

(2022) 06 AFT CK 0003

In the Armed Forces Tribunal

Case No : O.A. Nos. 1725, 1054 and 1055 of 2021

Col S.K. Singh

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 01-06-2022

Acts Referred:

Constitution of India, 1950 — Article 19(1)(a)
Armed Forces Tribunal Act, 2007 — Section 14
Right to Information Act, 2005 — Section 8

Citation : (2022) 06 AFT CK 0003

Hon'ble Judges : Rajendra Menon, Chairperson, (J); P.M. Hariz, Member (A)

Bench : Division Bench

Advocate : Amit Kumar, Rajiv Manglik, Capt Karan Singh Bhati

Final Decision : Disposed Of

Judgement

1. Though we have heard OA No 1725 of 2021 along with other two °As, since the reliefs sought for in OA No 1725 of 2021 is slightly different from the other two cases, we will pass a separate order in that case and we are disposing of OA Nos. 1054 of 2021 and 1055 of 2021 by this order.

2. Both these applications have been filed under Section 14 of AFT Act 2007 by the applicants who are serving soldiers in the Army and were Gentleman Cadets (GC) under training at the Indian Military Academy (IMA) to become commissioned officers in the Army. They are aggrieved by the arbitrary action of the Respondents of having withdrawn them from IMA on disciplinary grounds without having been given requisite opportunity to defend himself of the charges against them. The applicants have made the following prayers:

(a) To declare the action of the respondents as unjust, arbitrary and illegal.

(b) To call for all the records including case files at Army HQ, ARTRAC and IMA dealing with the case; and the file and copy of Col proceedings.

(c) To quash and set aside the decision of the respondents to withdraw the

applicants from IMA and further direct the respondents to re-instate the applicants on balance training of applicant to become an officer in Indian Army.

(d) To award exemplary costs in favour of the applicant.

(e) To pass such other and further orders which their lordships may deem fit and proper in the existing facts and circumstances of the case.

(f) And in the interim, stay the operation of the order dated 07 Jun 2021 till the pendency of the instant OA and, also direct the respondents to supply the copy of the CoI and other medical documents of the applicant including the report of filing of Medico Legal Case and accept the reply of the applicant to SCN by granting sufficient time to reply to such SCN, preferably 7 — 10 days and thereafter take a decision freshly.

Brief Facts of the Case:

3. Applicant No 1 in OA No 1054 of 2021, Gnr (OFC) Dinesh Singh, was enrolled into Artillery on 13.01.2015. He worked diligently and qualified to join the Army Cadets College (ACC). He joined ACC on 28.06.2017 and on successful completion of three years training joined IMA as a GC on 22.06.2020 and was assigned to Hajipir Company in Cariappa Battalion. The applicant successfully completed his second term and was in his third term which commenced in Jan 2021. Based on his overall performance, the applicant was appointed as the SUO of Hajipir Company in his third term. He was due to pass out on 12.06.2021 as a commissioned officer. Applicant No 2 in OA No 1055/2021, Sep Dharmendra Kumar, was enrolled into Corps of [ME on 19.06.2012. He too worked diligently and subsequently qualified to join the ACC to become an officer in the Army. He joined ACC on 29.12.2017 and on successful completion of three years training joined IMA as a Gentleman Cadet (GC) on 12.01.2021 and was also assigned to Hajipir Company in Cariappa Battalion. In Jun 2021, he was to move into the third term.

4. On 24.02.2021 all third termers including Applicant No 1 had proceeded to attend an outdoor training camp. For this period when the third termers and the regular appointments were away on training, Applicant No 2 a second termers was appointed as the officiating SUO. Foreign GC Suhrobi Alizoda, of Tajikistan, also a 3 term cadet did not go on the outdoor training camp due to certain medical issues, and was therefore in the company lines. On 24.02.2021, Applicant No 2 in his capacity as the Officiating SUO had called for a fall-in of the 21(1termers. FGC Suhrobi Alizodha, came to the fall in area and there he bullied Applicant No 2 and punched him in his abdomen. Applicant No 2 did not report the matter to the authorities then.

5. On 02.03.2021 when the 3 termers returned from the outdoor training camp, the Applicant No 1 learnt of the scuffle between Applicant No 2 and FGC Suhrobi Alizoda and enquired about the incident. As per Applicant No 1, he was aware of similar incidents involving FGC Suhrobi Alizoda whilst in his

2nd term, who then had beaten up his course mates. In one such incident involving GC Rohit Mallik, a case to withdraw FGC Suhrobi was also progressed. In order to ascertain the facts before reporting the incident to the Company Commander, Applicant No 1 decided to check the details with FGC Suhrobi and went to his cabin with Applicant No 2 and two other GCs (GC Nayeen Nagwal and GC Harpreet Dogra) at around 1730 h on 02.03.2021. Some heated discussion took place at this meeting as FGC Suhrobi became aggressive on seeing Applicant No 2, culminating in a scuffle with Applicant No 1 trying to stop FGC Suhrobi from hitting Applicant No 2. On hearing the heated arguments, FGC Gulam Sakhi of Afghanistan, staying in the adjacent room came to the room of FGC Suhrobi. Subsequently at around 1830 h FGC Suhrobi along with two other FGCs from Tajikistan went to the room of the Applicant No 1 and broke the latch of his room finding it to be locked. Later, around 2030 h when Applicant No 1 returned from the cadet's mess there was a lot of provocation and aggressiveness by the Tajikistan GCs. They were shouting that Applicant No 1 & 2 would be taken to task and would be thrown out of Academy and that they had already informed their Defence Attaché of the incident on phone. Applicant No 1 then reported the entire matter to the Company Commander who then visited the company lines and Applicant No 1's room. The Duty Officer of IMA also visited Hajipir Company and Applicant No 1's room.

6. That on 03.03.2021 around 1930 h the Commandant If\1A addressed all the FGCs. It is the applicants' case that after this address, all the Tajikistan GCs, a total of 21, came to the room of Applicant No 1, where Applicant No 2 was also present. The Tajikistan GCs were armed with hockey sticks, rods, canes etc; they broke open the room of Applicant No 1 and the adjacent room and started beating Applicant No 1 & 2 and others mercilessly. Applicant No 1 rang up the Coy Cdr, who then instructed him that the Indian GCs should not indulge in any fight and that they should not beat any Tajikistan GCs; and these instructions were followed.

7. As per the applicants, they and the other Indian GCs were saved from the merciless attack by the Tajikistan GCs by the Coy Cdr and other officers. In this incident, the applicants and the other GCs who were injured were admitted to MH Dehradun and were in the ICU. On being discharged from the MH, the applicants and other GCs were kept separately in the Section Hospital of IMA and not permitted to return to the company lines.

8. As per the applicants, two internal inquiries were carried out commencing from 09.03.2021 before the Staff Col commenced on 13.03.2021. This inquiry continued till around 20/22.04.2021 during which numerous witnesses, including both the applicants were examined. That during the CoI, AR 180 was invoked against the applicants and some other GCs including FGC Suhrobi. As per the applicants, the following issues came up during the CoI; that the FGCs were uncontrollable even by the Coy Cdr and that

the Adjutant had to therefore call the QRT (armed guards) to control the Tajikistan GCs; that during the training period FGC Suhrobi had always been a trouble maker; that though FGC Gulam Sakhi had stated that on 02.03.2021 the door to the room of FGC Suhrobi had been locked from inside and that he had to break open the door and that the applicants and two other GCs were beating FGC Suhrobi, this was disproved during the cross examination; that FGC Suhrobi had reported sick on 02.03.2021 and that no medico legal case had been registered since there were no injury and that FGC Suhrobi and many other foreign GCs were in possession of mobiles phones, contrary to the IMA instructions.

