

(2007) 01 DEL CK 0026

In the Delhi High Court

Case No : Writ Petition (C) No. 11839 of 2006

Lt. Gen. Surendra Kumar Sahni

APPELLANT

Vs

Chief of Army Staff and Others

RESPONDENT

Date of Decision : 11-01-2007

Acts Referred:

Army Act, 1950 — Section 154, 164(1), 164(2)

Army Rules, 1954 — Rule 177, 180, 180, 184, 22

Constitution of India, 1950 — Article 14, 21, 226, 311, 33

Citation : (2007) 01 DEL CK 0026

Hon'ble Judges : Swatanter Kumar, J;G.S. Sistani, J

Bench : Division Bench

Advocate : N.K. Kaul and Viraj R. Datar, for the Appellant; Rakesh Tiku and T. Prasad, Dy. JAG, for the Respondent

Final Decision : Allowed

Judgement

Swatanter Kumar, J.—The petitioner, who was working as Director General of Supply and Transport of the Army Service Corps, has approached this Court under Article 226 of the Constitution of India for quashing and setting aside of proceedings and recommendations of the Court of Inquiry in terms of order dated 26th May, 2005 and order directing attachment of petitioner dated 18th July, 2006.

2. In the submissions of the petitioner, the entire Court of Inquiry allegedly conducted by the respondents is void and non est. A General Court of Inquiry was ordered on the basis of anonymous and Pseudonymous complaints, which itself was not permissible under Army Order 4/2000 read with Central Vigilance Commission Act, 2003. Though the Inquiry was not directed against the petitioner but it was intended to falsely implicate and humiliate the petitioner at the end of his career as he was to retire on 30th September, 2006. These orders were also challenged on the ground of bias and mala fides. The petitioner has challenged the order of attachment on the ground that upon attachment, he has

to serve under an officer, who is 3 year's junior to him i.e. HQ 2 Corps under the Command of Lt. General V.K. Singh, GOC despite the fact that there are other senior officers in the army commanders, who by virtue of their appointment could be said to be senior to the petitioner and thus, the respondents cannot take aid of doctrine of necessity in the facts and circumstances of the case.

3. The petitioner has specifically denied his involvement in any kind of irregularities and on the contrary has stated that he was responsible for issuance of certain instructions in relation to food inspection organization and detailing the measures for ensuring good supplies to the troops.

4. According to the petitioner, the facts giving rise to the present writ petition are that the petitioner was commissioned in the Indian Army on 16th December, 1967 and thereafter has been promoted to each higher rank on first consideration. Because of his outstanding service profile and distinguished service, the petitioner was promoted to the rank of Lt. General on 1st February, 2005 and where after he held the appointment of Director General Supplies and Transport as senior most officer of the Army Service Corps. The petitioner was being considered for promotion from the rank of Brigadier to Major General. He was considered by two Selection Boards constituted for this purpose on 1st November, 1996 and 11th April, 1997 and was unanimously recommended for promotion by each Board. However, recommendations of Selection Board were not approved by the Ministry of defense, which compelled the petitioner to file civil writ petition being WP(C) No. 5264/97 against the decision of the respondents. Learned Single Judge of this Court had allowed the writ petition on 13th May, 1999 and set aside the decision of the Central Government. It was directed that petitioner be declared to be promoted as Major General with effect from 1st May, 1997. The Court in its judgment noticed that petitioner was being denied promotion at the behest of the then Director General Supplies and Transport, since the petitioner had objected to the use of Regimental Funds of the Army Service Corps Units of 3 Corps for maintenance of official residence of the said Director General Supplies and Transport. With great difficulty, the petitioner was promoted to the rank of Major General with all consequential benefits. The petitioner thereafter was considered by a Special Selection Board for promotion to the post of Lt. General in August, 2002 and petitioner was recommended but still the result of the Selection Board was not being declassified or given effect to. This was primarily with a view to show that the petitioner could be denied his promotion. Though entirely incorrect allegations made had been inquired into by Lt. General P.S. Joshi, the then GOC-in-C Central Command and they were found to be totally baseless and false still a Court of Inquiry was directed to be convened by Convening Order dated 23rd September, 2002 to inquire into certain anonymous and Pseudonymous complaints against the petitioner. In view of persistent attitude of the respondents, the petitioner again approached this Court by filing CW No. 415/2003 praying for quashing of Convening Order dated 23rd September, 2002 and also for issuance of directions to the respondents to implement the recommendations of the Selection Board

and promote the petitioner to the rank of Lt. General. Vide Order dated 16th March, 2003, High Court granted stay of operation and effect of order dated 23rd September, 2002. Finally vide order dated 9th April, 2003, the Court was pleased to quash the order dated 23rd September, 2002 directing a Court of Inquiry into the allegations founded on anonymous and Pseudonymous complaints but permitted the respondents to look into one allegation. In its judgment dated 9th April, 2003, the Court recorded the following findings:

...In the given circumstances, learned Additional Solicitor General appearing for the respondents fairly conceded that the fact finding exercise by the Court of Inquiry would be restricted to the allegations contained in para 3(a), leaving aside the allegations in para 3(b) to (f). The allegations in para 3(a) of the counter affidavit are said to be based on official records only and not on any complaint. There could thus be no occasion for supplying copy of any complaint to enable the petitioner to offer his comments before the authority concerned ordered convening of the Court of Inquiry in question. The petitioner having been at the helm of affairs at the relevant time could be taken to have been well conversant with the official records relating to the incorrect transfer of contract carrying capacity which constitutes the subject matter of fact finding exercise by the Court of Inquiry in terms of allegations in para 3(a) of the counter affidavit. Apart from having dealt with the matter himself while performing the duties as Executive Officer, Central Command, the petitioner would otherwise appear to be in the knowledge of all the relevant facts pertaining to incorrect transfer of contract carrying capacity in respect of M/s. Haji Abdul Sakoor & Co. by virtue of having been in possession of the original files pertaining to the contracts for a period of about 10 months even after being posted out from Headquarters Central Command to Headquarter Southern Command. It is thus not a case where the petitioner would be taken by surprise while appearing before the Court of Inquiry to depose as a witness in regard to alleged incorrect transfer of contract carrying capacity in respect of M/s. Haji Abdual Sakoor & Col. Rule 180 of the Army Rules provides sufficient safeguard to protect one's character or military reputation by cross-examining the witnesses to be produced before the Court of Inquiry and also by examining one's own witnesses in defense. Thus, no fault could be found with the convening of Court of Inquiry to investigate into the allegations pertaining to incorrect transfer of contract carrying capacity of M/s. Haji Abdul Sakoor & Co. as mentioned in para 3(a) of the counter affidavit and consequently no interference is called for in that respect.

