failed to appreciate that the-sharing-of information as mentioned in the third charge is with regards to the date and place of stay at Hotel "Lake View Centaur" and not with regards to the complete itinerary of Higher Defence Management Course-11. The same is evident from the brief reasons where the Court has mentioned "The Court is convinced that XXXX was only aware of the fact that accused and other officers of the course will be staying in hotel 'Centaur Lake View', Srinagar on 24-25 August 2015 and no more details about the entire tour plan OT the course. This information as per her deposition was provided to her by the accused as they wanted to meet each other at that time. It is also established that sharing of such information by the accused was only verbal during one of their telephonic conversation between them. The prosecution has also not produced electronic records or documentary evidence of sharing entire tour plan of the said course by the accused with her. Though, the court has considered the security situation prevalent in Srinagar during the period of August 2015 by taking judicial notice of the same, but is convinced that sharing information to the extent of course stay at the said dates and in a particular hotel by the accused with XXXX, wife of a retired officer, cannot strictly fall within the meaning of an act prejudicial to



good order and military discipline". Thus a careful and conscious appreciation of evidence on record, clearly establishes that the accused improperly shared tour programme of the higher Defence Management Course-11" as regards date and place of Hotel "Late View Centaur",-Srinagar with XXXX (PW-1). Even after having been convicted, the Court arrived at a finding of "Not Guilty" on the charge, which is misplaced. As regards the issue of the said act coming to the knowledge of the authority competent to initiate action on 06 December 20,16, prosecution has not produced any evidence in this regard. Therefore, the said evidence be produced in Court by prosecution by calling a competent witness in this regard.

Finally in para 6 and 7 the following directions were issued:

6. In view of the aforesaid discussion and the evidence on record, the Findings "Not guilty" of the Court on third charge is against the weight of evidence on record. I therefore, direct the Court to reassemble for taking fresh evidence showing knowledge of the authority competent to initiate action on 06 December 2016, by examining a competent witness in this regard. Thereafter, the Court should re-appreciate and re-evaluate the evidence in the light of observations as above and reconsider its findings of 'Not guilty' on the third charge.

7. After the Revision Order is read out in the open Court, the Court shall record additional evidence as brought out above. The prosecution as well as the defence shall be granted further opportunity to address the Court. Thereafter, the Judge Advocate will give a further Summing up incorporating all the legal issues raised by the prosecution and defence, if any and additional evidence brought on record. If the Court after re-appreciating and re-evaluating the evidence in the light of observations as above, finds that the accused is 'guilty' of



the third charge, it should revoke its finding on the third charge and record revised findings and the brief reasons in support thereof. Thereafter, the Court should proceed with the proceedings on conviction under Army Rule 64 and pass appropriate sentence commensurate to the nature and gravity of the charge. Even if, the Court chooses to adhere to their previous finding, they must give fresh / additional reasons.”

*“14. The question as to whether this exercise of power by the Revisional Authority is beyond the powers conferred under the statute particularly Section 160 of the Army Act, this issue has been considered by Hon'ble Supreme Court in the case of **Union of India and Ors. Vs. Capt. A.R Bajpai [(1998) 4 SCC, 245]** and in para 15, after taking note of the statutory provisions, the Hon'ble Supreme Court has come to the following conclusion;*

“15. It was contended by the respondent that the very use of the expression "perverse" in the revision order would have influenced the mind of the members of the General Court Martial as the officers constituting the General Court Martial were lower in rank than the confirming authority who was of the rank of Major General and that the confirming authority of its own appreciated whole of the evidence instead of saying as to what evidence was to be considered by the General Court Martial which had the effect of influencing the General Court Martial. An argument was also raised that when the Court Martial reassembled after the revision order the whole proceeding concluded within half an hour and the General Court Martial returned finding of guilt against the respondent. That according to the respondent would show that the General Court Martial did not apply its mind independently and was swayed by the opinion of the confirming authority. It was lastly submitted that