9. Once the Col concluded, from 22.04.2021 onwards the applicants and other GCs resumed their training and completed the schedule missed by them during their admission/ stay at Section Hospital. However on 04.06.2021 the applicants were issued Show Cause Notices (SCNs) seeking explanation as to why disciplinary action should not be taken against them for being involved in a physical scuffle on 02.03.2021 and 03.03.2021. Without being given a copy of the Col and time to prepare the reply, the applicants were instructed to give an oral reply by 0900h on 05.06.2021. In response to the SCN, the applicants requested that they be given a copy of the Col and also that they be given adequate time to prepare their replies. However, the Respondents issued movement orders withdrawing them from training at IMA and reverting them back to their respective Centres. It is the plea of the applicants that while they had been dealt with very severely and entirely denied the prospects of becoming an officer, many other GCs involved along with the applicants had been treated differently and were only relegated by six months.

10. It is also the case of the applicants that the movement order stated that they were being withdrawn on disciplinary grounds based on the instructions of HQ ARTRAC; thus the issue of SCN and seeking a reply was merely a formality; that the principles of natural justice had been grossly violated and that they were not given adequate opportunity to defend their case; that the punishment given was grossly disproportionate and not commensurate with the lapses of the applicants, as they had been withdrawn from the Academy when only five days were left to complete the term and for Applicant No 1 to become an officer and Applicant No 2 to go into third term; that though the applicants were beaten by the FGCs and medico legal case had been registered, no action/ investigation had taken place on this issue; that the applicants had been made scape goats because of the of the political international pressure and that resultantly, the rights of the applicant as a citizen of India had been compromised. Aggrieved by these issues the applicants have filed the OAs.

11. When the matter was first heard, vide our Order dated 10.06.2021, the Respondents were directed to maintain status quo in the matter as on that day and that the order for discharge was to be kept in abeyance till the next date of hearing.

2. Considering the manner in which action has been taken for relieving the applicant from the course, prima facie, we find that the requirements of the principles of natural justice and the statutory provisions have not been complied with before taking the impugned decision. Considering the same, we direct that status quo in the matter as on today shall be maintained and the order of discharge of the applicant from the course in question shall be kept in abeyance till the next date of hearing, on which date further orders would be passed after considering the reply affidavit of the respondents.

In the light of the counter affidavit filed by the Respondents, we heard both sides on the issue of maintaining status quo as on 10.06.2021 and holding the discharge of the applicant in abeyance. The matter was heard on 11.08.2021 and order was promulgated on 18.08.2021.

21. Having heard both sides at length we find much force in the arguments of the Respondents in withholding the supply of a copy of the Col proceedings to the applicants. With regards to the issues pertaining to the order dated 10.06.2021 and the necessity of the applicants having access to the Cal proceedings to prepare their case and file a rejoinder as mentioned by the Counsel for the applicants, the following is directed:

(a) Respondents to make necessary arrangements for the applicants and their Counsel to inspect the Col- proceedings here at New Delhi; in the office of the custodian of the document and intimate the details to the Counsel for the applicants.

(b) The applicants and their Counsel are permitted to inspect the Col proceedings and take necessary notes over seven working days.

(c) The Respondents will obtain an undertaking from the applicants and their Counsel prior to commencing perusal of the Car proceedings stating that they will not divulge any details of the proceedings to anyone else.

(d) The applicants and their Counsel will ensure that no copies are made or photographs taken of the proceedings.

(e) Status quo being maintained in respect of the applicants, as of 10.06.2021, to continue.

(f) Rejoinder, if any, to be filed within two weeks of the completion of perusal of the Col proceedings.

Arguments by the Counsel for the Applicants

12. The Counsel for the applicants familiarized us with the service profile of the applicants and then took us through the details of the incidents which had taken place on 24.02.2021, 02.03.2021 and on 03.03.2021. The Counsel then reiterated that it was relevant to examine whether these three incidences were interconnected or whether they were independent incidences. The Counsel then referred to the Col held consequent to the incidences and emphasized that the

first CoI had commenced on 02.03.2021 wherein all the witnesses were examined and this was subsequently shelved, and that a fresh CoI commenced on 10.03.2021. The Counsel emphasized that between 02.03.2021 and 10.03.2021 the statements had been modified and improved upon which has been detrimental to the interests of the applicants. He then invited our attention to Army Rule (AR) 177 and 179 which set out the procedure for the conduct of CoI and elaborated that the CoI held on 02.03.2021 was valid and that as per AR 179(5), a CoI can only be reassembled and cannot be reconvened.

13. Further referring to the conduct of the CoI and application of AR 180, the Counsel stated that AR 180 has been applied in respect of the applicants from day one itself. However, what is not known is whether AR 180 had been adhered to during the entire CoI or not, since certain statements, as mentioned at page 109 of the Rejoinder in OA 1055/2021, had been taken on record behind the backs of the applicants and annexed to the CoI. Moreover, these were not produced by any of the witnesses. Further referring to the actions initiated against the foreign and Indian cadets the Counsel stated that the CoI had categorized the cadets involved based on whether they were primary or secondary instigators. He further elaborated that while the primary instigators had been withdrawn, secondary instigators had been only relegated. The Counsel vehemently stated that the applicant's here had been incorrectly categorized as primary instigators whilst they were actually the victims of the scuffle initiated by the foreign cadets who were actually the primary instigators.

14. The Counsel once again walked us through the details and sequence of event of the incident on 24.02.2021 in which FGC Suhrobi, during the evening muster parade had hit Applicant No 2 who was the officiating SUO. However, since Applicant No 2 thought that the issue had been resolved had not reported the incident. The Counsel then took us through the details of the incident on 02.03.2021 wherein Applicant No 1 along with Applicant No 2 and two other cadets had gone to the cabin of FGC Suhrobi which culminated in a scuffle in the cabin. The Counsel further added that the Indian cadets were forced into a fight in order to protect themselves.

15. Referring to the statement given in the CoI by Witness No 1 (FGC Suhrobi) the Counsel stated that the FGC had recorded a video of the injury sustained by him but on being asked to produce this in the court had stated that he had since deleted them. The Counsel added that it was relevant to note that though cadets were not permitted to keep mobile phones with them, many of the FGCs had their mobile phones with them. The Counsel also referred to the statement by the FGC that on 02.01.2021, he had been disturbed since his course mates had brought along a 2' termor (Applicant No 2) to his cabin. The Counsel further emphasized that the FGC in his statement to the CoI had never mentioned that Applicant No 2 had been involved in assaulting him. The Counsel then stated that there had been earlier instances of indiscipline and physical fights by the

FGC and that this was corroborated by the statement of Witness No. 29 who had stated that in the previous term he had been beaten by this FGC during a training camp. The Counsel further drew our attention to the statement by Witness No. 39 that one of the reasons for the incident was a lack of fear and inadequate measures in place to deal with such incidents involving FGCs. He also drew our attention to the statement by Witness No 26 (Adjutant 1MA) who had mentioned various past incidents of indiscipline by certain FGCs of Tajikistan, and the Counsel emphasized that apparently no action was then taken against the a particular FGC involved in instigating other FGCs to misbehave, that it was only now that this particular FGC had been seen as the second primary instigator and had been withdrawn. The Counsel also referred to the statement of Witness No 39 (AUO Deepak Singh) who had stated that there indeed was a different method of treating FGCs and Indian GCs and that FGC would get away with misbehavior/disciplinary issues while Indian GCs were taken to task; and that therefore Indian GCs do not intentionally go to get into trouble.

16. The Counsel then took us through the statements of various witnesses pertaining to the incident on 02.03.2021. In particular he referred to the statement by Witness No. 4 (Applicant No 1), Witness No 6 and Witness No 7. The Counsel stated that Applicant No 1 had returned from the 3' term training camp on 02.03.2021 and had learnt of the incident of 24.02.2021 after the games period that day. The Counsel referred to the Standing Orders of IMA which amongst other details, lays down the responsibility of various appointments in the Academy. He further added that as per Appendix E of the Adm instr, that giving a report without verifying facts was an offence for cadet appointments. Thus, as per the instructions, an SUO was required to verify details before making any report on any issue. The Counsel emphasized that having learnt of the incident of 24.02.2021, and also having learnt that the matter had not been reported, Applicant No 1 thought it appropriate to verify the details of both parties before making a report of the incident. He therefore took Applicant No 2 to FGC Suhrobi's cabin to actually ascertain the facts, and since FGC Suhrobi was known to be aggressive, he also took along two other GCs.