The allegations of incorrect transfer of contract carrying capacity directed against the petitioner pertains to a period prior to the date of holding the Selection Board to fill up the vacancy occurring in the post of Lt. General ASC. Admittedly, the Selection Board has already made its recommendations in respect of the said vacancy which awaits approval by ACC. It lies within the domain of ACC's jurisdiction to accept or reject the recommendations of the Selection Board in that respect for any valid reason and until any such decision is taken it is premature to interfere with the process. There is thus no justification to issue a

direction to 1st and 2nd respondents to declassify the result of the Selection Board pertaining to the promotion of the petitioner to the rank of Lt. General. Further, until ACC's approval of recommendations by the Selection Board there is no occasion to issue a direction to the respondents to effectuate the promotion of the petitioner and as cord him seniority in terms of his prayer in that regard.

In the result, the convening order dated 23-9-2002 for a Court of Inquiry relating to investigation into the allegations contained in para 3(b) to (f) of the counter affidavit is quashed. The fact finding exercise by the Court of Inquiry in respect of the allegations contained in para 3(a) of the counter affidavit shall, however, remain unaffected and the petitioner will abide by the directions to appear before the Court of Inquiry as a witness. Prayer (d) is declined.

The petition is disposed of in the aforesaid terms. No costs.

5. One man inquiry was conducted on the basis of leave granted by the Court and the petitioner was advised to be careful in interpreting rule position in future. According to the petitioner, even advise given to the petitioner was primarily for the sake of passing a remark inasmuch as he had acted in accordance with rules and had taken a pragmatic interpretation of rule position and not for any violation much less dishonest practice, which was sought to be projected by the respondents against the petitioner. In fact in June, 2005, keeping in view consistent good performance of the petitioner at various levels, the Chief of Army Staff at that time found the petitioner as an outstanding officer and awarded Ati Vishisht Seva Medal to the petitioner and during his entire service, no complaint was found worthy against the petitioner and the work of the petitioner was always appreciated. In fact the petitioner himself had brought certain anomalies, omissions and malpractice existing in the system to the notice of Army Commander (Western Command) seeking that a detailed inquiry be conducted at his end to bring culpability of various functionaries and to rectify the situation immediately. As a result of recommendations made by the petitioner, inquiries were conducted and role of very high and senior officers were examined. The petitioner while working as Director General Supplies and Transport besides other efforts undertaken by him, also rejected the cases of various suppliers who were seeking to supply substandard or non-confirming items to the Indian Army and obviously are inimical to the petitioner for this reason and for the reason that there is direct unholy nexus of certain officers, who have been promoting substandard supply to be made to the army in the past. Certain complaints were directed against the petitioner by such interested persons to which the petitioner for the first time was called upon to offer its comments by the Quarter Master General some times in August/September, 2005 and the petitioner duly gave his reply/comments to each of such complaint on 12th September, 2005. Thereafter, the petitioner was not asked to explain anything on these basis.

6. However, on 26th September, 2005, the petitioner was informed that a Court of Inquiry was directed to be convened under the Directions of GOC in C, Western Command, respondent No. 2 in the writ petition to investigate into the 7

allegations/areas of reference. The Court of Inquiry was to consist of a Presiding Officer and one other Member, who was to be assisted by a Technical Member. The Technical member was much junior in rank to the petitioner and belonged to ASC itself, upon whom the petitioner exercised command and the other Member, though of the same rank, was junior in seniority to the petitioner. The order of Convening dated 26th September, 2005 reads as under:

CONVENING ORDER

1. A Court of Inquiry composed as under will assemble at a place, date and time to be fixed by the Presiding Officer as under:

(a) Presiding Officer-IC-16907, Lt. Gen. Mohinder Puri, PVSM, UYSM, DCOAS (IS & T), Army HQ.

(b) Member IC-17280, Lt. Gen. VC Jain, AVSM, VSM DG EME, Army HQ.

2. IC-36022, Brig Rajesh Malhotra, Addl. Offr., HQ. Delhi Area, is detailed as a technical member who will be in attendance to assist the Court of Inquiry.

3. The Court will investigate into the irregularities committed by any Army pers in the following:

(a) Procurement of Kabuli Chana through contract finalised during April 05 by Army Purchase Organisation.

(b) Tendering and procurement of Barley crushed and Gram kibbled during financial year 2005-2006 by Army Purchase Organisation.

(c) Testing and sampling of items of ration by CFL Delhi as per laid down specification and its subsequent purchase/procurement from various firms/dealers as per approved sample and ASC specifications.

(d) Tendering and procurement of 979 Metric Tonnes of Masoor Whole which was supplied by grainfed.

(e) Violation, if any, of the laid down quality norms, ASC specifications and other desired parameters with regard to moisture content, number counts per 100 gm weight, system of imposing price reduction of commodities contracted.

(f) Any undue favor granted to any contractor for procurement of meat by HQ Central Command during financial years 2003-2004 and 2004-2005.

(g) Any irregularity with regard to permitting a civil contractor to dump excavated soil within the compound of ASC Centre and College of any undue favor taken from any contractor by any Army pers at ASC Centre and College.

4. The Court will also investigate any other related issue/matter which may come to its notice during the conduct of inquiry and requires investigation.

5. The Court will pin point the responsibility, culpability of the Army Pers and loss if any, caused to the State.

6. The Court will also suggest the remedial/preventive measures to avoid reoccurrence of such incidents/lapses and streamline the entire tendering and procurement process of rations.

7. The Court will record its findings and opinion.

8. Army Rule 180 to be complied with wherever applicable.

9. Under the power vested vide Army Rule 181(3), it is directed that the Court shall record evidence on oath/affirmation.

10. The C of I proceedings duly completed in all respects will be submitted by the Presiding Officer by 07 Nov. 05.

Case No.:0337/DA/C of I/CFL Delhi/A4

Sd/-

(Deepak Anand)

Maj Gen.

HQ Western Command (DV-4) MG-IC-Adm

Chandimandir ? 134107

Dated : 26 Sep 05

Distr:

VCOAS Sectt

Army Headquarters

DHQ PO, New Delhi -11

DCOAS Sectt

Army Headquarters

DHQ PO, New Delhi-11

AG's Branch

Army Headquarters

DHQ PO, New Delhi-11

QMG's Branch

Army Headquarters

DHQ PO, New Delhi-11

MGO's Branch

Army Headquarters

DHQ PO, New Delhi-11

DG EME Sectt.

