

(2008) 02 P&H CK 0056
In the Punjab And Haryana At Chandigarh

Maj. Dimple Singla

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-02-2008

Acts Referred:

Army Act, 1950 — Section 123, 153, 164, 165
Constitution of India, 1950 — Article 136, 226, 227, 311, 32

Citation : (2008) 02 P&H CK 0056

Hon'ble Judges : Mohinder Pal, J; Hemant Gupta, J

Bench : Division Bench

Judgement

Hemant Gupta, J.—The important question of law, which arises in the present writ petition is whether the General Court Martial convened against the petitioner is required to pass a reasoned order while declining an application filed by the petitioner under Rule 51 of the Army Rules, 1954 (hereinafter referred to as 'the Rules')

2. Since the question is a purely legal, we do not consider it necessary to make reference to the detailed facts of the case. Suffice it to say that the petitioner was commissioned in the Judge Advocate General Branch of the Indian Army on 8.3.1997. A Court of Inquiry was ordered by the Headquarters Western Command on 5.8.2005 consequent to a newspaper report published against the conduct of the petitioner. Subsequently, the Commanding Officer ordered summary of evidence on 30.12.2005 and that a communication dated 19.1.2007 was addressed to the petitioner to the effect that the provisional disciplinary and vigilance ban has been imposed on the petitioner with effect from 27.1.2006 and that due to disciplinary case pending against her, she shall be relieved of her duties with effect from 7.3.2007 and that the provisions of Section 123 of the Army Act, 1950 (for short 'the Act') stand invoked against the petitioner. It was thereafter that the General Court Martial Proceedings were convened against the petitioner on 26.2.2007.

3. Before the General Court Martial, the petitioner moved an application raising a

preliminary objection to the jurisdiction of the General Court Martial to try the petitioner due to non compliance of Rule 37 of the Rules by the Convening Authority. The said objections are appended as Annexure R.26 with the present petition. The petitioner also submitted a supplementary preliminary objections supplementing the earlier objection, vide Annexure P.27. To such preliminary and supplementary preliminary objections, the respondents filed a detailed reply on 30.4.2007 vide Annexure P.28. The petitioner submitted again a detailed rejoinder on 3.5.2007. On the basis of such detailed pleadings of over fifty pages, the General Court Martial, as per the petitioner, passed the following order on 7.5.2007:

The Court decides that prima facie the Court is not satisfied that they do not have the jurisdiction to try the accused hence rejects her submission to lead evidence in support of same. As regards to the tampering of summary of evidence the Court decided that the same are typographical errors and hence decides to use manuscript copy of the same and directs the Prosecutor to provide sufficient copies before the Court.

4. The challenge in the writ petition is inter-alia to the aforesaid order on the ground that the said order is not a reasoned order and, therefore, violates the principles of natural justice.

5. In reply, the respondents have asserted that the reasoned order was not required to be passed by the General Court Martial as it is not the requirement as per the provisions of Rule 51 of the Rules. Reference is made to certain judgments, which shall be referred at the appropriate stage. It was also pointed out that the order Annexure P.33 is not the order passed by the General Court Martial and the order passed has been reproduced in para No. 29 of the reply, which reads as under:

The Court, after carefully considering all the issues raised by the Defence Counsel in support of Special plea to General jurisdiction of the Court, is not satisfied that the same prima facie shows that the Court lacks jurisdiction to try the accused. The Court therefore, decide to overrule the plea and to proceed with the trial.

The Court further decide, that to rule out any omission of words and sentence in the statements due to typographical error, the manuscript S to E as laid before the Court and copies thereof shall only be used during trial.

6. It is the stand of the respondents that in terms of Rule 51 of the Rules, the General Court Martial, while dealing with the preliminary objections of the accused is not required to pass a reasoned order. Primary reliance of the respondents is based upon the judgment of the Constitutional Bench of the Hon'ble Supreme Court reported as S.N. Mukherjee Vs. Union of India, . Reference was also made to the earlier judgment of the Hon'ble Supreme Court reported as Som Datt Datta Vs. Union of India (UOI) and Others, . Before referring to the judgments referred by the Learned Counsel for the parties,

reference may be made to Rule 51 of the Rules, which is reproduced hereunder:

51. Special plea to jurisdiction.-(1) The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the court, and if he does so, and the court considers that anything stated in such plea shows that the court has no jurisdiction, it shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and, any address by or on behalf of the accused and reply by the prosecutor in reference thereto.