there was no ground for the confirming authority to interfere in the proceeding of the General Court Martial which had considered the evidence and argument in depth and held the first charge not proved against the respondent. We are unable to agree to any of the submissions. Confirming authority cannot act merely as a rubber stamp. The fact that the finding and sentence of Court Martial should be valid only after it is confirmed by the competent authority would show that it has to examine the whole of the record of the proceeding of the Court Martial before confirming the finding or sentence. It is the requirement of Section 160 that when the confirming authority wished that the finding or sentence of a Court Martial required revision it should not send back the case as a matter of course but record reasons as to why the confirming authority thought so as to where the Court Martial has failed in its duty to properly examine the facts and in application of correct law. When the matter is remitted back to the Court Martial under Section 160 the Court Martial may take additional evidence if so directed by the confirming authority. In the present case no such direction was given by the confirming authority and there was no occasion for the General Court Martial to record additional evidence. Full opportunity was given to the respondent to make submission before the General Court Martial after it had reassembled and as the record would show copy of the revisional order was also supplied to respondent and he made his submission in writing. The Court thereafter that it revoked its earlier finding and sentence and held the respondent guilty of the first and second charge. It cannot be said that the finding and sentence after reconsideration was arrived at in a hurried fashion. We have noted above that now it was the Chief of the Army Staff



who confirmed the finding and sentence and when he did so it could not be said that the whole of the record was not before him. We do not think that the confirming authority exceeded its jurisdiction in analysing the evidence recorded during Court Martial proceedings. The revision order was not intended in any way to interfere with the discretion of the Court Martial and the Court Martial was also not bound by any such observation.”

15. From the aforesaid it is clear that the Revisional Authority under law, as held by Hon'ble Supreme Court, is empowered to exercise the aforesaid power and for the detailed reasons contained in the order passed on February 08, 2020, the Revisional Authority having exercised the powers in accordance to the requirement of law and directing the Court to re-assemble, we find no reason to interfere into the matter.

16. Based on the aforesaid, we find that the Court re-assembled on February 15, 2020 and conducted its proceedings, took note of the Supreme Court judgment, examined the seventh prosecution witness named Col A. H. Chandra, Headquarters Karnataka and Kerala Sub Area and finally gave its findings to the effect that the findings are proved.

17. The findings recorded by the court on re-assemble, with regard to the third charge, read as under:

"1. The court after having carefully gone through the observations raised by the confirming authority in the Revision Order (Exhibit-71), additional written addresses by the Prosecution and Defence Counsels, additional evidence brought on record by the Prosecution through Prosecution Witness (PW-7) and having re-examined the evidence of all witnesses in the Court Martial proceedings, have the following



reasons for finding the accused 'Guilty' of the third charge:-

(a) the Prosecution in the revision proceedings has examined Colonel AH Chandra (PW-7) and brought on record directions of General Officer Commanding, 15 Corps dated 06 December, 2016 (Exhibit-74) to establish that the alleged offence as mentioned in the particulars of third charge of sharing of information pertaining to place and duration of stay of HDMC Course Officers at Hotel Centaur Lake View came to the knowledge of authority competent to initiate action on the day of his directions. The Court is satisfied that General officer Commanding, 15 Corps was a competent authority to initiate action against the accused, as at that time, the accused was posted as Additional Officer and Colonel Q Designate under the command of the said General Officer Commanding 15 Corps. The knowledge of authority competent to initiate action as envisaged in Section 122 Army Act can be attributed to the General Officer Commanding 15 Corps with certainty with regard to the nature of offence and offender on the day he gives his directions against the accused pertaining to the said charge. As such, during the course of the entire trial proceedings, the accused did not raise any plea in bar under Anny Rule 53 challenging the expiry of period of limitation in relation to the said third charge. In these set of circumstances, the court is convinced and satisfied that the Prosecution has well established shed and proved the factum of the trial on the third charge is within the period of limitation. Further the gravamen of the particulars of the third charge and directions of the General Officer Commanding, 15 Corps are



the same and similar, therefore, the contention of the accused that the directions of competent military authority are different than from the particulars of the said charge is unfounded