Army Headquarters

DHQ PO, New Delhi-11

AG's Branch (DV-4)

Army Headquarters

DHQ PO, New Delhi-11

7. In the said Court of Inquiry, the petitioner was called as the last witness to depose in February, 2006 where the petitioner gave his deposition and was asked certain questions. The objections of the petitioner in relation to constitution of Court in regard to the complaints being anonymous and Pseudonymous were not accepted. After few days of recording statement of the petitioner on 24th December, 2006, the petitioner had received a message from Lt. General Mohinder Puri, Presiding Officer of the said Court and upon the petitioner meeting him, the petitioner was asked to sign his statement as having been recorded in compliance of Rule 180. The petitioner made a query from Lt. General Puri whether anybody stated anything against the petitioner implicating the petitioner. The said query was replied in negative by the said officer and informed that it was as per directions of Respondent No.5 that such request was being made. The petitioner, however, declined to make an incorrect declaration as provisions of Rule 180 were not complied with. The petitioner also claim that subsequently he came to know that similar request was made by General Puri to Major General BPS Mander, who also declined to make such a statement. Vide letter dated 19th July, 2006, the said officer informed the petitioner as under:

CONFIDENTIAL Tele : 23018349 Dte Gen of Supplies & Transport Quartermaster General's Branch Integrated HQ of Mod(Army) DHQ PO New Delhi - 110 011. 23362/BPSM/ADGST 19 Jul 06

Lt. Gen. SK. Sahni, AVSM DGST & Sr Col Comdt Dte Gen of Supplies & Transport Quartermaster General's Branch Integrated HQ of MoD (Army) DHQ PO New Delhi - 110011. C OF 1 CONVENED VIDE HQ WESTERN COMMAND CONVENING ORDER NO 0337/DA/C OF I/CFL, DELHI/A4 DATED 10 OCT 2005

1. Ref your letter No 19234/SKS/C of I dt. 19 Jul 2006.

2. I was contacted initially by Lt Gen VC Jain, who said that they wished to apply AR 180. I told him that it would not be appropriate at this stage since the recording of all Statements was over. He then handed me over to Lt Gen Mohinder Puri, who said that this was a routine procedure and that he would send the Staff Officer with all the Statements and I could go through them. I told him that I could read the Statements but would not be privy to the discussions that had taken place during the recording of the Statements. I also asked him

about what were the changed circumstances that now warranted application of AR 180 since all Statements had been recorded and AR 180 applied on all those considered necessary. He said that it was only a routine. I did not hear anything from him after that.

SD/-

(BPS Mander)

Maj Genl Addl. DGST

8. It is also the case of the petitioner that in order to falsely implicate the petitioner in response to the unstarred Question No. 2604 put up in the Parliament, deliberately an incorrect answer was furnished to the defense Minister for a statement to be made in Parliament on 10th June, 2006. The incorrect information reads as under:

SL. RANK/NAME CHARGES ON WHICH FOUND SENTENCE AWARDED/CASE STATUS No. GUILTY 1 Lt. Gen SK. Sahni HQ Central Command ordered The General Officer had obt- a Court of Inquiry (C of I) ained stay from Hon''ble High to investigate the matter Court of Delhi against the pertaining to conclusion and C of I. The Supreme Court operation of Meat Group has stayed the High Court Contract Judgment and has granted leave for detailed argument. The case will be progressed after detailed hearing by the Supreme Court. 9. The respondents had preferred an SLP against the judgment of Division Bench of this Court wherein the Supreme Court vide its order dated had granted stay of the judgment but not qua the petitioner and that is how the petitioner was granted his due promotion to the rank of Lt. General. The intention of the petitioner was to defame and project the petitioner in bad light. Keeping in view the above arbitrary actions of the respondents, the petitioner made a detailed representation on 9th June, 2006 to respondent No.1 in relation to findings of the Court of Inquiry and also to the subsequent actions proposed to be taken in pursuance thereto. The petitioner received no reply much less redress of his grievance till 19th July, 2006 on which date the petitioner was informed that his application was rejected in consultation with respondent no.5 and Court of Inquiry was legal and valid. Even the further representation made by the petitioner was of no consequence. Vide order dated 20th July, 2006, the petitioner was recalled from his leave and called upon to join duty. Another order of same date was made whereby the petitioner was directed to hand over the charge of DG (ST) to Major General D.K. Dutta by 1600 hours on 21st July, 2006. By order dated 18th July, 2006, the petitioner was directed to be attached to the Headquarter 2 corps till finalisation of disciplinary action against him. The petitioner made another representation on 19th July, 2006 stating that he should be given reasonable time to hand over the charge but that request was only partially allowed and he was allowed two days time to hand over charge and the petitioner was directed to report to the said headquarter as per earlier order. The request of petitioner for some leave on the ground that his father was very sick

and was admitted under a Neuro Specialist in Chanan Devi Hospital on 24th July, 2006, was declined and the respondents acted in a most high handed, arbitrary and discriminatory manner, compelling the petitioner to approach the Court.

10. Though the matter was argued at great length on behalf of the respondents but they have filed a short affidavit in response to the writ petition on 31st July, 2006. According to the respondents, number of complaints were received at Army Headquarter in the month of August, 2005, which contained allegations regarding irregularities committed in procurement of rations viz. pulses and cattle feed. The complainants were also relating to irregularities in purchase activities of rations for the Army, as a result quality of the supplies for troops was compromised. Another complaint was made to the Raksha Mantri by a Member of Parliament Mr. K.S. Sangwan wherein he had raised similar issues. The matter was examined by the concerned authorities and it was decided to seek comments of the petitioner in his capacity as Director General of the Supply and Transport Directorate. The petitioner was also furnished copies of the complaints. After receipt of his comments, the matter was re-examined at the Army Headquarter and it was decided by the Chief of Army Staff to have the same investigated by a Court of Inquiry and as such Court of Inquiry was convened on 10th October, 2005 by the General Officer Commanding-in-Chief, Western Command. The order of convening reads as under:

CONVENING ORDER

1. A Court of Inquiry composed as under will assemble at a place, date and time to be fixed by the Presiding Officer:

(a) Presiding Officer - IC - 16907, Lt. Gen Mohinder Puri, PVSM, UYSM, DCOAS (IS & T), Army HQ.

(b) Member - IC-17280, Lt. Gen. VC Jain, AVSM, VSM DG EME, Army HQ.

2. IC-36022, Brig Rajesh Malhotra, Addl. Offr, HQ Delhi Area is detailed as a technical member who will be in attendance to assist the Court of Inquiry.

3. The Court will investigate into the irregularities committed by any Army pers in the following:

(a) Procurement of Kabuli Chana through contract finalised during Apr 05 by Army Purchase Organisation.

(b) Tendering and procurement of Barley crushed and Gram Kibbled during financial year 2005-2006 by Army Purchase Organisation.

(c) Testing and sampling of items of ration by CFL Delhi as per laid down specification and its subsequent purchase/procurement from various firms/dealers as per approved sample and ASC specifications.

(d) Tendering and procurement of 979 Metric Tonnes of Masoor Whole which was supplied by grainfed.

(e) Violation, if any, of the laid down quality norms, ASC specifications and other desired parameters with regard to moisture content, number counts per 100gm weight, system of imposing price reduction on commodities contracted.

4. The Court will also investigate any other related issue/matter which may come to its notice during the conduct of Inquiry and requires investigation.

5. The Court will pin point the responsibility, culpability of the Army Pers and loss if any, caused to the State.

6. The Court will also suggest the remedial/preventive measures to avoid reoccurrence of such incidents/lapses and streamline the entire tendering and procurement process of rations.

7. The Court will record its findings and opinion.

8. Army Rule 180 to be complied with wherever applicable.

CONFIDENTIAL

9. Under the power vested vide Army Rule 181(3), it is directed that the Court shall record evidence on oath/affirmation.