(2) If the court overrules the special plea, it shall proceed with the trial.

(3) If the court allows the special plea, it shall record its decision, and the reasons for it, and report it to the convening authority and adjourn; such decision, shall not require any confirmation and the convening authority shall either forthwith convene another court for the trial of the accused, or order the accused to be released.

(4) If the court is in doubt as to the validity of the plea, it may refer the matter to the convening authority, and may adjourn for that purpose or may record a special decision with respect to such plea, and proceed with the trial.

7. The argument raised by the Learned Counsel for the respondents is that Sub rule (3) to Rule 51 of the Rules, contemplates recording of reasons only if the Court allows the special plea. To the contrary, while dismissing the special plea, no reasons are required to be recorded as there is no stipulation to do so. Therefore, recording of reasons is impliedly dispensed with.

8. No doubt, sub rule (3) to Rule 51 of the Rules makes it mandatory to record reasons if the General Court Martial is to allow the special plea, but in case the General Court Martial is to over rule the special plea, whether the reasons are required to be recorded, is the meaningful question which arises for consideration before this Court.

9. It may be noticed that an argument was raised that the petitioner has an alternative remedy of appeal u/s 164 of the Act, which provides for a remedy of appeal to any person, who is aggrieved by any order passed by any Court Martial.

10. Som Datt Datta's case (supra), was a case, where the Chief of the Army Staff confirmed the proceedings of the Court Martial without recording any reasons. It was contended that non recording of reasons by the confirming authority violates the rules of natural justice. The Court found that there is no express obligation imposed by Section 164 or Section 165 of the Act on the confirming authority or on the Central Government to give reasons in support of its decision to confirm the proceedings of Court Martial.

11. In S.N. Mukherjee's case (supra), the judgment on which the Learned Counsel for the respondents has placed reliance with vehemence is a case raising the question whether it was incumbent for the Chief of the Army Staff while

confirming the finding of sentence of the General Court Martial and the Central Government while rejecting the post confirmation petition of the appellant, to record the reasons for the orders passed by them. The argument of the Additional Solicitor General was that there is no requirement in law that the reasons be given by the confirming authority while confirming the finding or sentence of the the Court Martial by the Central Government while dealing with the post confirmation petition submitted u/s 164 of the Act and that the decision of the Hon"ble Supreme Court in Som Datt Datta's case (supra) in this regard does not call for reconsideration. In the said case, the following questions arose for consideration:

(i) Is there any general principle of law which requires an administrative authority to record the reasons for its decision; and

(ii) If so, does the said principle apply to an order confirming the findings and sentence of a court martial and Post-confirmation proceedings under the Act? The Hon"ble Supreme Court has noticed the divergence of opinion in the common law countries and the legal position in the United States. The Hon"ble Supreme Court found that requirement to record reasons, the approach of the Court is more in line with that of American Courts. The Court has considered the 14th Report of the Law Commission relating to reforms in Judicial Administration where the Law Commission has recommended as under:

In the case of administrative decisions provisions should be made that they should be accompanied by reasons. The reasons will make it possible to test the validity of these decisions by the machinery of appropriate writs. (Vol. II p. 694).

12. It is noticed by the Hon"ble Supreme Court that no law has however been enacted in pursuance of these recommendations imposing a general duty to record the reasons by an Administrative Authority though the requirement to give reasons is found in some statutes. After considering various judgments, the Court held that the reasons recorded by an Administrative Authority in an order passed by it while exercising quasi judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. It was held by the Hon"ble Supreme Court to the following effect:

35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decisions-making. `The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be

recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and not explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms, such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

13. After discussing the principles of law as enunciated in certain judgments, the Court proceeded to hold as under:

38. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action." As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

39. For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi judicial functions is required to record the reasons for its decision.

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48. But that is not the end of the matter because even though there is no requirement to record reasons by the confirming authority while passing the order confirming the findings and sentence of the court martial or by the Central Government while passing its order on the post-confirmation petition, it is open to the person aggrieved by such an order to challenge the validity of the same before this Court under Article 32 of the Constitution or before the High Court under Article 226 of the Constitution and he can obtain appropriate relief in those proceedings.