(b) It is also well established through the deposition of (deleted the name of the lady) PW1 that the accused, in June or July, 2015, while she was speaking to him, he had verbally informed her about his Higher Defence Management Course travel plan and dates and where all they will be travelling. As per, (XXXX) (PW1), the accused had told her and she was aware that accused was travelling from Secundrabad to Delhi and after that from Delhi to Jammu. She has also deposed that she was aware about accused's course tour programme. During her cross examination, (XXXX) (PW-I) has deposed that she did not know which flight the accused had boarded from Secundrabad to Delhi and onwards to Jammu and she was not aware about the instructors, who were accompanying the course. She also did not know which vehicles the entire courses along with the accused were travelling in, while travelling to Srinagar. She was also not aware of the details as to how the accused along with the entire course travelled to Srinagar. She admitted that the accused did not tell her about the complete itinerary of the course. The accused also did not tell her as to the sequence of visiting of various places and all other installations, wherever the course was required to visit. However, the court is convinced and satisfied that (XXXX) was only aware of the fact that accused and other officers of the course will be staying in hotel 'Centaur Lake View'. Srinagar on 24-25 August 2015 and no more details about the entire tour



plan of the course. This information, as per her deposition was provided to her by the accused as they wanted to meet each other at that time. The court finds and satisfied that the deposition of (XXXX) (PW1) consistent, reliable and truthful. As the deposition of (XXXX) has also been supported by the testimony of Shri Ghulam Mohi-ud-din Bhat (PW-4) that the said booking had been made by (XXXX) on 15 Aug 2015, which clearly shows that she was aware about the date of arrival and period of stay of the accused at the said hotel at that time. It is well established that it was the accused who shared such information with (XXXX) 9 PW-1) (c) The court has now re-considered the already existing evidence, whether such information by the accused with (XXXX) (PW1 will be an act prejudicial to good order and military discipline in the light of observations of confirming authority as well as security situation existed at the time of offence for which the judicial notice has been taken by the court. On re-appreciation of evidence on record, the court now finds and convinced that passing of such information to civilian tantamount to an act prejudicial to good order and military discipline. Even though the hotel was a civil installation and the staff though may have been aware of the stay of the army officers, however the accused, being a member of armed forces of the India, was well aware of the fact that he should not have divulged the information to an unauthorised recipient, (XXXX) (PW-1) and the same would have been detrimental to the safety and security of the entire officers of HDMC-11. In the set of circumstances in which the accused was placed and in the light of existing volatile security situation existing in



Srinagar at that time, the court is convinced and satisfied that senior officer of the rank of accused, divulging information to (XXXX) (PW1) is an act amounting to willful and culpable negligence. The court, while taking the judicial notice is satisfied that sharing of this information is a violation of service norms, wherein the security of information is accorded primary importance. History is replete with examples, wherein breaches in security of information has resulted in severe security lapses which led to loss of lives. Hence, the sensitivity of the officer of the rank of the accused towards prevention of breach of security cannot be undermined in any case and a lackadaisical attitude/negligence in this regards is likely to have grave consequences. Therefore, it is well established that the actus reus of sharing information with (XXXX) (PW1) certainly was an act which was not only prejudicial to military discipline but also against the good order.”

ANNOUNCEMENT OF FINDING AND BRIEF REASONS IN SUPPORT OF FINDING

The court being re-opened, the accused is again brought before it.

The finding on the third charge and the brief reasons in support of finding, are announced in the open court. The finding is announced as being subject to confirmation.”

18. Now, the sole question before us is as to whether in the backdrop of the aforesaid reasoned finding recorded by the Court of Inquiry, any interference is required to be made.