10. The C of I proceedings duly completed in all respects will be submitted by the Presiding Officer by 10 Dec 05.

11. Convening order No. 0337/DA/C of I/CFL Delhi/A4 dt. 26 Sep 05, be treated as cancelled.

Case No : 0337/DA/C of I/CFL Delhi/A4

Sd/-

(Deepak Anand)

HQ Western Command (DV-4)

Maj. Gen. Chandimandir - 134107 MG-IC-Admn. For GOC-in-C

Dated : 10 Oct 05

11. From the terms of reference dated 10th October, 2005, it is pleaded by the respondents that the Court of Inquiry was in the form of Facts Finding Inquiry and was not directed against any individual. The Court examined 23 witnesses. The scheme of examination of witnesses would reveal that the Court first called the Director of Supply and Transport (Provisioning), apparently to familiarize themselves with procurement procedure. The petitioner was examined as witness No. 22. Each witness was examined for his role in the procurement procedure. As required vide the convening order the Court identified 12 culpable Army Personnel including the petitioner and found them prima facie blameworthy for their improprieties. The petitioner gave a statement at the Inquiry and about 63 questions were put to him. From the answers given by him, the Court of Inquiry

felt that his conduct was blameworthy though no witness had deposed against him. On the basis of this Court of Inquiry, the competent authority had directed that disciplinary action be taken against the petitioner and for such purpose he was being attached by the orders, which have been impugned by the petitioner in the present writ petition.

12. It is also the case of the respondents that the attachment of the petitioner to the unit has been done so that the commanding officer may carry out hearing of the charge and then order summary of evidence and if so ordered, Army Rule 22, 23 and 24 of the Army Rules 1960 will be duly complied with. Various safeguards available to the petitioner are contemplated u/s 164(1) and (2) of the Army Act and no prejudice has been caused to the petitioner. According to the respondents, they have not committed any breach of Rule 180 of the Rules and even if there is any breach, it is of no consequence as respondents have duly proposed to comply with the requirements of Rules 22 to 24 of the relevant rules. It is only after compliance with the said provisions that the Court Martial is to commence on the basis of findings recorded by summary of evidence. The petitioner would have complete right to cross-examine such witnesses as may be necessary. The ground on which the petitioner is being attached to a unit where Commanding Officer is junior to him in seniority, is stated to be not based on any statutory provision. The text of para 52(a) read with para 9(b)(i) of the Regulations for the Army caters for a situation where a person can be placed under a Commanding Officer who is otherwise junior. It is stated that it is not an isolated instance. There have been instances when officers holding rank of Lieutenant Generals have served under officers of the same rank though junior to them in length of service. The order has to be passed by the General Officer Commanding in Chief Command and not by the Chief of Army Staff because if this order is passed by the Chief of Army Staff, it would seriously affect the operational and administrative functioning of the entire Army, as the Chief of Army Staff would have to perform the function as the convening authority with relation to the Court Martial under Rule 37 and after the verdict of Court Martial, would also have to function as the Confirming Authority being the officer so empowered u/s 154 of the Army Act, 1950. In the larger interest of the army and its administrative functioning, the order of attachment of the petitioner cannot be said to be arbitrary or contrary to the provisions of law. It is stated that it is the first time in the history of the Army that a three star Lieutenant General has to face such charges and the order of attachment is based on principle of necessity.

13. The entire thrust of argument on behalf of the petitioner revolves upon the interpretation of Rule 180 of the Rules. The contention is that the requirements of Rule 180 are mandatory and in fact they place an obligation upon the Presiding Officer to ensure compliance of said provisions in its true spirit and substance. In the event of non-compliance, the findings and subsequent proceedings taken thereupon would be vitiated in law. According to the petitioner, there appears to be no compliance to the requirements of Rule 180 by

the respondents. Thus, the proceedings, findings and order of attachment for the purpose of taking disciplinary action against the petitioner cannot stand according to law and are liable to be set aside. In order to buttress his submissions, the petitioner has relied upon the decisions of the Supreme Court and High Court in the cases of Col. A.K. Bansal v. Union of India and Ors. Civil Writ Petition No. 1990/98 decided on 18th January, 1991, Vinayak Daultatrao Nalawade v. Core Commander, Lt. Gen. G.O.C. H.Q. 15 Corps. 1987 LAB.I.C. 860, Major General Inder Jit Kumar Vs. Union of India (UOI) and Others, , G.S. Sandhu Lt. Col. v. Union of India and Ors. 2002 (2) SLR 120, Harbhajan Singh v. Ministry of defense, Govt. of India and Ors. 1982 (2) SLR 782, R.P. Shukla and Others Vs. Central Officer Commanding-in-Chief, Lucknow and Others, , Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, and Major G.S. Sodhi Vs. Union of India (UOI), .

14. The respondents have taken an alternative stand that the inquiry was of general nature and there was no occasion for giving opportunity to the petitioner to cross-examine the number of witnesses which had been examined during the course of Court of Inquiry. The petitioner was granted opportunity in terms of Rule 180 when he was examined as witness No. 22 and in any case the alleged violation is of no consequence as the respondents are going to comply with requirements of Rules 22 to 24 of the relevant rules. According to them, the entire proceedings, findings and the orders impugned in the present writ petition do not suffer from any illegality or irregularity, no prejudice has been caused to the petitioner and the respondents are entitled to proceed with the disciplinary action against the petitioner. In order to substantiate these alternative pleas, the respondents have relied upon and made reference to judgments of the Supreme Court and the High Court in the cases of Major General Inder Jit Kumar Vs. Union of India (UOI) and Others, , Maj. A.R. Malhotra v. Union of India and Ors. Mil 2005 LJ J & K 184, Lt. Col. Ramesh Mohan v. Union of India and Ors. Mil 2002 LJ J & K 166, Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827), Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, and Major G.S. Sodhi Vs. Union of India (UOI), .

15. Before we proceed to discuss the merit or otherwise of the submissions made before the Court, reference can be made to the provisions of Rule 180, the Rule on the interpretation and compliance of the provisions of which, the entire controversy of the present case revolves, which reads as under:

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

court shall taken such steps as may be necessary to ensure that any such person so affected and not previously notified receives notice of and fully understands his rights, under this rule.

16. To examine whether the requirements of Rule 180 are mandatory or directory and its effect on the case of the petitioner with reference to the facts and circumstances of the case, it is very necessary for us to note at this stage itself the stand taken by the respondents in their affidavit in relation to compliance of provisions of Rule 180.

8. That the petitioner gave statement at the Court of Inquiry and about 63 questions were put to him. From the answers given by him the Court of Inquiry felt that his conduct was blameworthy. No witness had deposed against him. Therefore, the question of calling any witness for cross-examination did not arise as his character or military reputation was not in question at the time of examination of any of the witnesses. He had duly appeared before the Court of Inquiry and was free to make any statement which he duly made. The statements of the witnesses were recorded by the Court of Inquiry. They were given an opportunity and 9 of them, viz Col Pramod Kumar, Maj Sunita Yadav, Lt. Col VK Pant, Nb Sub KK Lal Karan, Nk SKT Sachin Gurung, Col N.K. Yadav, Brig SK Handa, Brig PS Gill, Maj Gen SC Mohan submitted a certificate that they did not wish to avail this opportunity. Although no witness had spoken against the Petitioner there was no occasion for invoking Rule 180 against the Petitioner yet he petitioner was offered whether he wanted to avail Rule 180 and the petitioner replied that since none had spoken against him where was the question of application of Army Rule 180. It is in this background that the petitioner did not avail Rule 180. In any case the case against the petitioner is made out of his own statement and admissions. No prejudice of any kind whatsoever has been caused to the petitioner.