14. However, while discussing the second question and the role of Judge-Advocate General, it was concluded that the reasons are not required to be recorded while an order of confirmation is recorded by the General Court Martial as well as in the order passed by the Central Government dismissing the post-confirmation petition.

15. Learned Counsel for the respondents has relied upon para 39 of the judgment in S.N. Mukherjee's case (*supra*), to argue that since by implication the reasons for rejection of special plea under Rule 51 of the Rules are not required to be recorded, therefore, the challenge of the petitioner to such order is not tenable.

16. Prof. H.W.R. Wade in *Administrative Law*, 6th Edn. p. 548, has expressed the view that "natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice."

17. Lord Denning M.R. in *Breen v. Amalgamated Engineering Union* (1971) 1 All ELR 1148, in his dissenting judgment, has held that giving of reasons is one of the fundamentals of good administration. It was held to the following effect:

Then comes the problem; ought such a body, statutory or domestic, to give reasons for its decision or to give the person concerned a chance of being heard? Not always but sometimes. It all depends on what is fair in the circumstances. If a man seeks a privilege to which he has no particular claim - such as an appointment to some post or other - then he can be turned away without a word. He need not be heard. No explanation need be given: see the case cited in *Schmidt v. Secretary of State for Home Affairs*. But, if he is a man whose property is at stake, or who is being deprived of his livelihood, then reasons should be given why he is being turned down, and he should be given a chance to be heard. I go further. If he is a man who has some right or interest, or some legitimate expectation, of which it would not be fair to deprive him without a hearing, or reasons given, then these should be afforded him, according as the case may demand. The giving of reasons is one of the fundamentals of good administration.

18. In *Regina v. Immigration Appeal Tribunal Ex parte Khan (Mahmud)* (1983) 2 All ELR 420, the Court held to the following effect:

Where one gets a decision of a tribunal which either fails to set out the issue

which the tribunal is determining either directly or by inference, or fails either directly or by inference to set out the basis on which it has reached its determination on that issue, then that is a matter which will be very closely regarded by This Court, and in normal circumstances will result in the decision of the tribunal being quashed. The reason is this. A party appearing before a Tribunal is entitled to know either expressly stated by the tribunal or inferentially stated, what is to which the tribunal is addressing its mind. In some cases it may be perfectly obvious without any express reference to it by the tribunal; in other cases it may not. Second, the appellant is entitled to know the basis of fact on which the conclusion has been reached. Once again in many cases it may be quite obvious without the necessity of expressly stating it, in other cases it may not.

19. A Constitution Bench of the Hon'ble Supreme Court in *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, , while dealing with an order passed by the Central Government in exercise of its appellate powers in the matter of refusal by a company to register the transfer of shares, has held that there was no proper trial of the appeals before the Central Government since no reasons had been given in support of the order passed. That was a case where the Central Government reversed the findings in appeal without recording any reasons. In *Bharat Raja Vs. The Union of India (UOI) and Others*, , a Constitutional Bench of the Hon'ble Supreme Court held to the following effect:

The decisions of tribunals in India are subject to the supervisory powers of the High Courts under Article 227 of the Constitution and of appellate powers of this Court under Article 136. It goes without saying that both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the single word "rejected" or "dismissed". In such a case, this Court can probably only, exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This will certainly be a very unsatisfactory method of dealing with the appeal.

20. In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , the Hon'ble Supreme Court held to the following effect:

The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (i) no one shall be a judge in his own cause (*nemo debet esse judex propria causa*) and (ii) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice.

21. It was further held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.

22. These rules can operate only in areas not covered by any law validly made.

23. In other words they do not supplant the law of the land but supplement it.

24. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, the Seven-Judge Bench of the Hon'ble Supreme Court has considered the principle of applicability of the rule of *audi alteram partem* and held to the following effect:

The aim of both administrative inquiry as well as quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice, or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both. On what principle can distinction be made between one and the other? Can it be said that the requirement of "fair-play in action" is any the less in an administrative inquiry than in a quasi-judicial one? Sometimes an unjust decision in an administrative inquiry may have far more serious consequences than a decision in a quasi-judicial inquiry and hence the rules of natural justice must apply equally in an administrative inquiry which entails civil consequences. There was, however, a time in the early stages of the development of the doctrine of natural justice when the view prevailed that the rules of natural justice have application only to a quasi-judicial proceeding as distinguished from an administrative proceeding and the distinguishing feature of a quasi-judicial proceeding is that the authority concerned is required by the law under which it is functioning to act judicially.