17. Elaborating on the limited involvement of Applicant No 2, the Counsel then emphasized that Applicant No 2 had been found blameworthy of only not reporting the incident of 24.02.2021. The Counsel further emphasized that the various statements only referred to the incidents on 02 and 03.03.2021 and that on that date, Applicant No 2 was not present as he had been asked to move out. Moreover, Witness No 4 did not recognize Applicant No 2 at the time of the incident and neither did the witness mention that he was hit by Applicant No 2. Further referring to the statements of Witness No 11, 18 and 27, all had stated that three Indian GCs had beaten up FGC Suhrobi and that Applicant No 2 was never there. The Counsel also referred to the statement of Witness 14 (Mal Prabhat Mishra) who when questioned about what Applicant No 1 had reported to him had stated that applicant No 1 had told

him that there had been a fist fight between himself, GC Navneet Nagwal, GC Harpreet Dogra and FGC; and that they had taken Applicant No 2 to the cabin of the FGC.

18. Further elaborating on how the events unfolded whilst in the cabin of FGC Suhrobi, the Counsel stated that when Applicant No 2 was asked to explain the incident of 24.02.2021 FGC Suhrobi got agitated and physical with Applicant No 2, and the others had to intervene to pull them apart. The ensuing scuffle which also involved FGC Gulam Sakhi of Afghanistan spilled into the corridor, and once the fight stopped all the GCs had dispersed. Further the Counsel reiterated the details as given by Witness No 12 (FGC Saimumin Abdurakhmonov), who mentioned how he had been informed by FGC Suhrobi of the scuffle his cabin, how he had rushed to meet FGC Suhrobi and FGC Gulam Sakhi, learnt of the details of the scuffle and had pacified FGC Suhrobi. The Counsel further elaborated that this Witness had also stated that he had made an effort to talk to Applicant No 1, and not finding him in his cabin and having found it locked had broken open the cabin. The Counsel emphasised that in all of this, FGC Suhrobi had not named Applicant No 2 as the person who hit him, as was corroborated by the statement of Witness No 20 (FGC Dustov Daviatoli) who stated that FGC Suhrobi had only mentioned the name of Applicant No 1 as the person involved in the scuffle. The Counsel then referred to the statement by Witness No 5 (FGC Gulam Sakhi) to substantiate how the witnesses had improved their statement from the first Col on 02.03.2021, to the main CoI on 10.03.2021. In particular, the Counsel referred to the fact that while in the earlier statement, the FGCs had stated that they did not recognize Applicant No 2, had later stated that though Applicant No 2 was not recognized during the incident, the Witness having seen him at various fall ins/ musters now recognized him as the GC present in the cabin of FGC Suhrobi during the scuffle. Further referring to the statement of Witness 39 (AU0 Deepak Sinha), the counsel stated that the witness had categorically denied that any FGC had asked him for a WLL telephone, and emphasized that the whole issue of not being provided a telephone to the FGCs to report the matter had been cooked up to take up the issue later.

19. Further elaborating on the incident of 03.03.2021, the Counsel vehemently stated that this was a pre meditated brutal attack by 21 FGCs from Tajikistan which resulted in grievous injuries to the Indian GCs. The Counsel elaborated that this had been accepted by the FGCs in their respective statements. In particular the Counsel referred to the statements by Witnesses No 1,12,19,21,22 and 26, and further stated that while the FGCs had been sent back to their country by the Respondents, disproportionate action had been taken against the Indian GCs. The Counsel drew our attention to the statement of Witness No 26 (Adjt IMA) who had given a detailed account of the incident and had given details of the injury sustained by the Indian GCs and the fact that the fight on 30.03.2021 had not been instigated by the Indian GCs. Further referring to the statement by Witness No 27 (FGC Nazarov Muslimjon) the Counsel stated that all the FGCs had first attended the Comdt's address in the evening

and had later moved to Hajipir Company and fought with the Indian GCs, feeling aggrieved by the fact that the FGCs were being held responsible for the incident of 02.03.2021. Referring to the statement of Witness No 30, 31 and 32 the Counsel elaborated on the methodical way in which the FGCs unleashed the premeditated and planned attack on the Indian GCs, resulting in grievous and serious injury to the Indian GCs and how various witnesses had informed the Company Officer about the ongoing vicious attack. The Counsel then referred to the statement of Witness No 35 and 36 (MO/ RMO at the Section Hospital) who stated that around eight to nine GCs had been brought to the Section Hospital with various injuries and had been shifted to MH for further evaluation, management and initiation of medico legal case as necessary, as the injuries were serious. The witness also stated that consequent to their discharge from the MH, the injured GCs were all retained in the Section hospital, essentially for administrative reasons.

20. Once again referring to the conduct of Cols, the Counsel referred to the letter dated 27.02.2022 in which the Respondents have stated about the prelim inquiry for which no convening order was issued and statements of various witness were taken down and how no formal orders were passed to close it down. He further added that a second Col could not have been ordered, and in this case, it gave time to witnesses to improve upon their initial statement. Referring to the statement of Witness 26 (Adjt IMA) on the draft convening order, the counsel stated that a CoI could not have been held based on a draft convening order. He further stated that the Convening Order issued by GOC-in-C HQ Central Command was incorrect as he had no adm authority and moreover it refers to AR 177 to 180. Further elaborating on the conduct of Col and promulgation of orders, the Counsel stated that the Col had been conducted under the provisions of the Adm Instructions and not under the Army Rules. However, referring to the letter on chain of command issued by Army HQ /DG SD the Counsel stated that this was essentially for the Command staff and further stated that action as per Para 75 of the Adm Instruction and the complete Adm Instr needed to be followed in its entirety.

21. The Counsel invited our attention to Para 15 to 17 of the Adm Instr and stated that since the applicants were service cadets, they were governed by both the Adm Instrs and the Army Act. Further referring to the fact that the discipline policy needed to be corrective and not punitive as given in Para 28 of the Adm Instr, also that as per Para 31(p) restraint was required to be exercised in the case of awarding punishment to passing out course towards the end of the course, the SCN was issued on 04.06.2021 when the passing out parade was on 12.06.2021. Also, that contrary to the provisions of Para 34, the applicant had not been mentored or counselled prior to being awarded the harshest of punishment. Also, in reference to Para 36, the case should have been sent to ARTRAC, however it was sent to GOC-in-C Central Comd who was not in the chain of command. Referring to Paras 70 and 71 where in the case of withdrawal on disciplinary grounds, it was meant to be on the merits of the case

and that in the case of the applicant, the merits of the case did not warrant such a harsh punishment. Moreover, as per Para 72, all cases of withdrawal (other than medical grounds) were to be sanctioned by the DCOAS(T&S) at the Army HQ, however, here without the recommendation of HQ ARTRAC, HQ Central Command had directed withdrawal as intimated vide letter dated 24.04.2021. It was then examined by Army HQ and MoD. Also again referring to Para 75(c) the Counsel stated that as per the laid down procedure the proceedings of the Col were to be forwarded to HQ ARTRAC along with the recommendations of the Comdt, and in this case, the opinion of the Comdt on withdrawal had not been taken and SCN was issued even prior to such recommendations being recorded. Further referring to the scales of punishment given at Appendix F of the Adm Instr, the Counsel stated that the incident of 02.03.2021 was covered at Serial 20 of the appendix and the prescribed punishment was only 21 days of restriction, and if it was a repeat offence, it was 28 days restriction, and that contrary to the scale of punishment laid down, the applicants had been withdrawn. The Counsel emphasised that the CoI by HQ Central Command has been perverse and that the directions of the Col to withdraw the applicant was contrary to the spirit of the Adm Instrs, especially since this was the first incident in the case of the applicants, where as in the case of the FGC, there had been earlier cases of indiscipline.