The petitioner first did not avail Rule 180 although there was no occasion to invoke as none of the witnesses has spoken against him yet now he is trying to raise a plea about violation of Rule 180. It is further submitted that Court of Inquiry is in the nature of preliminary inquiry to find out facts and to collect evidence so as to submit into a report with regard to matters referred to it. The respondents are basically relying upon his own statement which he had made before the Court of Inquiry.

In order to complete the factual matrix of the case, we can usefully refer to the stand taken by the petitioner vide his letter dated 9th June, 2006 in relation to compliance of these provisions as that has been heavily relied upon by the respondents to urge that there is substantial compliance of the provisions of Rule 180. The same reads as under:

8. From the terms of reference furnished to the Court, there was no scope for any doubt that the probe would be into my commissions and omissions as alleged by the author of the anonymous or pseudonymous complaints.

Compliance with Army Rule 180 was, Therefore, indispensable from the very start, as should have been clear to the Presiding Officer of Lt Gen rank, whose duty it was under the said Army Rule, in order to lend legitimacy to the inquisition directed mainly, if not solely, against me, not only related to performance in my present appointment, but also retroactively, from the days when I had functioned in my rank below, as MG ASC.

9. After my statement had been recorded, I was told by the Presiding Officer that I would not be required any longer and that the C of I would be finalized and submitted shortly thereafter. However, on 24 Feb 06, I recd a msg from Lt. Gen Mohinder Puri, PVSM, UYSM to meet him in his office at 1500h. I did so. He requested me to sign my statement as having been recorded by complying with Army Rule 180. On being so requested, I had asked him as to who it was that had made the allegations against me, so that I could exercise my statutory rights against any such person. He said that no witness had made any allegation against me. I asked him, in the absence of any complainant so identified, why I was being asked to certify falsely then. He replied that it was not his case that any person had made any such allegation at the proceedings, but the JAG had advised that my statement be recorded and shown as upon compliance of Army Rule 180. I did not agree as it was factually untrue and legally incorrect. He then requested me to think it over and meet him the next day....

17. With some vehemence, it was argued on behalf of the respondents that the provisions of Rule 180 of the Army Rules are to be dissected and construed so as to place an onus upon the person whose character or military reputation would be affected under the inquiry. The said person has to decide for himself what evidence he wishes to give, which witnesses he would like to cross examine, whose evidence in his opinion is to affect his character or military reputation and even which witnesses to be produced by him. In the submission of the respondents, it is obligatory upon such person to ask for compliance of these provisions and, thus, the onus lies on him. This argument is primarily based in treating the Rule 180 into two parts. The earlier being grant of full opportunity to be afforded to such person of being present throughout the inquiry and of making any statement while the other is where the person concerned has to make decisions for cross-examination of witnesses and even for production of such witnesses as the person may deem fit and proper. With reference to this provision, it is also argued that in the present case there was no occasion for complying with the requirements of Rule 180 as none of the 21 witnesses examined prior to the examination of the petitioner, had stated material involving the petitioner and when the petitioner was examined, the respondents treated his statement as self-inculcatory and decided to take disciplinary action against the petitioner. Thus, in any case there is substantial compliance to the provisions of Rule 180 and it was required of the petitioner to decide in terms of the latter part of the Rule if he wished to examine or cross-examine any witnesses and he ought to have asked the Presiding Officer in that regard. However, on behalf of the petitioner, it is strenuously argued that at no stage the provisions of Rule 180

had been complied with and serious prejudice has been caused to the petitioner as a result of non-compliance of those provisions. The provisions of the Rule being mandatory cannot be treated to be directory at the discretion of the respondents. The petitioner had taken a definite stand during the course of proceedings and immediately thereafter that the non-compliance of the provisions had rendered the entire proceedings against the petitioner as invalid.

18. Army authorities are vested with the powers but equally true is that they are entrusted with certain duties. The provisions of law like Rules 22, 24 and 180 of the Army Rules enjoined on the authorities important responsibilities omission of which could be of serious consequences particularly when they cause prejudice to the basic protections available to the member of the Force under different provisions as the Supreme Court in the case of Lt. Col. Prithi Pal Singh Bedi (*supra*) had held as under:

When an offence is committed and a trial by a general court martial is to be held, there is no provision which requires that a court of enquiry should be set up before the trial is directed. To ensure that such a person whose character or military reputation is likely to be affected by the proceedings of the court of enquiry should be afforded full opportunity so that nothing is done at his back and without opportunity of participation, Rule 180 merely makes an enabling provision to ensure such participation. But it cannot be used to say that whenever in any other enquiry or an enquiry before a commanding officer under Rule 22 or a convening officer under Rule 37 or the trial by a court martial, character or military reputation of the officer concerned is likely to be affected a prior enquiry by the court of enquiry is a *sine qua non*.

19. While spelling out in unambiguous terms, the different protections available to a person under Rule 180, a Division Bench of this Court in the case of Col. A.K. Bansal v. UOI and Ors. CWP 1990/88, decided on 18.1.1991 while quashing the proceedings of the court of inquiry and their findings and the penalty of severe displeasure imposed upon the petitioner in that case, held as under:

The rule incorporates salutary principles of natural justice for a fair trial and full right of being heard, to a person whose character or military reputation is likely to be affected in a court of enquiry. Four rights are expressly recognized - (1) The officer has a right to be present throughout the enquiry meaning thereby that the entire evidence is to be recorded in his presence; (2) of making statement in defense (3) cross-examination of the witnesses whose evidence is likely to affect his character or military reputation. It is the judgment of the person whose reputation is in danger to testify as to whether an evidence of a particular witness is likely to affect his character or military reputation, and (4) such a person has a right to produce evidence in defense of his character or military reputation. It is the mandatory duty of the presiding officer not only to make all these opportunities available to the person whose character and military reputation is at stake but also that such person is fully made to understand all the various rights mentioned in that said rule.