19. *Learned counsel for the appellant primarily argued on two counts. The first was that for the purpose of over reach of the Supreme Court judgment, the action was initiated and second that the powers of revision have been misused by the Revisional Authority.*

20. *We have already recorded a finding that both these grounds are unsustainable. However, after the Court re-assembled based on the order passed by the CA on February 08, 2020 and based on the evidence that again came on record, the finding was recorded, in our considered view, is a reasonable finding based on appreciation of the material that came on record and a reasonable finding recorded on due appreciation of evidence and the material that came on record does not call for any interference in the matter particularly in the light of the punishment of severe displeasure recorded against the appellant for his act of commission and omission which clearly is in violation to the mandate of Army Act, i.e. Section 63. Accordingly, finding no case for interference, we dismiss the appeal with no order as to costs."*

41. So, the only issue which arises for consideration is on the basis of submissions made by the learned counsel for the petitioner is that, whether the GCM has rightly concluded that the sharing of information by the petitioner with 'A', is in violation of service norms resulting in severe reprimand, which decision has been upheld by the AFT.

42. The submissions of Mr. Singh as noted above can be summed up as, *"That the GCM had cleared his name from sharing any information earlier which clearly was not confidential in nature and hence having been acquitted of the Charge under Section 63 of the Army Act, the GCM reassembled for taking fresh evidence and re-*



appreciating as well as revaluating the evidence, and finding him guilty by overturning the finding of “Not Guilty” in the earlier proceeding and imposing severe reprimand as confirmed by the CA, is bad in law.”

43. Suffice to state that, after the CA had remanded the matter back to the GCM with a direction to the GCM to re-assemble for taking fresh evidence by examining a competent witness and re-evaluate the evidence in the light of the observations made by the CA. Pursuant thereto, the petitioner appeared before the GCM and in fact participated in the cross-examination of witness produced by the respondents, and based on the proceedings, which were held between February 15, 2020 to February 19, 2020, the GCM has drawn a conclusion that the petitioner is ‘Guilty’ of Third charge and has in paragraphs (b) and (c) of its ‘Findings on Revision’, based on which the GCM imposed the sentence of severe reprimand, held as under:

*“(b) It is also well established through the deposition of **(deleted the name of the lady) PW1** that the accused, in June or July, 2015, while she was speaking to him, he had verbally informed her about his Higher Defence Management Course travel plan and dates and where all they will be travelling. As per, (XXXX) (PWI), the accused had told her and she was aware that accused was travelling from Secundrabad to Delhi and after that from Delhi to Jammu. She has also deposed that she was aware about accused's course tour programme. During her cross examination, (XXXX) (PW-I) has deposed that she did not know which flight the accused had boarded from Secundrabad to Delhi and onwards to Jammu and she was not aware about the instructors, who were accompanying the course. She also did not know which vehicles the entire courses along with the accused were travelling in, while travelling to Srinagar. She was also not aware of the details*



as to how the accused along with the entire course travelled to Srinagar. She admitted that the accused did not tell her about the complete itinerary of the course. The accused also did not tell her as to the sequence of visiting of various places and all other installations, wherever the course was required to visit. However, the court is convinced and satisfied that (XXXX) was only aware of the fact that accused and other officers of the course will be staying in hotel 'Centaur Lake View'. Srinagar on 24-25 August 2015 and no more details about the entire tour plan of the course. This information, as per her deposition was provided to her by the accused as they wanted to meet each other at that time. The court finds and satisfied that the deposition of (XXXX) (PW1) consistent, reliable and truthful. As the deposition of (XXXX) has also been supported by the testimony of Shri Ghulam Mohi-ud-din Bhat (PW-4) that the said booking had been made by (XXXX) on 15 Aug 2015, which clearly shows that she was aware about the date of arrival and period of stay of the accused at the said hotel at that time. It is well established that it was the accused who shared such information with (XXXX) 9 PW-1)