22. The Counsel stated that while the direction on the Col had been given on 13.04.2021, it was received at HQ ARTRAC only on 13.05.2021. The Counsel further added that the files had been kept pending because of FGCs, and that whatever action had been taken was done only to justify the actions taken against the FGCs. The Counsel vehemently asserted that while the FGCs of Tajikistan had been almost permitted to organize a mutiny and have been dealt with based on diplomatic considerations, the Indian GCs have had to bear the brunt of the wrath of the organization, resulting in one applicant being withdrawn five days prior to his passing out to become an officer and the other before moving to the third term. The Counsel once again reiterated the dates and stated that while the directions on the Col had been given on 24.04.2021, it was received on 13.05.2021; the SCN was issued on 04.06.2021 and the applicants were withdrawn on 07.06.2021 and movement orders issued reverting the applicants to their respective Centres. Referring to the charge sheet at Annexure R-7, the Counsel stated that the applicants had been withdrawn based on the directions of HQ Central Command and not based on the application of mind of the Comdt. Thus, the whole exercise of SCN and reply there to were a mere formality as the decision had been taken to withdraw the applicants much earlier by HQ Central Command. The Counsel emphasized that the applicants had not been given a copy of the Col; nor were they given adequate time to consider the SCN and make a suitable reply, despite making a plea to the authorities. The Counsel added that it was only with the intervention of the Tribunal and based on its Order dated 18.08.2021 that the applicants finally got access to the CoI.

23. The Counsel then stated that while the Respondents had projected the whole incident as a very grave and serious incident, the Counsel emphatically stated that it was the actions of the FGCs on 03.03.2021 that was indeed serious as it was a pre mediated collective insubordination. However, in order to take action against FGCs, two Indian GCs were also withdrawn. The Counsel further stated that it was incorrect for the establishment not to have issued the SCN earlier, especially when the directions were with them on 13.05.2021, and the only reason that they hadn't was that the establishment waited for the direction of the MEA regarding the disposal of the case against the FGCs. The Counsel also stated that the Tajiki cadets were actually officers who were under training at IMA and that their withdrawal did not make a difference to their status as officers, where as in the case of Indian GCs, the implications were grossly different, as here they would go back as soldiers to their respective units. Counsel emphatically concluded that gross injustice had been meted out to the applicants in withdrawing them from training and killing the aspirations of the two soldiers from becoming commissioned officers in the Indian Army. He further stated that the applicants were the aggrieved party having been beaten up and injured in the scuffle and that they were being withdrawn without any case being registered against the perpetrators of the incident. The Counsel further stated that foreign relations cannot undermine the need to ensure equitable justice to Indian nationals.

24. The Counsel then relied on the following judgments in support of his contentions:

(a) Anvar P.V v. P.K. Basheer and others (C.A No. 4226 of 2012 decided by the Hon'ble Supreme Court on 18.09.2014;

(b) Col. Rajbir Singh Khanna v. The Military Secretary and others (SWP No.1141 of 1991 decided by the Jammu & Kashmir High Court on 31.12.1993); and

(c) Air Cmde Mrigendra v. Union of India and others (WP(C) No,5606 of 2012 decided by the Gauhati High Court on 17.09.2013)

Arguments by the Counsel for the Respondents

25. The Counsel for the Respondents briefly recapitulated the sequence of events from 24.02.2021 to 03.03.2021, in which the applicants were involved in a case of grievous assault and affray at the IMA on 02 & 03.03.2021 which resulted in a major breach of discipline in the premier training establishment; brought into play larger concerns of foreign relations of the country as the incident involved cadets from Tajikistan; and certain organizational infirmities/ lapses on the part of the Institution and its staff which aggravated the issue. The Counsel also elaborated on the importance of a cordial relationship between India and Tajikistan in the context of India's foreign relations/ policy and strategic issues.

26. The Counsel took us through various provisions of the HQ ARTRAC Administrative Instructions for Pre-Commission Training Academies (PCTA) and Cadet Training Wing (CTW) issued vide their letter No 935306/PCT dated 19.07.2018. Referring to Para 15 & 16, the Counsel elaborated that while regular cadets are governed by the adm instrs, service cadets under training at PCTA, in addition to these adm instrs are also governed by the Army Act. The Counsel emphasized that since the applicants in this case were service cadets, they are governed by both, the adm instrs and the Army Act. The Counsel then drew our attention to the Section on 'Discipline Policy and elaborated on the guiding principles in awarding punishments and the need for restraint in punishing cadets of the passing out course towards the end of term. Further elaborating on Para 32 to 42, the Counsel explained the types of punishments, the scales of punishments and the powers of punishment vested in various authorities, and elaborated on the classification of offences/ misconduct and explained the classification of 'Grave Offences/ Misconduct as given in Para 47.

27. Further referring to Paras 70 to 75, the Counsel stated that a cadet can be withdrawn on disciplinary grounds, depending upon the merits of the case. He further elaborated that in exceptional cases, where the nature of offence was grave/serious, the Comdt could recommend the withdrawal of a cadet without previous warning. However, efforts are to be made to provide adequate opportunity to the cadet to explain his/her conduct. In all cases, the gist of the charges are to be communicated to the cadet in writing along with a SCN and an opportunity afforded to the cadet to submit his/her reply before the Comdt recommends the case for withdrawal. He further emphasized that the importance and relevance of 'friendly relations with foreign states' can be gauged from the provisions of Article 19(1)(a) of the Constitution of India and Section 8 of the Right to Information Act which exempts information affecting relationship with foreign states. The Counsel then took us through AR 180, its application and stressed that AR 180 had been applied throughout the conduct of the Col.

28. The Counsel further asserted that contrary to the assertions by the Counsel for the applicants, there had been only one Convening Order and that a single Col had been conducted. While the applicants had referred to a Col on 02.03.2021, that at best could have only been a preliminary inquiry. Referring to the assertion that HQ Central Comd had no jurisdiction over the event, the Counsel stated that Central Command had jurisdiction as per the laid down channel of command and control by Army HQ / SD Directorate vide their letter dated 20.05.2009, where in HQ Central Command had jurisdiction over IMA for operations, discipline and conduct of annual adm inspection. In this case, since there was the possibility of dereliction of duty on part of the staff at IMA and in order to ensure necessary impartiality, fair play and justice, the investigation was taken out of the jurisdiction of IMA and carried out under the aegis of HQ Central Command by an independent CoI in accordance with the relevant provisions of the Army Act and principles of natural justice (in relation to

the FGCs, who are not subject to the Army Act). Counsel further emphasized that while a draft of the convening order to be subsequently issued by IMA itself had been forwarded to HQ Central Command by IMA on 06.03.2021 for approval, the final Convening Order had been issued by HQ Central Command as decided by them.

29. A detailed investigation was carried out, wherein a total of 39 witnesses and 23 Exhibits (including relevant Adm Instr, Army Orders 8(Army Instructions) were examined by the CoI. The provisions of AR 180 were invoked and both the applicants here and all other witnesses were given every opportunity to put forth their stand as regards the incident and also cross examine the witnesses, irrespective of rank/status. At no stage, during the proceedings of the Col did the applicants complain of any illegality, discrimination or arbitrariness. The Counsel emphasized that the inquiry had clearly established who had beaten whom and action has been taken against those who have been identified, and no action had been taken against those who were not positively identified.

30. The Counsel then took us through the statements of various witnesses at the Col in detail. Referring to the statement of Witness No 1 (FGC Suhrobi), the Counsel said that if the incident of 24.02.2021 had indeed been settled, the incident on 02 and 03.03.2021 would not have happened. The Counsel stated that Witness No 1 had given a free and frank statement and had explained the incidences in detail, had admitted to the incident, his role and that of the other FGCs. The Counsel emphasized that the statement of Witness No 1 was entirely reliable as he had vividly narrated all the incidents and had never tried to defend himself. Referring to the statement of Witness No 2 (Applicant No 2), he had reported the incident of 24.02.2021 for the first time on 02.03.2021 and that too, to Applicant No 1. The Counsel emphasized that Applicant No 2 should have reported the matter on occurrence, and the fact that he did not report indicates that either he did not want to report or had settled the issue. Thus, his complaining to the 3' Termers on 02.03.2021 apparently was with a different intention. Moreover, on 02.03.2021, if the intention of Applicant No 1 was only to ascertain the facts of the case, he did not have to take two other GCS with him to meet FGC Suhrobi.