It has been held by this Court in *Maj. Harbhajan Singh v. Ministry of defense and Ors.* 1982 21 LLT 262, and by Supreme Court in *Lt. Col. Prithi Pal Singh Bedi v. UOI and Ors.* *Capt. Dharam Pal Kukrety and Ors. v. UOI and Ors.* and *Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others*, that the requirements of Rule 180 are mandatory. The reason for making Rule 180 as mandatory is that it incorporates the principles of natural justice which alone can ensure a fair trial to a person whose character or military reputation is in danger. It is now well settled law that even in administrative action the principles of natural justice must be observed because the administration is obliged to follow fair play in action when it is dealing with the character and reputation of a person. The rule is eminently in public interest. There is one other reason why the requirements of Rule 180 are to be strictly interpreted, the normal protection of fundamental rights of an the provisions of Article 311, available to the civil servants under the Union or a State are not available to military personnel. The army personnel must maintain high degree of efficiency and preparedness at all the times and the same cannot be maintained effectively unless every member of the armed forces is able to see fair play in action. It is admitted by the respondents that the requirements of Rule 180 were not complied with and the petitioner was denied opportunity of cross-examining the witnesses. The counsel for the petitioner has taken us through the evidence and we find that in particular the evidence of witness No. 7 Shri Ram Datt and Witness No. 15 Maj. Gurung was highly incriminating the petitioner. But he was not allowed to cross-examine any of the witnesses. The submission in the counter affidavit that the petitioner was given an opportunity through show-cause notice and, Therefore, cannot make a grievance of non-compliance of Rule 180 is plainly untenable in law. Show cause notice proceeds on the...right of a person whose character and military reputation...substance is a right to persuade the presiding officer through cross-examination and production of his evidence, to come to a contrary conclusion. This right is admittedly denied to the petitioner. In justification of the action it is curiously stated in the counter affidavit that the petitioner was blamed from the evidence recorded in the court of inquiry proceedings and not only the basis of the initial court of inquiry which was initiated to find out the involvement of the petitioner. (The evidence recorded in the first inquiry conducted by the Sqdn. Leader implicated the petitioner). But that evidence cannot be relied upon, in the second inquiry conducted by Brig. S.C. Chatrath VSN. As a matter of fact, the evidence in the first inquiry ought to have been furnished to the petitioner so as to enable him to cross-examine the said witnesses who again appeared in the 2nd enquiry for the purpose of contradiction. We have no hesitation in holding that the right of being heard was denied to the petitioner by non-compliance of mandatory requirements of Rule 180 and, Therefore, the court of inquiry which found the petitioner guilty, was completely vitiated.

20. Different High Courts have also taken the view that the provisions of Rule 180 are mandatory and the authorities are required to provide full opportunity to the delinquent and Rule 22 in fact is a double protection granted to the affected

officer. Wherever the mandatory provisions of the Rules were infringed, the Courts have held that the inquiry was bad and violative even of Article 14 of the Constitution of India. A Bench of Jammu and Kashmir High Court in the case of Vinayak Daultatrao Nalawade (*supra*) held as under:

20. Ambit and scope of R. 180 came to be considered by the Supreme Court in *Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others*, . Rule 180 was held not to mean that whenever and wherever any inquiry in respect of any person subject to the Act, his character, or military reputation is likely to be affected, setting up of a Court of Inquiry is a *sine qua non*. Rule 180 has been held to be mandatory to be followed whenever a court of enquiry is set up. The Supreme Court has thus made it clear that setting up of a Court of Inquiry is not a *sine qua non* for any inquiry which may be set up under the Army Act. However, it has laid down that if a court of Inquiry is held, compliance with R.180 is imperative. It proceeds to say:

... Rule 180 merely makes it obligatory that whenever a Court of Inquiry is set up and in the course of inquiry by the Court of Inquiry character or military reputation of a person is likely to be affected then such a person must be given full opportunity to participate in the proceedings of Court of Inquiry. Court of Inquiry by its very nature is likely to examine certain issues generally concerning a situation or persons. Where collective fine is desired to be imposed, a court of Inquiry may generally examine the shortfall to ascertain how many persons are responsible. In the course of such an inquiry there may be a distinct possibility of character or military reputation of a person subject to the Act likely to be affected. His participation cannot be avoided on the specious plea that person whose character or military reputation is likely to be affected by the proceedings of the Court of Inquiry should be afforded full opportunity so that nothing is done at his back and without opportunity of participation. Rule 180 merely makes an enabling provision to ensure such participation

In the instant case Court of Inquiry was set up though it was not necessary for the authorities to set up it. But once Court of Inquiry has been set up, mandate of R.180 is to be followed and if its provisions are violative that would amount to denying equality before law and equal protection of law to a person who is subject to Army Act and against whom court of Inquiry is set up.

21. Rule 180 is framed under the Army Act. Therefore the said rule has a statutory force and it is binding on the authorities as also on the person who is brought before the Court of Inquiry. The procedural safeguards envisaged under the rule is not only fair but just also. It ensures fairness in action and affords equality before law and equal protection of law to a person who is subject to Army Act and who is brought before the court of Inquiry. It is true that the persons bound by the Army Rules belong to a disciplined force but they do not lose their right under Article 14 of the Constitution on that ground. A person subject to Army Act does not cease to be a citizen of India and he has certain rights which are to be enforced subject to Article 33 of the Constitution. A special

procedure is given in the Army Act and the Rules framed there under for dealing with the person subject to the Army Act. The procedure does not derogate from the generality of power conferred by Article 33 of the Constitution. Therefore the law which is applied in relation to armed forces may not satisfy the requirements of Article 21 of the Constitution but if the law and procedure is prescribed, it has got to be applied during the court of Inquiry or during the Court Martial. The law for the persons who are subject to the Army Act and the Rules will be Army Act and the Rules framed there under. So protection of said law cannot be denied to them and they have to be denied to them and they have to be governed by the said law in the disciplinary matters.

22. It is one of the fundamental features of our Constitution that a person subject to Army Act continues to be a citizen of India and is not wholly deprived of his rights under the Constitution. In the large interests of national security and military discipline the Parliament may restrict or abrogate such rights in their application to Armed forces but the basic feature which the Parliament would not like to alter is that persons subject to Army Act cannot be denied equality before law and equal protection of law. Therefore the guarantees contained in Article 14 of the Constitution are available to the persons subject to Army Act in the same manner in which these guarantees are available to the other citizens of India. If the inquiry is sought to be held into the conduct of the Army Offices or into his reputation, a procedure which is fair, just and reasonable is to be adopted and the persons holding such an enquiry must be unbiased. This is exactly what is embodied in R.180 of the Army Rules....

25. The said rule requires that if an enquiry is held in respect of matters which affects the character or military reputation of a person subject to the Army Act, full opportunity must be afforded to such person throughout the inquiry. He is to be given an opportunity to make statement, give evidence and cross-examine the witnesses whose statement in his opinion affect his character and military reputation, So on and so forth. The authorities are under an obligation to examine the witnesses in presence of the person whose character on military reputation is under investigation. That would mean cross-examine all witnesses as also the examination-in-chief of the witnesses is to be conducted in his presence. It is option of the person against whom inquiry is conducted to cross-examine the witnesses and this option cannot be exercised by the person who conducts the inquiry. The rule is a safeguard against arbitrariness, and ensures fair enquiry. If fairness is not observed as is mandated by the rule during the inquiry, the action of the authority conducting the inquiry can be assailed and termed as arbitrary.

21. Similar view was taken by the Punjab & Haryana High Court in the case of G.S. Sandhu (Lt. Gol.) (supra) and and R.P. Shukla and Others (supra).