(c) The court now re-considered the already existing evidence, whether such information by the accused with (XXXX) (PW-1) will be an act prejudicial to good order and military discipline in the light of observations of confirming authority as well as security situation existed at the time of offence for which the judicial notice has been taken by the court. On re-appreciation of evidence on record, the court now finds and convinced that passing of such information to a civilian tantamount to an act prejudicial to good order and military discipline. Even though the hotel was a civil installation and the staff though may have been aware of the stay of the army officers, however, the accused being a member of armed forces of the India, was well aware of the fact that he should not have divulged the information to an unauthorized recipient, (XXXX) (PW-1) and the same would



have been detrimental to the safety and security of the entire officers of HDMC-11. In the set of circumstances, in which the accused was placed and in the light of existing volatile security situation existing in Srinagar at that time, the Court is convinced and satisfied that senior officer of the rank of accused, divulging information to (XXXX) (PW-1) is an act amounting to willful and culpable negligence. The Court, while taking the judicial note is satisfied that sharing of the information is a violation of service norms, wherein the security of information is accorded primary importance. History is replete with examples, wherein breaches in security of information has resulted in severed security lapses which led to loss of lives. Hence, sensitivity of the officer of the rank of the accused towards prevention of breach of security cannot be undermined in any case and a lackadaisical attitude / negligence in this regard is likely to have grave consequences. Therefore, it is well established that the actus – reus of sharing of information with Mrs. (XXXX) (PW-1) certainly was an act which was not only prejudicial to military discipline but also against the good order.”
(emphasis supplied)

44. Concedingly, the petitioner had not challenged the order of the CA dated February 08, 2020 in O.A. (Appeal) before AFT. Even otherwise, according to Mr. Singh, the CA has overreached its statutory powers vide order dated February 08, 2020, and directed the GCM to re-assemble for taking fresh evidence and re-appreciate, re-evaluate the evidence and re-consider the finding of ‘Not Guilty’ with regard to the third charge. Suffice to state, such a challenge is unsustainable, because the said plea was made before the AFT, after the petitioner appeared in the proceedings before the GCM, i.e., he submitted to the jurisdiction of the GCM and allowed the GCM to re-assemble and record the statement of witness, who has also been cross-examined by the



petitioner. Hence, it is too late in the day for the petitioner to challenge the power / jurisdiction of CA to pass its order of '*Revision*' dated February 08, 2020. Even assuming such a challenge was raised in the proceedings before the GCM, no independent challenge was made to the conclusion of the CA in the O.A. (Appeal). In that sense, he has accepted / acquiesced into the decision of the CA.

45. Mr. Singh's submissions, on the merit of the conclusion drawn by the GCM, are the following:

- (i) The information was not confidential in nature;
- (ii) The entire civilian staff of the hotel was aware of the presence of the officers staying with him for the course;
- (iii) The '*A*' specifically deposed that, she was not having the proof that the petitioner had shared the itinerary with her;
- (iv) She was not aware regarding the flight details of the petitioner, neither the mode of travel nor the sequence of visiting places.
- (v) The '*A*' has not produced the call records which the GCM has noted and no such evidence has been surfaced during the revision proceedings. It is only the '*A*^s' words against the petitioner's.
- (vi) No such Whatsapp messages have been brought on record by the witnesses to show that the petitioner had shared the information to '*A*'.
- (vii) PW2 (B) fairly stated that the information was not confidential. PW2 (B) also stated that he called the reception and enquired with them regarding the stay of



the petitioner and other officers in the hotel. PW2 admits that, his course-mate was an instructor at the CDM and informed him about the programme.

46. The aforesaid submissions have no bearing on the misdemeanor of the petitioner, as the GCM in paragraph '(c)' of its '*Findings on Revision*', do refer to security situation as existed in Srinagar at the time of offence of which the GCM had taken notice of. The incidents which have been highlighted by Mr. Vaidyanathan in his submissions, which we have reproduced above, do indicate that, given the then situation prevailing in J&K, the disclosure of such an information would have proved fatal. We have highlighted the conclusion of the GCM which held the petitioner '*Guilty*' inasmuch as the petitioner being a senior officer of the rank, divulging information to unauthorised recipient/ '*A*' is an act amounting to willful and culpable negligence. The plea that the information was not confidential / secretive and was in public domain cannot be accepted. It is only, because no incident has happened it is being urged that the information is not confidential. Surely, the petitioner cannot absolve himself of sharing the information. The plea based on the testimony of PW 2 shall also not absolve the petitioner of his misdemeanor being a senior officer and the information pertains to the presence of the Army officers including the petitioner in a Hotel in Srinagar.