31. The Counsel further stated that the Witness had also admitted to the presence of four GCs in the cabin of FGC Suhrobi, and that it was no coincidence that all four GCs were ACC cadets. The Counsel further stated Applicant No 2 had however not completely and faithfully stated the sequence of events of the incidence on 02.03.2021.. Referring to the statement of Witness No 05 (FGC Ghulam Sakhi of Afghanistan) the Counsel stated that when he entered the cabin of FGC Suhrobi, Applicant No 2 was also present and that in the ensuing scuffle Witness No 5 too had been hit. Referring to the statement of Witness No 4 (Applicant No 1), the Counsel stated that the visit to the cabin of FGC just before 1800h was a pre meditated action as they knew that all other cadets would be out for the games period between 1600 to 1800h. It was

also evident from the statement that the scuffle was 4:1 and instead of reporting the incident, had gone to the juice bar. Thus, the witnesses had accepted the scuffle on 02.03.2021 and they had carefully chosen the time to do it. Witness No 4, despite being the SUO with the responsibility to prevent such incidents had willingly participated in the incident, not reported the matter, and had not even assisted the FGCs to report the matter, despite the fact that the Coy had five WLL telephones available. The Counsel emphatically stated that from the statements of the various Indian GCs, it was evident that there was great disparity in their statement on how the scuffle concluded. Moreover, the situation had continued post the dinner and it was only controlled after the arrival of various officers.

32. Referring to the argument of the Counsel for the applicants regarding non adherence to AR 180 and inclusion of certain documents as exhibits without these being produced by any witness, the Counsel stated that AR 180 had been adhered to both in letter and spirit throughout the conduct of the inquiry. As regards the documents included, the Counsel stated that these were the statements given by the eight FGCs to the Def Attaché and had been forwarded directly to the Presiding officer by the International Cooperation Cell at Army HQ and that these were in conformity to the statements given by the FGCs in the Col. The Counsel emphasized that this aspect has been also accordingly recorded in the Findings of the Col.

33. The Counsel stated that the Col was conducted by an independent authority which culminated into recommendations for initiating action against the cadets involved and the Directing Staff for certain lapses, The Col pin pointed the responsibility of various cadets for the incident on 24.02.2021, 02.03.2021 and 03.03.2021. The CoI recommended action against six FGCs (two primary instigators and four secondary instigators) and four Indian GCs (two primary instigators and two secondary instigators). The Col had also found four members of the Directing Staff blameworthy for inadequate understanding and inept handling of the situation. The Col also opined that all 21 Tajikistan GCs undergoing training at IMA were involved in collective insubordination and violation of laid down instructions on discipline. The Col also concluded that all 21 Tajiki cadets at IMA had participated in the incident on 03.03.2021 and that they were firm in their stand on their collusion, rationale and their participation.

34. The Counsel then stated that since the incident involved additional complexities and sensitivities including the reputation of a premier training establishment of the country and relationship with a friendly foreign country, it was therefore decided not to provide a copy of the Col to any cadet and it was pertinent to place on record that for the same reasons, the proceedings of the CoI was denied to the Def Attaché of Tajikistan too. The Counsel also stated that as per the Adm Instrs issued by HQ ARTRAC, there were no provisions for supplying a copy of the CoI to a cadet against whom disciplinary actions

are contemplated.

35. The Col proceedings were finalized after detailed scrutiny by the staff and the JAG Branch at HQ Central Command and the Directions of GOC-in-C Central Command were issued on 24.04.2021. Referring to the argument from the applicant's side that the whole action was taken to assuage a foreign country, the Counsel stated that this argument was entirely misplaced since the findings were deliberated at the highest levels in the country and a considered decision was taken to withdraw the GCs who were the primary instigators, both Indian and foreign. At the Govt level, it also entailed actions taken to intimate the Govt stance to the Tajikistan Govt through a Note Verbale issued on 04.06.2021. The directions on the FGCs were also communicated to HQ ARTRAC on 04.06.2021.

36. Referring to the conduct of SUO Dinesh Singh, the applicant in OA 1054/2021, the Counsel stated that the appointment of a cadet as SUO is based on his overall performance and the SUO is expected to exhibit great sense of discipline and discharge his duties with utmost sincerity and sense of responsibility. Regrettably, the conduct of the SUO left much to be desired and he had let down the faith reposed in him by the Academy.

37. The Counsel then took us through the proceedings of the Col in great detail. Referring to statements by various witnesses, the Counsel stated the following:

(a) That the Indian GCs were of the opinion that the incident of 03.03.2021 had taken place since the earlier incidents had not been reported and controlled (Witness No 7 -GC Harpreet Dogra), while the FGCs felt that the violent reaction on 03.03.2021 was due to the fact that a FGC from Tajikistan had been beaten up by four Indian GCs and the FGC was sent to the hospital and that the Indian GCs were gloating over this. It had hurt the pride of all the Tajiki cadets (Witness No 12 - FGC Saimumin Abdurakhmonov).

(b) That as per Witness No 20 (FGC Dustov Daviatali) the incident on 03.03.2021 had occurred since no action had been taken against the four GCs involved in beating FGC Suhrobi and the Indian GCs were mocking and making fun of the Tajiki cadets and therefore the Tajiki cadets decided to beat the Indian GCs just as they had beaten FGC Suhrobi for the incident of 24.02.2021.

(c) That as per Witness No 21 (FGC Nur Mohammad) he was present in Hajipir company after the scuffle in FGC Suhrobi's cabin and corroborated the fact that the Tajiki cadets were angry for no one helping them to report the matter, or take action and therefore had decided to handle the situation themselves by retaliating and hitting the Indian GCs.

(d) That as per Witness No 27 (FGC Nazarov Muslimjon) he had learnt of the incident of 02.03.2021 from FGC Suhrobi during dinner on 02.03.2021 and that in the Comdt's address the Comdt never spoke of the incident of 02.03.2021 and

that this gave a feeling that only the Tajiki cadets were at fault in the whole incident. That since the morning of 03.03.2021 the issue had been simmering on account of the fact that only the Tajiki cadets were being blamed and spoken about for the incident and they thus felt victimized. He also confirmed that all Tajiki cadets had participated in the incident of beating up the Indian GCs after the Comdt's Address.

(e) That as per Witness No 18 (Maj Shwetank Gaur, AQMG Cariappa Bn) he had first learnt of the scuffle in the FGC's cabin at 2015h through a phone call from a FGC. That he then informed the Duty Officer and later reported the matter to the Bn Cdr who arrived in person, spoke to FGCs and Indian GCs, dispatched the injured FGC to the Section Hospital, dispersed all the cadets. The Bn Cdr then reported the matter to the Comdt, while the witness reported the matter to Adjt IMA.

(f) That as per Witness No 17 (Maj Praveen Kumar, PI Cdr Poonch Coy and Bn Duty Offr on 02.03.2021) he whilst on duty had walked into the ground floor lobby of Hajipir Coy at about 2015h and saw about 15 GCs standing there including the AUO, who informed him of the scuffle in which FGC Suhrobi had been beaten by three/ four Indian GCs. That he also met the FGCs who confirmed the incident. While the Indian GCs dispersed when instructed to, the FGCs continued to stay put and it was then that he received the call from the AQMG informing him of the incident. That he had summoned the FGCs and Indian GCs to the Bn office and enquired of what had happened. That Applicant No 1 on being questioned had stated that they had gone to the cabin of FGC Suhrobi to resolve the matter of 24.02.2021 and on further inquiry had narrated the incident of 24.02.2021 and also stated that they had not reported it since it had been resolved. That he then informed the AQMG of the details and at 2100 h informed the Bn Cdr who then reached the Bn Office to inquire into the incident. That finally FGC Suhrobi was sent to the Sec Hospital and by 2220 all had dispersed.