22. The Supreme Court had proceeded to elaborate the extent of power and duties enjoyed upon by the authorities under the relevant Rules with reference to Rules 22 to 25 and cautioned that it is only actual unintentional omission or

deliberate lapse on the part of the authorities, which if committed to the prejudice of the accused would affect the correctness of the proceedings but such a matter cannot be presumed. Refer Major G.S. Sodhi Vs. Union of India (UOI),

23. It was stated to be the responsibility of the authorities to take such steps as may be necessary to ensure that any such person so affected receives notice and fully understand his rights under Rule 180 and must be afforded full opportunity. The purpose of the law was not only to put the concerned officer at notice but also to provide him due protection as contemplated under Rule 180. Where Court Martial was found to be convened and conducted in accordance with law, the Court while discussing the scope of the relevant provisions in the case of Major General Inderjit Kumar Vs. Union of India (UOI) and Others, held as under:

7. Under Rule 177 of the Army Rules, 1954, a Court of Inquiry can be set up to collect evidence and to report, if so required, with regard to any matter which may be referred to it. The Court of Inquiry is in the nature of a fact-finding inquiry committee. Army Rule 180 provides, inter alia, that whenever any inquiry affects the character or military reputation of a person subject to the Army Act, full opportunity must be afforded to such a person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation and producing any witnesses in defense of his character or military reputation. The presiding officer of the Court of Inquiry is required to take such steps as may be necessary to ensure that any such person so affected receives notice of and fully understands his rights under this rule. The appellant was accordingly present before the Court of Inquiry. Witnesses were examined by the Court of Inquiry in the presence of the appellant and were offered to the appellant for cross-examination. He, however, declined to cross-examine the witnesses. Instead, the appellant moved an application for an adjournment for preparing his defense. He also applied that the evidence adduced before the Court of Inquiry should be reduced to writing. The Court of inquiry noticed that sufficient time had been granted to the appellant for preparation of his defense after receipt of the Court of Inquiry proceedings by him. Hence his application for adjournment was refused. The hearing on charges took place in the presence of the appellant. At the conclusion of the hearing on charges, an order was passed that evidence be reduced to writing and a recommendation was made to convene a general court-martial for trial along with recommendation was made to convene a general court-martial for trial along with recommendations on charges to be framed. Thereafter the charges were finalised, charge-sheet was issued and a general court-martial was convened.

8. The appellant has also contended that a copy of the report of the Court of Inquiry was not given to him and this has vitiated the entire court-martial. The appellant has relied upon Rule 184 of the Army Rules, 1954 in this connection.

Rule 184, however, provides that the person who is tried by a court-martial shall be entitled to copies of such statement and documents contained in the proceedings of a Court of Inquiry as are relevant to his prosecution or defense at his trial. There is no provision for supplying the accused with a copy of the report of the Court of Inquiry. The procedure relating to a Court of Inquiry and the framing of charges was examined by this Court in the case of Major G.S. Sodhi Vs. Union of India (UOI), . This Court said that the Court of Inquiry and participation in the Court of Inquiry is at the stage prior to the trial by court-martial. It is the order of the court-martial which results in deprivation of liberty and not any order directing that a charge be heard or that a summary of evidence be recorded or that a court-martial be convened. Principles of mutual justice are not attracted to such a preliminary inquiry. Army Rule 180, however, which is set out earlier gives adequate protection to the person affected even at the stage of the Court of Inquiry. In the present case, the appellant was given that protection. He was present at the Court of Inquiry and evidence was recorded in his presence. He was given an opportunity to cross-examine witnesses, make a statement or examine defense witnesses. The order of the Court of Inquiry directing that a court-martial be convened and framing of charges, Therefore, cannot be faulted on this ground since it was conducted in accordance with the relevant rules.

24. Heavy reliance was placed by the respondents upon the judgment of the Jammu and Kashmir High Court in the case of Major A.R. Malhotra v. Union of India and Ors. Mil 2005 LJ J & K 184 to contend that provisions of Rule 180 of the Army Rules, 1954 is only an enabling provision to participate in the proceedings before the Court of Inquiry. To make it directory, is contrary to the very spirit of the judgment. In that case, the Court as a matter of fact had recorded the finding that there was substantial compliance to the Rule 180 inasmuch as the statements of the witnesses, which were recorded in the absence of the appellant during inquiry proceedings were recalled and opportunity to cross-exam the said witnesses was granted to the appellant in that case, who then actually cross-examined the witnesses without any prejudice or reservation and as such the Court of Inquiry proceedings were not vitiated on account of violation of provisions of Rule 180. In the case of Lt. Col. Ramesh Mohan (supra) the Bench of the same High Court did take the view that when it is not certain to the Commanding Officer as to who has committed the offence or the manner of committing the offence is not certain, then there could be no question of even thinking that the person concerned is likely to be prosecuted in future and in that case, there can hardly be any compliance to Rule 180. Rule 180 contemplates that if inquiry is contemplated, which affects the military reputation of a person, full opportunity is to be given. When a Court of Inquiry is constituted to collect the evidence then it cannot be said that person should be given an opportunity.

25. None of the cases relied upon by the respondents even remotely suggest that provisions of Rule 180 are not mandatory and are directory. The view taken

by all the High Courts and the Hon"ble Supreme Court of India is that wherever reputation and character of a person, subject to Army Act is likely to be affected, the requirements of law is compliance to Rule 180 and to that extent the provisions of Rule 180 are mandatory. Wherever, there is a lapse or default prejudicially affecting the right or protection given to a person in terms of said Rule, the proceedings would be vitiated. of course, conducting of a Court of Inquiry is not a sine qua non to commencement of any proceedings under Rule 22 or convening of a Court Martial. The Supreme Court in the case of Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, had clearly stated that Rule 180 merely makes an enabling provision to ensure such participation by the delinquent officer. But it cannot be used to say that whenever in any other enquiry or an enquiry before a commanding officer under Rule 22 or a convening officer under Rule 37 or the trial by a court martial, character or military reputation of the officer concerned is likely to be affected, a prior enquiry by the court of enquiry is a sine qua non.

26. Holding of a court of enquiry may not be essential and would be at the discretion of the competent authority but once the authority exercises its powers to hold such an enquiry and where the enquiry affects or is likely to affect the character or military reputation of a person subject to the Act, then compliance to the requirements of Rule 180 would be mandatory. The language of the Rule is certain and unambiguous, capable of only one interpretation i.e. that to afford a full opportunity in terms of this provision is the responsibility of the competent authority. This obligation and burden is incapable of being shifted at the initial stage. Once an opportunity is afforded at the initial stage then it is for the concerned Officer whose character or military reputation is being affected or is likely to be affected, to exercise the option in regard to what evidence he wishes to give, which witnesses he wishes to cross-examine and what defense, if any, he wishes to lead. These are the matters which squarely fall for decision within the domain of the concerned person subject to the Act. The arguments advanced on behalf of the respondents that the obligation and onus lies upon the delinquent to ask for the protection or opportunity in terms of the provisions is ex facie contrary to the spirit of the provision. Neither the Rule does attempt such an interpretation nor does it suggest such a course of action. Even in normal course such an approach is incapable of being implemented in actual practice. Initiation of an enquiry as contemplated under Rule 180 lies in the discretion of the competent authority and there would be no occasion for an Officer to ask for a protection or rights available to him under this rule, without notice. Thus, to notify the officer concerned of initiation of such proceedings or the likelihood of his reputation or character being affected in the process of the enquiry would undoubtedly be the duty of the competent authority.

