

(1993) 12 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 747 of 1991

S.C. Bagari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-12-1993

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 16(1), 21

Citation : (1994) 1 ShimLC 417

Hon'ble Judges : L.S. Panta, J;Devinder Gupta, J;D.P. Sood, J

Bench : Full Bench

Advocate : Party in Person, for the Appellant; K.S. Banyal, instructed by P.A. Sharma, Sr. Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Devinder Gupta, J.—Petitioner, who is posted as a Havildar Clerk in the Indian Army has by filing this writ petition under Article 226 of the Constitution of India, challenged the vires of the Army Order No. 11 of 1987, which permits the sanction of study leave only to all Commissioned Regular Officers of the Indian Army as discriminatory, and violative of Article 14 of the Constitution.

2. The Petitioner joined the Indian Army on 26th December, 1977, as a Clerk and has thereafter served as such in various Formation Headquarters. He obtained military qualifications, such as map reading, Classification test etc. and passed the promotion cadre from Havildar to Naib-Subedar and completing Head Clerk Duties Course. He also obtained civil qualification during his service career. He graduated in Arts from Dr. Hari Singh Gour Vishwa Vidyalaya, Sagar (M.P.), in the year 1986 in first Division. During the year 1988, he did M.A. in English from Bundelkhand University, Jhansi (U.P.) and in 1992 obtained LLB degree from Jodhpur University, Rajasthan. The Petitioner also completed two weeks Computer Course in Jodhpur University, which was organised by army authorities. Being interested in prosecuting his studies further and obtaining higher educational qualifications, such as post-graduation in Law, the Petitioner

felt handicapped because of the provisions contained in Army instructions, as regards study leave, under which only Regular Commissioned Officers of the Army can be granted extraordinary leave known as study leave and not the persons like the Petitioner. The instant writ petition was filed by him seeking to challenge the Army instructions concerning study leave rules, more particularly, Army Order No. 11 of 1987 as highly discriminatory. It is the Petitioner's case that the exclusion of Junior Commissioned Officers and other Ranks from the provisions of study leave is inequitable and discrimination without any lawful and reasonable basis. Such exclusion from educational facility on the basis of rank structure is in violation of the provisions of the Constitution. Consequently, the relief prayed for by the Petitioner is to extend the provisions for study leave under Army Order No. 11 of 1987 also to Junior Commissioned Officers and other Ranks of the Indian Army.

3. On notice being issued, the Respondents filed the return on the affidavit of Col. K. Mohinder Singh. Colonel "A" of Headquarters Punjab, Haryana and Himachal Pradesh, Shimla. It is stated in the return that study leave is granted to enable a Regular Commissioned Officer to undergo higher studies, having a direct and close connection with the spheres of his duties. The instructions provide for grant of study leave for those non-academic courses of study, which would enhance the usefulness of a Regular Commissioned Officer in the Organisation. It is further stated that the charter of duties of Junior Commissioned Officers and Non-Commissioned Officers are different, as compared to that of Regular Commissioned Officers. In case of Junior Commissioned Officers and Non-Commissioned Officers, it does not warrant enhanced knowledge, in connection with the charter of their duties. Higher education, if considered necessary for Junior Commissioned Officers and other Ranks is imparted through number of Army Courses, which are conducted by various training establishments of the Army. Thus, there is no requirement of granting any study leave to Junior Commissioned Officers and other Ranks for enhancing their knowledge, for the benefit of Organisation. It has also been pleaded that the matter of grantor refusal of study leave is purely discretionary and cannot be made subject matter of adjudication in exercise of the writ jurisdiction of the High Court. Conditions of service of Regular Commissioned Officers, Junior Commissioned Officers and other Ranks are different and there is no question of discrimination, as alleged by the Petitioner.

4. The writ petition was admitted for hearing on 14th April, 1992. It was directed to be posted for final hearing on 25th August, 1992. The hearing actually commenced on 26th August, 1992 before a Division Bench of this Court Mr. R.L. Sood, Additional Central Government Standing Counsel represented the Respondents at that stage. At the time of hearing, the Division Bench felt that the copies of certain Army Orders should be made available for the perusal of the Court, two of which were mentioned at items (b) and (c) in paragraph 2 of C.M.P. No. 603 of 1992 as under:

(b) Headquarters P.H. and H.P. area letter No. 403/1/GS (Trg) dated 28 April, 1989.