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This development in the law had its parallel in India in the *Associated Cement Companies Ltd. v. P.N. Sharma* AIR 1965 SC 1515 where this Court approvingly referred to the decision in *Ridge v. Baldwin* (supra) and, later in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, observed that:

If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power.

This Court also pointed out in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, another historic decision in this branch of the law, that in recent years the concept of quasi-judicial power has been undergoing radical change and said:

The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised.

The net effect of these and other decisions was that the duty to act judicially

need not be super-added, but it may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected and where it is found to exist, the rules of natural justice would be attracted.

25. In *Suresh Koshy George Vs. University of Kerala and Others*, , it was held that the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose.

26. Whenever a complaint is made before a court that some principle of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case.

27. In *Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others*, , the Court observed that it is one of the cardinal features of our Constitution that a person by enlisting in or entering armed forces does not cease to be a citizen so as to wholly deprive him of his rights under the Constitution. It was held to the following effect:

Reluctance of the Apex Court more concerned with civil law to interfere with the internal affairs of the Army is likely to create a distorted picture in the minds of the military personnel that persons subject to Army Act are not citizens of India. It is one of the cardinal features of our Constitution that a person by enlisting in or entering Armed Forces does not cease to be a citizen so as to wholly deprive him of his rights under the Constitution. More so when this Court held in *Sunil Batra Vs. Delhi Administration and Others etc.*, , that even prisoners deprived of personal liberty are not wholly denuded of their fundamental rights. In the larger interest of national security and military discipline Parliament in its wisdom may restrict or abrogate such rights in their application to the Armed Forces but this process should not be carried so far as to create a class of citizens not entitled to the benefits of the liberal spirit of the Constitution. Persons subject to Army Act are citizens of this ancient land having a feeling of belonging to the civilised community governed by the liberty-oriented constitution. Personal liberty makes for the worth of human being and is a cherished and prized right. Deprivation thereof must be preceded by an enquiry ensuring fair, just and reasonable procedure and trial by a judge of unquestioned integrity and wholly unbiased.

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Absence of even one appeal with power to review evidence, legal formulation, conclusion and adequacy or otherwise of punishment is a glaring lacuna in a country where a counterpart civilian convict can prefer appeal after appeal to hierarchy of courts. Submission that full review of finding and/or sentence in confirmation proceeding u/s 153 is provided for is poor solace. A hierarchy of courts with appellate powers each having its own power of judicial review has of

course been found to be counter-productive but the converse is equally distressing in that there is not even a single judicial review. With the expanding horizons of fair play in action even in administrative decision, the universal declaration of human rights and retributive justice being relegated to the uncivilised days, a time has come when a step is required to be taken for at least one review and it must truly be a judicial review as and by way of appeal to a body composed of non-military personnel or civil personnel. Army is always on alert for repelling external aggression and suppressing internal disorder so that the peace-loving citizens enjoy a social order based on rule of law; the same cannot be denied to the protectors of this order. And it must be realised that an appeal from Caesar to Caesar's wife - confirmation proceeding u/s 153 - has been condemned as injudicious and merely a lip sympathy to form. The core question is whether at least there should be one appeal to a body composed of non-military personnel and who would enjoy the right of judicial review both on law and facts as also determine the adequacy of punishment being commensurate with the gravity of the offence charged. Judicial approach by people well-versed in objective analysis of evidence trained by experience to look at facts and law objectively, fair play and justice cannot always be sacrificed at the altar of military discipline. Unjust decision would be subversive of discipline. There must be a judicious admixture of both. And nothing revolutionary is being suggested.