27. The language used by the framers of the Rule in no way supports the contention raised on behalf of the respondents that on its correct dissection, the Rule places a mandatory obligation upon the person subject to the Army Act to ask for the grant of protection specified in the Rule. The Rule enjoins upon the

concerned authorities an unequivocal duty to give notice and provide full opportunity to the person whose character or military reputation is likely to be affected by the enquiry in terms of Rule 180. Of course, it also places a burden upon such an officer as to what extent and how he wishes to exercise the opportunity provided to him. The option to cross-examine the witnesses produced, which witnesses he wishes to examine and what evidence he wishes to lead as defense, are the basic features in relation to which he has to exercise his choice and to that extent the Rule does place an obligation upon the delinquent person. This burden no way displaces or reduces the significance of the duties of the authorities and protections available to the Officer. The one in no way destroys or diminishes the obligatory value of the other. Whatever be the stage of the proceedings and whenever the enquiry is likely to affect or affects the character or military reputation of a person, at that very moment, it is required of the authority to sincerely and objectively comply with the requirements of the Rule.

28. Another argument advanced on behalf of the respondents is that the provisions of this Rule are not mandatory and even minimum compliance to the requirements of the Rule would achieve the object, as the proceedings contemplated under Rule 22 are in the nature of fresh proceedings where full and complete opportunity in all respects should be provided to the Officer. In other words, the provisions of Rule 22 are a complete safeguard even where there is no complete compliance to the provisions of Rule 180. This argument needs to be noticed only to be rejected. Such an interpretation would entirely defeat the concept of the basic rule of law where the Legislature in its wisdom has opted "to grant full opportunity in all respects and complete participation by an Officer whose military reputation or character is affected or is likely to be affected". It will be impermissible to read such a provision as "directory or optional" at the discretion of the authority. A provision should be construed on its plain language and not by reading something into the provision which is not intended. To expect that mere presence of an Officer before the Court of enquiry or mere notice implicate to him would be substantial compliance to the mandatory provisions of the rule would amount to completely defeating the object of the provision. The obligation on the authority is composite in its substance and authorities must ensure its due compliance. The legislative intent is to provide full opportunity at the very first stage of the proceedings so that the competent authority can justly and fairly consider the future course of action including whether it should drop the proceedings or take recourse to the procedure specified under Rule 22, or any other power vested in it under law. It cannot be disputed that the proceedings under Rule 22 are in the nature of disciplinary proceedings while the proceedings under Rule 180 are in the nature of an enquiry. The law has provided full protection to the person even at the initial stage and it would not be permissible to restrict its scope by imposing unwritten restrictions.

29. In the present case, there were number of complaints against the petitioner, still the competent authority in its discretion directed a General Court of Inquiry.

It is an admitted case before us and as is evident from the counter affidavit filed by the respondents, which we have also referred above that 22 witnesses examined in the General Court of Inquiry had said nothing against the petitioner or his conduct or in relation to discharge of his duties. The petitioner prior thereto was never notified that the authorities were examining his conduct, military reputation or character and all the 22 witnesses were examined at his back and no opportunity was provided to him to cross-examine the said witnesses. It is the case of the respondents that the petitioner gave certain vague answers and it was his statement, which in the opinion of the authority was self-incriminating, on the basis of which the respondents proposed to take further action against the petitioner under Rule 22 or holding of a General Court Martial. Once the Court of Inquiry and/or the competent authority felt that the statement of the petitioner itself could bring his military reputation or character in question, then the authorities were obliged to serve and notify the petitioner that they intend to proceed and look into the conduct of the petitioner on that basis itself. Further, the respondent were under an obligation to provide an opportunity to the petitioner whether he wanted to lead any defense, cross-examine any witnesses already examined in the Court of Inquiry or take any other steps in terms of Rule 180. Admittedly, the Officer was not notified, either at the initiation of the enquiry or at the stage when in the opinion of the competent authority the character or the military reputation of the Officer could be questioned. On the contrary, at a subsequent stage he was called upon to record that the provisions of Rule 180 have been complied with, which the petitioner specifically declined by writing a detailed representation dated 09.06.2006 to the authorities.

30. It may also be noticed by us at this stage that the petitioner had specifically raised a complete defense to the complaints as well as had clarified his statement before the Court of Inquiry by making a subsequent representation. The petitioner claims that in fact, he was the person who had detected certain lacunas/drawbacks in the working of the Directorate as well as the Units and had even prepared a "Technical Instruction 1/05 Food Inspection Organisation". This achievement of the petitioner was also recorded by his senior officers i.e. the Initiating Officer and the Reviewing Officer in his Confidential Report for the year 2004-2005 where it was recorded "he has initiated innovative measures to streamline and further refine the existing Judicious in delegation of responsibilities, he is eminently suited to head the Army Supply Corps." We are not concerned nor are we called upon to comment on the merits of the charges which the authorities wish to frame against the petitioner. It squarely falls in the domain of the said authorities. All that we intend to say is that the Explanation rendered by the petitioner ought to have been considered, at least at some stage, before the authorities could proceed further particularly in relation to and on the basis of Court of Inquiry conducted, which is in violation of the provisions of Rule 180 of the Rules and even otherwise. Fairness in such action should be reflected on the record and objectivity should be the basis of consideration in

such matters. No Records have been produced before us to show that there was due compliance to the provisions of Rule 180. On the other hand, even in the counter affidavit, it is stated that the petitioner was never put at notice at any stage of the Court of Inquiry proceedings. The entire action is based upon the submission that the statement of the petitioner is self-incriminating and that too without granting him an opportunity to lead his defense and/or cross-examine any witnesses. Such a course of action would be impermissible on the plain reading of Rule 180

31. The petitioner was in service and the present action was sought to be taken against the petitioner at the fag end of his service career. During the pendency of the petition, the petitioner has super-annuated. On 28.9.2006, the Court had specifically directed the petitioner not to leave the territorial jurisdiction of the Court except his house in Gurgaon where he was stated to be living. The petitioner has complied with the conditions of the order. The pendency of this writ petition would in no way prejudice the rights of the respondents to take such action against the petitioner as may be permissible to them in accordance with law.

32. In the event any question of limitation or other technical plea arises, the pendency of this petition would not accrue to the benefit of the petitioner.

33. For the reasons afore-recorded, we are of the considered view that the respondents have not complied with the provisions of Rule 180 of the Rules, as such they cannot take any further proceedings against the petitioner on the basis of the Court of Inquiry held in furtherance to the order of the competent authority dated 26.09.2005. However, the respondents are at liberty to give notice to the petitioner and continue with the proceedings under Rule 180, or in the alternative, even to take recourse to the provisions of Rule 22, or exercise any other power available to them under the Act, in so far as they do not rely upon the proceedings of the aforesaid Court of Inquiry.

34. In the facts and circumstances of the case, the writ petition is allowed to the limited extent in the above terms with the observations afore-recorded, while leaving the parties to bear their own costs.