(c) Headquarters P.H. and H.P. Area Signal No. 0-3930 dated 5th March, 1991.

The Court directed that the copies of the documents be kept ready on the next date of bearing, namely, 9th September, 1992.

5. The hearing continued on 9th, 10th and 16th September, 1992. The Petitioner concluded his submissions on 18th September, 1992, when a request was made by the learned Counsel for the Respondents to adjourn the case, in order to enable him to secure instructions M.T. 9 of the Army Headquarters, dealing with the matter relating to study leave. Since the hearing had commenced, long adjournment was not allowed and the case was directed to be posted after one week.

6. On 29th September, 1992, the Division Bench felt that issues raised in the petition were likely to have a wider effect upon the day-to-day working of the Armed Forces and in case the petition is answered in favour of the Petitioner, the Armed Forces personnel of the cadres of Junior Commissioned Officers and other Ranks may be inclined, in large number, to apply for study leave. It was felt necessary to have the writ petition decided by a larger Bench. The Full Bench was constituted and the case was posted for hearing on 18th March, 1993.

7. Mr. R.L. Sood, Advocate, who till then was representing the Respondents expressed his inability to address arguments. He pointed out that his engagement has been discontinued by the Central Government and Mr. Dharam Chand, Advocate, had been instructed to appear in this case. As a special case, we granted one adjournment to the Respondents to make suitable arrangement for addressing arguments. The Petitioner in the meanwhile, who was earlier stationed at Shimla, had been transferred to Calcutta. After three months, the case was again taken up on 25th June, 1993. On that date also, nobody was prepared to address arguments on behalf of the Respondents Mr. K.S. Banyal, on instructions received from Mr. P.A. Sharma, Senior Central Government Standing Counsel, put in appearance and made a request for adjournment. We after noticing the circumstances in which Full Bench was constituted to hear the arguments declined the request for adjournment and proceeded to hear the Petitioner in person and reserved our judgment.

8. C.M.P. No. 1872/93 dated 26th June, 1993 was moved by the Respondents through Mr. P.A. Sharma on 28th June, 1993 praying that the Respondents may kindly be heard before announcing the judgment. The circumstances under which arguments could not be addressed on the previous date of hearing were narrated in the application. For reasons, which we recorded in our order dated 16th July, 1993, the Respondents were again permitted to avail one more opportunity in addressing the arguments. The case was to be fixed for 21st August, 1993 on which date, due to certain circumstances, it was not possible to constitute a Full Bench, therefore, the case was not listed on that day and due intimation was

sent to the Petitioner as well as the Respondents. On 8th October, 1993, the case was again listed for hearing, on which date Mr. Dharam Chand, Advocate, representing the Respondents was not present. A request was made on his behalf by Mr. Anand Sharma, Advocate, for adjournment on the ground that Mr. Dharam Chand had to abruptly leave Shimla and it was not possible to make any alternate arrangement for arguments. It was also requested that the case be taken up during the course of same week, when Mr. Dharam Chand would be in a position to address arguments. Since the Petitioner had come from Calcutta, we directed the Respondents to make suitable arrangements for his stay at Shimla and directed the case to be fixed up for hearing on 15th October, 1993.

9. On 15th October 1993, again Mr. P.A. Sharma, learned Senior Central Government Standing Counsel sought adjournment on the ground that Mr. Dharam Chand, Advocate, was not available. After noticing that ample time was available with the Respondents to make alternative arrangements and adjournments had been sought from time to time, we declined to adjourn the matter further. Reference was also made to the observations made in Ramadhar Pandey Vs. State of U.P. and Others, that it has become a regular practice with all the Government agencies, taking it for granted that the time would be given to suit their convenience, we thereafter reserved our judgment.

10. After the writ petition was admitted, the parties also supplemented their pleadings by filing further affidavits and placing on record further material. Respondents filed further affidavit on 21st September, 1992 of Col. K. Mohinder Singh, aforementioned, justifying the action of the Respondents in not granting study leave to J.C.Os. and other Ranks in the Indian Army. The stand taken therein is being noticed by us presently.