(g) That as per Witness No 14 (Maj Prabhat Mishra, Officiating Coy Cdr Hajipir Coy) the incident of 24.02 .2021 had never been reported to him or brought to his notice earlier. That he was first informed of the situation by the AQMG, immediately after which Applicant No 1 too had reported the matter to him on the WLL telephone at about 2030h. That the Coy had six WLL telephones and that on the day of the incident only three were functional. That WLL telephones were available in the Coy so that the appointments could give requisite reports and was also available to the cadets to speak to their homes (Witness No 16 - Col SK Singh Bn Cdr Cariappa Bn)

(h) That the statement of Witness No 15 (Capt Abhishek Dhawan, PI Cdr Hajipir Coy) corroborated the timings on 02.03.2021 in that when he reached the Company at 1740, he saw some GCs in the central lobby and that Applicant No 1 too was there, indicating that by then the four GCs had reached the Coy. That in the incident on 03.03.2021 the injuries sustained by the Indian GCs was severe

with blood splattered on their faces/ head which could have caused only by being hit with some object.

(i) That as per Witness No 19 (FGC Mirzoionov Khovarashoh) he was on the spot immediately after the scuffle, till the Bn Duty Offr had arrived at about 2015h. That all his endeavor to get the matter reported to the authorities had failed, as none helped him report the matter and that finally he called AQMG on the mobile of FCC Suhrobi. That during the various conversation with the Indian GCs, the Indian GCs had stated that they were irked with FGC Suhrobi's aggressive behaviour and beating Indian GCs.

(J) That Witness No 26 (Lt Col Raman Gakhar, Adjt IMA) elaborated on the contents of the Comdt's Address to the FGCs on 30.03.2021 which indicated that the argument that the Comdt's address had angered the FGCs and triggered the incident of 03.03.2021 was incorrect. That the witness had first learnt of the incident of 03.03.2021 when he received a call from AQ Cariappa Bn at about 2115, who reported that all the Tajiki cadets had come to Hajipir Coy and were beating the Indian GCs. The witness also described the tense situation and the attempt by the FGCs to harass Col SK Singh the Bn Cdr and their intransigence in not listening to stop and step back, and that order was established only after the arrival of the QRT. That the possible reasons for the escalation of events was that the incident of 24.02 2021 was not reported and that the cadets wanted Applicant No 1 to resolve it for them, while the Tajiki wanted their Def Attaché to resolve it for them. That though the Def Attaché did not take any action, his words may have encouraged the cadets to undertake the incident on 03.03.2021.

(k) That as per Witness 37 (Col AK Sharma Col Instr) he was informed of the incident in Hajipir Coy on 02.03.2021 and was detailed as the Presiding Officer to ascertain the facts. That he visited Sec Hospital to meet FGC Suhrobi and also went to Hajipir Coy where he saw that all officers of the Coy were present there. That as per the directions given to him, he took down the statement of the cadets and officers and that statements of 19 to 20 cadets/ offr had been taken on 03.03.2021 by when the incident on 03.03.2021 happened and he was asked to stop the CoI . The witness also confirmed that he had been instructed verbally to conduct the inquiry and that no convening order had been issued.

38. Referring to the Reports initiated by MH Dehradun to report medico legal cases (exhibits at pages 420 to 427), the Counsel stated that reports in respect of eight Indian GCs had been initiated in which injuries sustained by five cadets, including the two applicants here were non grievous in nature while that of the remaining three were grievous in nature. Those who had grievous injuries were GCs Harpreet Dogra, Rahul and Navin Nagvval. Referring to the issue of establishing the identity of Applicant No 2, FGC Suhrobi had no doubts as he had interacted with him on 24.02.2021 and had punched him in the stomach. Thus, the necessity for him to identify Applicant No 2 did not arise. As regards the assertion that the Tajiki GCs under training were already officers, the

Counsel stated that he would need to verify this.

39. Explaining the actions taken after the conclusion of the CoI, the Counsel stated that after due diligence, application of mind and detailed analysis of the records of the CoI proceedings, GOC-in-C HQ Central Command issued his directions on it in accordance with Para 11 of the Regulations for the Army, 1987 (Revised Edition) on 24.04.2021. The Col proceedings were then forwarded by HQ Central Command to HQ ARTRAC vide their letter number 190105/D/2021/AG/DV-2 (IMA) dated 29.04.2021. The copy of findings, opinion and directions were also forwarded to IMA with directions to take necessary disciplinary actions against Indian GCs found blameworthy, in consultation with HQ ARTRAC. Though the documents were received by HQ ARTRAC on 13.05.2021 no action was initiated against any Indian GCs, including the applicants, in order to ensure uniformity of process / procedure as well as equality of justice vis-a-vis the Foreign GCs since no confirmation had been received from MEA/MoD in respect of the Foreign GCs.

40. Since the case involved foreign cadets, the entire CoI proceedings were further scrutinized by the COAS, at the MoD and MEA and finally a Note Verbale was issued by ADG International Cooperation, IHQ of MoD (Army) vide their letter No A/92001/2020-21/GS/F-1 I dated 04 June 2021 in which it was intimated that the Tajik Gentlemen Cadets found violating disciplinary norms on conclusion of Col at Indian Military Academy were to be withdrawn/ relegated. And that the training of the two cadets who were to be withdrawn would be terminated on 08.06.2021, and that the Embassy was accordingly required to book their flight tickets back to Tajikistan. Thus, apart from the fact that an independent investigation was conducted, all rules of fair play and natural justice were adhered to, and the case was scrutinized at various levels, both in the Army and the GoI to ensure fairness/ equity in determining acts of omission/ commission and degree of culpability/ punishment. Various actions for withdrawal were taken as per the procedure given at Para 75, 80 and 131 of Administrative Instructions, 2018 (Annexure R-5).

41. Subsequently, a SCN was issued to all GCs who were found blameworthy, including the applicants on 04.06.2021. As per Para 75 of the Adm Instrs, while a Col is mandated in cases involving withdrawal of GCs on disciplinary ground, there was no provision/ mandate in these instructions to provide a copy of the ('of to the cadet against whom disciplinary action is contemplated A request from the Tajikistan Defence Attaché for a copy of Col was also declined on these grounds. HQ Central Command, too vide their letter No 190705/D/2021/AG/DV-2/IMA dated 29 April 2021 addressed to HQ ARTRAC has issued explicit instructions that keeping in mind the sensitive nature of the case, no photocopies of the Col proceedings would be made.

42. SCN dated 04.06.2021 were issued to both the applicants who submitted their replies on 05.06.2021 in which they did not categorically deny the incidents. The applicants were aware of the entire facts of the case relating

to the incident as AR 180 had been invoked, affording them adequate opportunity to be present during the proceedings, cross examine witnesses, produce evidence and make statements. Both applicants had also rendered certificates confirming compliance of AR 180, and these were on record of the Col. Since the applicants were in full knowledge of the incidents as revealed at the Col, based on which the SCN was issued, no prejudice had accrued to the applicants merely because the copy of CoI was not provided at that point of time.

43. On receipt of replies to the SCN from all the four GCs (two Indian and two Tajaki GCs) who were recommended to be withdrawn, the case was submitted to HQ ARTRAC for approval, with the recommendations of the Comdt as per provisions of Para 72 of the Adm Instrs. HQ ARTRAC examined the case and approved the withdrawal of the four GCs. On receipt of approval from HQ ARTRAC on 07.06.2021, the two applicants and two foreign GCs were marched up before Comdt INIA on offence reports. During this procedure the applicants did not highlight any new facts or call any additional witnesses; and they pleaded guilty to the offences against them. Having heard the GCs, the Comdt ordered that the four GCs be withdrawn. Thus, both the applicants were withdrawn by the Comdt IMA as per due process in accordance with the tenets of military law and as per the existing procedures.

44. Once the CoI proceedings were approved and the proposed action was confirmed by MEA/MoD, for reasons explained, the withdrawal process was executed in a time bound manner. Thus, time bound execution needs to be distinguished from action taken in haste. Apart from the fact that the Admin Instrs does not mandate providing a copy of the Col with the SCN to the GCs, the Col proceedings were not shared with both the Indian and Foreign GCs due to larger issues of foreign policy sensitivities and larger organizational interests being involved. Moreover, being a sensitive case with adverse ramifications, it would have adversely impacted the friendly relation with the foreign country to which the cadets belonged.

45. Further, the expeditious action in the instant case was warranted since the Passing Out Parade of the applicant and other cadets undergoing the course was scheduled on 12.06.2021 and any delay in the proposed action would have made it infructuous. Notwithstanding the same, due procedure as laid down in Para 75 of Adm Instrs was scrupulously followed. Thus, the applicants were given ample opportunity to put forth their defence. The applicants having pleaded 'Guilty' to the offence against them are now estopped from resiling from their statements.