47. The reliance placed by the GCM in its order dated February 19, 2020 on paragraph 'b', wherein the following deposition of A, is noted by the GCM becomes relevant:-

“xxx

xxx

xxx



(b)However, the court is convinced and satisfied that A (name redacted) was only aware of the fact that accused and other officers of the course will be staying in hotel 'Centaur Lake View', Srinagar on 24-25 August 2015 and no more details about the entire tour plan of the course. This information as per her deposition was provided to her by the accused as they wanted to meet each other at that time. The court finds and satisfied that the deposition of A (name redacted) (PW-1) consistent, reliable and truthful. As the deposition of A (name redacted) has also been supported by the testimony of Shri Ghulam Mohi-ud-din Bhat (PW-4) that the said booking had been made by A (name redacted) on 15 Aug 2015, which clearly shows that she was aware about the date of arrival and period of stay of the accused at the said hotel at that time. It is well established that it was the accused who shared such information with A (name redacted)."

48. Suffice to state, this Court and the AFT cannot re-appreciate the evidence to come to a different conclusion. Surely, the conclusion drawn by the GCM is not a perverse conclusion as notice of overall situation prevailing in J&K could not have been overlooked.

49. We may reproduce the following judgments to highlight the law laid down by the Supreme Court on the scope of judicial review on re-appreciation of the evidence, in a matter of this nature, as under: -

i. ***The Indian Oil Corporation and Ors. v. Ajit Kumar Singh***



and Anr., Civil Appeal NO. 3663/2023 wherein the Supreme Court in paragraph 6 and 7 held as under:

“6. The facts of the case leading to the issuance of chargesheet, initiation of departmental inquiry, the report of the inquiry officer and the punishment inflicted upon respondent no.1 have already been narrated in the preceding paragraphs. It is not in dispute that during the course of inquiry, fair opportunity of hearing was afforded to the respondent no.1 at every stage. This was even found by the learned Single Judge while dismissing the writ petition challenging the punishment inflicted upon him. The judgment passed by the Division Bench of the High Court shows that matter was dealt with in a manner as if it was the first stage of the case, namely, the inquiry was being conducted and inquiry report was being prepared, which is not the scope in judicial review. The views expressed by this Court on the scope of judicial review in Deputy General Manager (Appellate Authority) vs. Ajai Kumar Srivastava, (2021) 2SCC 612, are extracted below:

“24. It is thus settled that the power of judicial review, of the constitutional courts, is evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of



certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

25-27 xx xx xx

28. The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained .”

(emphasis supplied)

Similar view was expressed in the later judgment of this Court in Ex-Const/Dvr Mukesh Kumar Raigar vs. Union of India and Ors., (2023) SCC Online SC 27

7. If the facts of the case are examined in the light of the settled principles of law in scope of judicial review, we find that the Division Bench of the High Court proceeded to reappreciate the entire evidence as if conviction in a criminal trial was being re-examined by the next higher court. The stand taken by the respondent no.1 was that he was on leave and there was no question of his tampering with any document. His contention was that merely because he had the duplicate key of the drawer where the documents were kept, he cannot be made responsible for any tampering. However, there was no answer to the finding recorded by the Inquiry Officer in the Inquiry Report, namely, that the changed form of quotation of M/s. Laxmi Singh contained original signature of respondent no.1. The fact that this “Form of quotation” was changed is not in dispute. When the changed form of



quotation also contained signature of respondent no.1, it clearly established his involvement in the tampering of document. This fact has not even been noticed by the Division Bench of the High Court.”

- ii. In ***Union of India and Ors. v. Parashotam Dass, Civil Appeal No. 447/2023***, one of the issues raised by the appellants therein in paragraph 21, was that the re-appreciation of evidence to be kept out of judicial review. The Supreme Court in paragraph 30 and 31 held as under:

“31.....We would loath to carve out any exceptions, including the ones enumerated by the learned Additional Solicitor General extracted aforesaid as irrespective of the nature of the matter, if there is a denial of a fundamental right under Part III of the Constitution or there is a jurisdictional error or error apparent on the face of the record, the High Court can exercise its jurisdiction. There appears to be a misconception that the High Court would re-appreciate the evidence, thereby making it into a second appeal, etc. We believe that the High Courts are quite conscious of the parameters within which the jurisdiction is to be exercised, and those principles, in turn, are also already enunciated by this Court.