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Ours is still an antiquated system. The wind of change blowing over the country has not permeated the close and sacrosanct precincts of the Army. If in civil courts the universally accepted dictum is that justice must not only be done but it must seem to be done, the same holds good with all the greater vigour in case of court martial where the judge and the accused don the same dress, have the same mental discipline, have a strong hierarchical subjugation and a feeling of bias in such circumstances is irremovable. We, therefore, hope and believe that the changes all over the English-speaking democracies will awaken our Parliament to the changed value system. In this behalf, we would like to draw pointed attention of the government to the glaring anomaly that courts martial do not even write a brief reasoned order in support of their conclusion, even in cases in which they impose the death sentence. This must be remedied in order to ensure that a disciplined and dedicated Indian Army may not nurse a grievance that the substance of justice and fair play is denied to it.

28. In the aforesaid judgment, the Court held that the Parliament has power to restrict or abrogate any of the rights conferred by Part-III of the Constitution in their application to the members of the Armed Forces so as to ensure the proper discharge of duties and maintenance of discipline amongst the members of the Armed Forces. It was also held that in a trial which is likely to result in deprivation of liberty, the body which has ultimately the power to make an order which would result in deprivation of liberty, must hear the offender offering full

participation and that principle cannot be diluted.

29. In *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, the Court was seized of a question whether after amendment in Article 311(2) of the Constitution of India vide 42nd Amendment, dispensing with the requirement of show cause notice, has the effect of taking away the right of the delinquent to receive a copy of the inquiry report. It was held that denial of the report of the Inquiry Officer is a denial of a reasonable opportunity and breach of the principles of natural justice. The statutory rule, if any, which denies the report to the employee(s) are against the principles of natural justice and, therefore, invalid. It was also observed to the following effect:

6. origins of the law can also be traced to the principles of natural justice, as developed in the following cases: In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far-reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

30. In *Union of India and Another Vs. Charanjit S. Gill and Others*, the Hon''ble Supreme Court observed that despite lapse of about two decades neither Parliament nor the Central Government appears to have realised their constitutional obligations, as were expected by this Court in *Lt. Col. Prithi Pal Singh Bedi's case* (supra) except amending Rule 62 providing that after recording the finding in each charge the court shall give brief reasons in support thereof. The Judge Advocate General has been obliged to record or cause to be recorded brief reasons in the proceedings. Even today the law relating to the Armed Forces remains static which requires to be changed. It was further held that the time has come to allay the apprehension of all concerned that the system of trial by Court Martial was not the archetype of summary and arbitrary proceedings.

31. In the present case, no reasons have been recorded by the Judge Advocate

General or by the General Court Martial, rejecting the special plea of the petitioner in terms of Rule 51 of the Rules. It is not the case of the respondents that the reasons are available on file and if necessary, can be shown to the Appellate Authority or to this Court, while exercising powers of judicial review as held in S.N. Mukherjee's case (supra) as well. It is the categorical case of the respondents that no reasons are required to be recorded as such reasons are necessary only in case of allowing the plea of special plea. It is also the case of the respondents that any order passed by the General Court Martial is an appealable order in terms of Section 164 of the Act. Therefore, the recording of reasons would be the bare minimum requirement of the principles of natural justice, which would be necessary for the appellate Court to examine and by this Court in its power of judicial review under Article 226 of the Constitution of India. Even though in terms of Article 33 of the Constitution of India, the Fundamental Rights conferred under Part-III thereof, are not applicable to the persons subject to the Act, but the reasons to be recorded would be part of basic principles of natural justice to make the special plea meaningful. The words "if the Court overrules" have inherent in them the requirement of reasons so as to overrule the plea. Thus, even if such rule is silent regarding recording of reasons, it is inherent in the word 'overrule'. In fact, such interpretation would alone be in consonance with the rule of law under the Constitution of India even in respect of the members of the Armed Forces. It may be noticed that under Rule 51 of the Rules, in appropriate cases, Court can allow even evidence to be led in respect of the special plea raised by the accused. Therefore, it is impossible to imagine in the country governed by the Rule of Law that reasons are not required to be recorded while declining the special plea of an accused.

32. In view of the above, we set aside the order dated 7.5.2007 as reproduced by the respondents in para No. 29 of the reply and direct competent authority to record reasons on the special plea raised by the petitioner to make the right of appeal of the petitioner a meaningful right, which alone would satisfy the principles of natural justice, equity and fair play.

33. The writ petition stands disposed of accordingly.