46. The Counsel then took us through certain provisions of AR 147A which states that if the Central Government certifies that it is against the interests of the security of the State or friendly relations with foreign States to supply a copy of the proceedings or any part thereof, the copy of the proceedings shall not be furnished. However, AR 147A permits inspection of proceedings subject to an undertaking and certification.

147A Copy of proceedings not to be given in certain cases.- Notwithstanding anything contained in Rule 147, if the Central Government certifies that it is against the interests of the security of the State or friendly relations with foreign States to supply a copy of the proceedings or any part thereof under the said rule, he shall not be furnished with such copy: Provided that if the Central Government is satisfied that the person demanding the copy is desirous of submitting a petition in accordance with the Act or instituting any action in a court of law in relation to the finding or sentence, it shall permit inspection of the proceedings to such person or his legal adviser, if any, on the following conditions, namely:

(a) the inspection shall be made at such times and such places as the Central Government or any authority authorized by it, may direct; and

(b) the person allowed to inspect the proceedings shall, before such inspection, furnish-an undertaking, in writing, that he shall not make copies of the proceedings or any part thereof and that the information or documents contained in such proceedings shall not be used by him, for any purpose whatsoever other than for the purpose of submitting a petition in accordance with the Act or instituting an action in a court of law in relation to the said finding or sentence; and

(ii) a certificate that he is aware that he may render himself liable to prosecution under sections 3 and 5 of the Indian Official Secrets Act, 1923 (19 of 1923), if he commits any act specified in the said sections in relation to the documents or information contained in the said proceedings.

The Counsel then elaborated on the provisions of AR 184 which lays down the right of certain persons to copies of statement and documents, unless its ordered otherwise by the COAS for reasons to be recorded by him in writing.

184. Right of certain persons to copies of statements and documents

(1) Any person subject to the Act who is tried by the court-martial shall be entitled to copies of such statements and documents contained in the proceedings of a court of enquiry, 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 enquiry 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

47. The Counsel further elaborated and stated that COAS was the competent authority to withhold the copy of CoI proceedings on any justifiable ground whatsoever, and that there was no express provision of inspection of such proceedings once withheld. However, in the instant case the COAS has permitted inspection of the Coi proceedings, subject to certain undertaking and

certification.

48. The Counsel finally concluded by reiterating that the sequence of events from 24.02.2021 to 03.03.2021, involved a case of grievous assault and affray at the IMA on 02 & 03.03.2021 which resulted in a major breach of discipline in the premier training establishment; brought into play larger concerns of foreign relations of the country as the incident involved cadets from Tajikistan; and certain organizational infirmities/ lapses on the part of the Institution and its staff which aggravated the issue. The matter had been investigated impartially and the Col had been conducted as per the statutory provisions which have been followed scrupulously, both in letter and spirit. The Col had pinpointed responsibility of the cadets involved and had recommended actions to be initiated against them. Given the gravity and sensitivity of the case, it had been examined at the highest level in the Govt and it was only after the approval of the competent authority that action was taken against the defaulters.

49. In support of his arguments, learned Sr. CGSC has placed reliance on the following decisions:

- (i) Keshav Mills Co. Ltd v. Union of India (1973) 1 SCC 380;
- (II) Alit Kumar Nag v. G.M (P1), Indian Oil Corporation Ltd (2005) 7 SCC 764;
- (iii) RD. Agrawal v. State Bank of India (2006) 8 SCC 776;
- (iv) M/s. Dharampal Satyapal Ltd v. Dy. Commissioner of Central Excise and others (2015) 8 SCC 519;
- (v) Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others (1993) 4 SCC 727;
- (vi) Maj Gen Inderjit Kumar v. Union of India and others (1997) 9 SCC 1;
- (vii) South West Bengal State Transport v. Sapan Kumar Mitra and others (2006) 2 SCC 584;
- (viii) Tata Cellular v. Union of India (1994) 6 SCC 651; and
- (ix) Union of India and others v. Harjeet Singh Sandhu (2001) 5 SCC 593.

Consideration of the case

Issues Established

50. We have heard both parties at great length along with their reference to the Cal and have examined the Cal in detail. We have also examined the files of the Army HQ and MoD related to the issue. The following issues are very clearly established from the Col and various documents:

- (a) That there had been three incidents involving FGCs and Indian GCs.
- (b) The first was on 24.02.2021 in which Applicant 2 (Sep Dharnender Kumar)

who was the officiating SUO had been punched by FGC Suhrobi Alizoda, a 3rd termmer who had stayed back from the 3rd term training camp and the matter had not been reported to the authorities.

(c) The second incident took place on 02.03.2021 when Applicant No 1 (SUO Dinesh Singh) along with Applicant No 1 and two other GCs (GC Harpreet Dogra and Naveen Nagwal) had gone to the cabin of FGC Suhrobi and got into a scuffle with the FGC in which the FGC was injured. This was followed by a restless group of other FGCs who gathered in Hajipir Coy and were agitated by the beating of FGC Suhrobi by the four Indian GCs and the Indian GCs not assisting them report the matter. The matter was finally reported by a FGC to the AQMG and about the same time the Duty Officer arrived in the Company at 2015hrs followed by other Coy/ Bn officers. The incident culminated with the Bn Cdr speaking to both the Indian and FGCs, and FGC Suhrobi being sent to the Section hospital at approx 2200 hrs.

(d) In the morning of 03.03.2021, Bn Cdrs had addressed cadets of their respective Bns to sensitize them of the incident the previous evening and to caution them against repetition of such incidences. However, the third incident took place on 03.03.2021 at approx. 1930h when after the Comdt's address to all the FGCs in the Academy, the 21 Tajiki FGCs colluded and beat up the Indian GCs in Hajipir Company in retaliation to FGC Suhrobi being beaten up the previous day. The scuffle was controlled and ended with the intervention of the Directing staff of the IMA and deployment of the armed Quick Reaction Team. The scuffle resulted in eight Indian GCs getting moderate to very grievous injuries and being evacuated first to the Section Hospital and later to the Military Hospital.

(e) A preliminary inquiry was initiated on 02.03.2021 itself, but this was not concluded due to the fresh incident on 03.03.2021. Since for matters of discipline, IMA is under HQ Central Command, IMA sent a draft convening order for approval. However, HQ Central Command issued a fresh Convening Order dated 10.03.2021 with Cdr 116 Inf Bde as the Presiding Officer.

(f) The Col examined a total of 39 witnesses and 23 Exhibits (including relevant Adm Instrs, Army Orders & Army Instructions). The proceedings of the Col along with the findings and recommendations were submitted to HQ Central Command. All statutory provisions were followed in the conduct of the Col and there is no mala fides or prejudice caused to the applicants, or any other witness. The jurisdiction of HQ Central Command to deal with this disciplinary incident is valid as per the orders on the subject of command and control, and is accordingly upheld.

(g) The findings of the Col elaborated on the reasons leading to the final incident on 03.03.2021 and pin pointed the responsibility of various cadets for the incident on 24.02.2021, 02.03.2021 and 03.03.2021 and also held certain members of the Directing Staff responsible for lapses on their part. The Co' also

opined that all 21 Tajikistan GCs undergoing training at IMA were involved in collective insubordination and violation of laid down instructions on discipline. The CoI also concluded that all 21 the Tajiki cadets at IMA had participated in the incident on 03.03.2021 and that they were firm in their stand on their collusion, rationale and their participation.

(h) The CoI recommended action against 06 FGCs (02 primary instigators and 04 secondary instigators), 04 Indian GCs (02 primary instigators and 02 secondary instigators) and 04 members of the Directing Staff.

(i) The Col proceedings were examined at HQ Central Command and the Directions of GOC-in-C Central Command were issued on 24.04.2021. The details were forwarded to Army HQ by HQ Central Command. The Col proceedings were also forwarded to HQ ARTRAC vide HQ Central Command letter dated 29.04.2021. The copy of findings, opinion and directions were also forwarded to IMA with directions to take necessary disciplinary actions against Indian GCs found blameworthy, in consultation with HQ ARTRAC.