31. We also fail to appreciate as to why there should be any apprehension of diluting the jurisdiction of the Supreme Court as envisaged under the Act or the constitutional scheme, based on observations made by us in the present judgment.”

(emphasis supplied)

- iii. In ***Union of India and Ors. v. Subrata Nath*** and connected matter, ***Civil Appeal 7939-40/2022***, wherein the Supreme Court in paragraph 28 & 29 held as under:

“28. We are unable to commend the approach of the



learned Single Judge and the Division Bench. There was no good reason for the High Court to have entered the domain of the factual aspects relating to the evidence recorded before the Inquiry Officer. This was clearly an attempt to reappreciate the evidence which is impermissible in exercise of powers of judicial review vested in the High Court under Article 226 of the Constitution of India. We are of the opinion that both, the learned Single Judge as well as the Division Bench, fell into an error by setting aside the order of dismissal from service imposed on the respondent by the Disciplinary Authority and upheld by the Appellate Authority.

29. We find ourselves in complete agreement with the findings returned by and conclusion arrived at by the Disciplinary Authority, duly confirmed by the Appellate Authority and upheld by the Revisional Authority in respect of both the Articles of Charge levelled against the respondent and the punishment imposed on him. The respondent being a member of the disciplined force, was expected to have discharged his duty diligently. His gross negligence and dereliction of duty has resulted in theft of 800 kgs. copper wires from the spot where he was performing his duty. Further, the records reveal that the respondent did not mend his ways during thirteen years of service rendered by him and was awarded eight punishments for various delinquencies out of which, three punishments included stoppage of increment on two occasions for one year without cumulative effect twice and stoppage of increment for two years without cumulative effect on one occasion. In such circumstances, the desirability of continuing the respondent in the Armed Forces is certainly questionable and the Disciplinary Authority could not be expected to wear blinkers in respect of his past conduct while imposing the penalty of dismissal from service on him.

(emphasis supplied)

iv. In *Union of India and Ors. v. P. Gunasekaran*, (2015) 2



SCC 610, wherein the Supreme Court had laid down the parameters for exercise of jurisdiction of judicial review under Article 226, in paragraphs 12 to 15 as under:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced*



the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappraise the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience

14. In one of the earliest decisions in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723], many of the above principles have been discussed and it has been concluded thus: (AIR pp. 1726-27, para 7)

“7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly



interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.”

15. In State of A.P. v. Chitra Venkata Rao [(1975) 2 SCC 557 : 1975 SCC (L&S) 349 : AIR 1975 SC 2151] , the principles have been further discussed at paras 21-24, which read as follows: (SCC pp. 561-63)

“21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723] . First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a



petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a



proceeding for a writ under Article 226.

22. Again, this Court in *Railway Board v. Niranjana Singh* [(1969) 1 SCC 502 : (1969) 3 SCR 548] said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In *Niranjana Singh* case [(1969) 1 SCC 502 : (1969) 3 SCR 548] this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shutdown of an air compressor at about 8.15 a.m. on 31-5-1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a



writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. (See Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477] .)

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence.



That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.””

(emphasis supplied)

50. Mr. Singh has relied upon the judgments in the cases of ***Siemens Engineering & Manufacturing Co. of India Ltd. (supra)***, ***Assistant Commissioner Commercial Tax Department, Works Contract and Leasing, Kota (supra)***; ***Gurdial Singh Fijji (supra)***, ***Rajendra Prasad Jain (supra)*** and ***Sanjeev @ Bittoo (supra)*** to contend non-consideration of evidence, non-application of mind and non-specifying reasons on the conclusion by the AFT are concerned, we have already reproduced the conclusion drawn by the AFT in the above paragraphs, which are self speaking. Moreover, we have also considered the limited challenge made by the petitioner on the conclusion arrived at by the GCM holding him ‘Guilty’. The GCM imposing the severe reprimand which has been confirmed by the CA and the challenge thereof rejected by the AFT, is valid in the facts. The judgments are clearly distinguishable.

51. Even reliance placed by Mr. Singh on the judgments in the cases of ***Ranjeet Singh and Ors. (supra)*** and ***Rampur Distillery Co. Ltd. (supra)*** to contend that, if all relevant factors have not been considered by an authority, its decision is considered to be vitiated. The said judgments are distinguishable on facts of this case as there is no denial to the fact that the information was shared with ‘A’ which could have proved fatal given the situation prevailing in J&K at the relevant time, which finding has been arrived at GCM and also



highlighted by Mr. Vaidyanathan by specific instances.

52. In so far as the reliance placed by Mr. Singh on the judgments in the case of Maj. **R.K. Sareen** (*supra*) and **Arvind Ghindiyal** (*supra*) to contend that non-supply of the findings of the Court of Enquiry to the petitioner has prejudiced him is concerned, the same is also a misconceived argument as Exb.74 on which reference is made, is dated December 6, 2016, i.e., much before the proceedings were remanded back by the Supreme Court to the CA which in turn has remanded the matter back to the GCM and hence the said plea shall be unsustainable.

53. The plea of Mr. Singh by relying on the judgment in the case of **Ex-Haveildar K. P. Pandey** (*supra*) on the unexplained haste in completion of the first GCM proceeding, which has prejudiced the petitioner is also not sustainable because of the fact that thereafter, the order was passed by the Supreme Court remanding the matter to the CA which in turn remanded the matter back to the GCM on the third charge and pursuant to the proceedings, the decision has been tested by the AFT resulting in the impugned order.

54. Insofar as the judgment in the case of **Naik Gian Chand & Ors.** (*supra*) is concerned, the same was relied upon by Mr. Singh to state that the Court Martial at the time of re-considering the matter in pursuance of the direction having been issued under Section 160 of the Act of 1950, has to apply its mind to the case independently, uninfluenced by any observations, which have been made in the direction given by the CA. Suffice to state, in view of the finding in paragraph 'c' of the GCM wherein on re-appreciation of the evidence on record, which is paragraph 'b' thereof, the GCM has come to a



conclusion that he being a senior officer of the rank, could not have divulged such an information to 'A'. Hence, the judgment shall not help the case of the petitioner.

55. He also relied on the judgment of the Supreme Court in the case of *Union of India & Ors v. Major R. Metri (supra)* to contend that AFT while exercising its power under Section 15 of the Armed Forces Tribunal Act, 2007 can re-appreciate the evidence to come to a conclusion that the findings of the Court Martial are legally sustainable due to any reason is concerned, there cannot be any dispute on the said proposition but in the facts, the GCM having rightly concluded the petitioner as 'Guilty' based on the facts including, the security situation prevailing, which the AFT could not have disagreed with, has rightly dismissed the petition.

56. Insofar as the judgment in the case of *H.C. Goel (supra)* is concerned, the same has no applicability to the facts of the case, more so, in view of the conclusion arrived at by us in the above paragraphs.

57. Insofar as the judgment in the case of *B.S. Hari Commandant (supra)* is concerned, Mr. Singh contended that this Court is required to see the evidence and come to a final / appropriate conclusion that the AFT has appreciated the evidence before it while dismissing the petition. For the aforesaid reasons, we are of the view, the judgment shall have no applicability.

58. So, it is held that the GCM and CA have rightly considered the security situation which was prevailing at the time in J&K to hold the charge as proved resulting in severe reprimand is justified. We also state here that the conclusion drawn by the AFT after due consideration of



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the reasoning given by the GCM / CA is justified. The OA was rightly dismissed.

59. As a result thereof, the present petition is without merit and is dismissed. No costs.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

MARCH 18, 2024/ds/jg