(j) Though the documents were received by HQ ARTRAC on 13.05.2021 no action was initiated against any Indian GCs, including the applicants, in order to ensure uniformity of process/ procedure as well as equality of justice vis-a-vis the FGCs pending approval of the competent authority on the action to be taken against the FGCs.

(k) An Initial Report on the incident was initiated by IMA. On receipt of this at IHQ of MoD(Army) ADG International Cooperation / Foreign Trg Team too had raised an initial report on the incident to the MOD/ JS IC and to the Defence Attaché of Tajikistan at Delhi vide their Note dated 10 Mar 2021.

(l) It is seen from the original file (at Note 09 dated 05.08.2021) that the COAS, having considered the recommendations of the staff and GOC-in-C ARTRAC had approved withholding the supply of the Col proceedings. However, he had permitted the inspection of the Col subject to rendition of an undertaking.

(m) On receipt of the proceedings of the Col, the directions were examined and the case for the withdrawal of two FGCs and relegation of four FGCs was processed with MoD after approval of the competent authority. The MoD/IC intimated the approval of the competent authority for the withdrawal of two FGCs and the relegation of four FGCs vide their note dated 03.06.2021. This was then intimated to the Defence Attaché of Tajikistan in India by IHQ of MoD(Army)/ADG/IC & IIR vide their Note dated 03.06.2021, and to all concerned vide their Note dated 04.06.2021.

(n) Accordingly, a SCN was issued to all GCs who were found blameworthy, including the applicants on 04.06.2021. On receipt of replies to the SCN from all the four GCs (two Indian and two Tajiki GCs) who were recommended to be withdrawn, the case was submitted to HQ ARTRAC for approval, with the recommendations of the Comdt as per provisions of Para 72 of the Adm

Instrs. HQ ARTRAC examined the case and approved the withdrawal of the four GCs. On receipt of approval from HQ ARTRAC on 07.06.2021, the two applicants and two foreign GCs were marched up before Comdt IMA on offence reports. Having heard the GCs, the Comdt ordered that the four GCs be withdrawn. Thus, the applicants were both withdrawn by the Comdt IMA as per due process in accordance with the tenets of military law and as per the existing procedures.

Providing Copy of Col

51. One of the issues raised by the applicants is that copies of CoI were not provided to the applicants to assist them make a cogent reply to the SCN issued on 04.06.2021 and that the time provided to consider and prepare the reply was grossly inadequate. The Respondents have stated that as per Para 75 of the Adm Instrs, while a Col is mandated in cases involving withdrawal of GCs on disciplinary ground, there is no provision/ mandate in these instructions to provide a copy of the Col- to the cadet against whom disciplinary action is contemplated. It is also seen that as per AR 147A, that if the Central Government certifies that it is against the interests of the security of the State or friendly relations with foreign States to supply a copy of the proceedings or any part thereof, the copy of the proceedings shall not be furnished. We have also examined the provisions of AR 184 which lays down the right of certain persons to copies of statement and documents, unless its ordered otherwise by the COAS for reasons to be recorded by him in writing. It is also seen from the files that COAS had accorded necessary sanction to withhold the supply of the Col proceedings and had however, permitted the inspection of the Col subject to rendition of an undertaking. This matter was deliberated upon earlier and necessary directions were issued vide our Order dated 18.08.2021 to facilitate examination of the Col by the applicants.

52. In the normal course of events in a disciplinary proceeding, it follows the cycle of a Col, followed by directions of the competent authority to initiate disciplinary/ administrative action, hearing of the charge, recording of summary of evidence, issue of directions for a trial by court martial, conduct of the court martial, filing of pre confirmation petition by the accused, confirmation of the sentence by the convening authority and filing of a post confirmation petition by the accused. Thus, in the normal course, an accused is invariably entitled to the copies of all the proceedings including that of the court martial. Even in sensitive cases, where Col copies are not provided, the accused is given the opportunity to examine them with necessary caution on security implications. Thus, the accused has the knowledge of the details of the case against him when the disciplinary proceedings commence. Moreover, on conclusion of the disciplinary proceedings if the accused decides to challenge the disciplinary proceedings/ administrative action/ court martial and the sentence, he invariably has complete access to the requisite material to make his plea.

53. However, in the case of cadets at various Pre-Commission Training

Academies, whose withdrawal is governed by Para 75 of the Adm Instrs which does not mandate provision of a copy of the CoI, it is our considered opinion that the harshest punishment of withdrawal is implemented without the cadet having access to the very document based on which this punishment has been given. Also, the plea that since the affected cadets were those who were involved and therefore have requisite information of the incident to furnish a reply to a SCN is contrary to the principles of natural justice. Thus, in the light of the principles of natural justice where an accused must be afforded all assistance and support to make his defence, we direct the Respondents to review the Adm Instrs and include necessary provisions for providing a copy of the CoI to the cadet in all such disciplinary cases.

Punishment Awarded

54. We also find much force in arguments of the application that they were not given adequate time to reply to the SCN, notwithstanding the compulsion advanced by the Respondents. As part of process of natural justice it is also necessary that once a show cause notice is served on an individual, the individual is given adequate time to consider and submit a reply. The respondents have argued that since the applicants were already aware of the case no prejudice has been caused to them by the lack of adequate time to show cause notice. We are of the pinion that denying the individual adequate time to consider the show cause notice and submit it a reply on the presumption that he/she already has knowledge of the situation does not hold water. It needs to be borne in mind that since this is the last opportunity of the individual to state his case in detail and make necessary pleas, adequate time has to be provided to the individual to study the issue raised in the SCN, evaluate them and advance a cogent answer. In view of this, the Respondents must review the Adm Instrs and lay down a minimum time must be provided to an individual to consider a SCN, issued and submit they reply.

55. The Respondents have maintained that this was a grave and very serious case of grievous assault and affray, which resulted in a major breach of discipline in a premier training establishment brought into play larger concerns of foreign relations of the country as the incident involved cadets from Tajikistan; and certain organizational infirmities/ lapses on the part of the Institution and its staff which aggravated the issue. From the statements of the various FGCs it is evident that the events of 02.03.2021, and the way the whole incident and its perpetrators were immediately dealt with did not inspire confidence in the minds of the Tajiki cadets who felt victimized and mocked at by the Indian GCs and therefore decided to take law into their own hands and retaliate against the Indian GCs of Hajipir Coy by assaulting them. It is also evident from the statement of the Indian GCs and members of the Directing Staff that there have been previous incidences of indiscipline amongst the Tajiki cadets and their beating up of Indian GCs, and that these have mostly gone unchecked. Thus, the incident is a culmination of this mutual animosity which has festered

over a period of time and erupted with this incident.

56. While we do not condone the incidence, and we would not normally interfere with the actions taken by the authorities, we do find adequate force in having to review the harsh punishment given to the two applicants here, in that they have been withdrawn from training, totally shattering their dreams of becoming an officer. It is also seen that both the applicants are soldiers who aspire to become officers and one has been withdrawn just a few days prior to his commissioning. It is relevant to state that since the incident and the withdrawal in Jun 2021, a year has gone past and it is our considered opinion that the ends of justice would be met if the applicants are reinstated as GCs and allowed to complete their training be commissioned as officers with this loss of one year of their seniority, which to our minds is punishment enough. We are sanguine that the applicants have learnt their lesson and the final punishment of a loss on one year will remain a firm reminder to conduct themselves properly as responsible officers and citizens of the country.

Directions

57. In view of the above considerations we allow the OAs and direct the respondents to:

- (a) Reinstatement of the applicants as gentlemen cadets at the IN1A in the course commencing in July 2022, permit them to complete their training and be commissioned as officers in the Indian Army.
- (b) Review the Administrative Instructions and incorporate necessary provisions to:
 - (i) Supply a copy of the Col to cadets against whom disciplinary proceedings are initiated.
 - (ii) Lay down a minimum period of time that is to be provided to a cadet for consideration of a show cause notice issued.

58. No order as to costs.

Pronounced in open Court on this the 1st day of June, 2022.