11. It is stated in the second affidavit that the Petitioner applied to be enlisted as a General Duty Clerk and his sphere of work cannot be changed to a Soldier Tradesman, Soldier Technical or Soldier General Duty. Avenues of the education, connected or useful to the job, to be performed by him where available to him in the A.S.C. Army Clerk's Training School, Aurangabad. The Army has various colleges, training institutions, were specialised and ordinary education courses are available to other Ranks and J.C.Os., in order to improve their educational level, taking into consideration the usefulness of such individuals and courses. Reference has been made to four of such institutions, namely, College of Military Engineering Khirki, College of Tele-communications Mhow, Electrical and Mechanical Engineering School, Baroda and Army School of Education, Pachmari. It is stated that in these educational institutions, various disciplines are covered for the purpose of education and specialised knowledge to various armed personnel, which are considered appropriate and useful. It is only in very rare cases, where a particular field or branch of study is not available within the set up of Indian Army, that the desirability of having the personnel educated or subjected to specialised training, outside the framework of the Indian Army, arises or is considered necessary. In the J.A.G. branch (Judge Advocate General

Branch) there are only civilian employees, who retire at the age of 60 years, but in the case of the Petitioner and other categories of soldiers, there is a maximum length of service. In the case of other Ranks, the maximum length of service is 15 years. In the case of Havildar (N.C.O.) the maximum service is 26 years. For Naib-Subedars, it is 26 years and for Subedar Major, it is 32 years. The maximum age upto which a Havildar, Naib-Subedar, Subedar or a Subedar Major can be retained in service is 45 years, 48 years, 50 years and 50 years, respectively. In case of Regular Commissioned Officers, it is the Respondents case that they can serve upto the age of 50 years upto the rank of Lt. Colonel, if they do not get any higher promotion. In case further promotions are granted, they can serve upto the age of 52, 54, 56 and 58 years, for the ranks of Colonel, Brigadier, Major General, Lt General and General, respectively.

12. In the aforementioned background, the Respondents have pleaded that the study leave is not granted to a Commissioned Officer, who has rendered less than 10 years of service. It is also not granted to a Commissioned Officer, who is due to retire within 5 years of the date of return from study leave. The study leave is granted and is available only to Regular Commissioned Officers. Such Army Instructions are not applicable even to Short Commissioned Officers, Special List Officers or even to Honorary Commissioned Officers. The main object of granting study leave to an individual in the army is to enable him to undergo, either within country or outside a non-academic Course of study, in the subjects, which are mentioned in the Army Order, with a view to enhance his usefulness to the Army. In the case of Petitioner, it is not shown as to how and in what manner doing of post-graduation in Law will enhance his usefulness to the particular arm and more particularly to A.S.C. to which he belongs or to the Army in general. It is stated that the Petitioner cannot be a member of any District Court Martial, General Court Martial or a Summary Court Martial. He can neither be appointed as a prosecuting officer or a defending officer in any Court Martial Proceedings. Unlike the Petitioner, under the provisions of the Army Act, 1950, any officer belonging to any other arm, if he is legally qualified can be so appointed and assigned such duties, such as a prosecuting officer or a defending officer and for this reason alone, Doctorate in Law, Post-graduation and Doctoral in legal studies has now been included as one of the subjects in Army Order.

13. Three grounds, as stated in the affidavit of Col. K. Mohinder Singh, filed on 21st September, 1992, justifying the exclusion of J.C.Os. and other Ranks of the Army from the privilege of the study leave have been stated in paragraphs 10, 11 and 12 thereof. The first ground being that the method of recruitment and service conditions of the Regular Commissioned Officers, as compared to the J.C.Os., N.C.Os. and other Ranks is totally different. Even the promotional avenues are different. From the very beginning, they are treated as separate classes, enjoying respective rights and duties, as available to the separate categories and class. There are about 40,000 Regular Commissioned Officers in the entire Indian Army and approximately 7.5 lac other personnel, including J.C.Os., N.C.Os. and other Ranks. So far as the other Ranks in the Army are

concerned, these comprise of various categories, such as Soldier Technical, Soldier Clerk, Storekeeper Soldier, Soldier General Duty and Soldier Tradesman, which includes Safaiwala, Cook, Washerman, Barber, Painter and Carpenter. These other ranks have different minimum educational levels for the purpose of recruitment. In the case of Regular Commissioned Officers, there is one standard minimum educational qualification required, for being inducted into the Army, with the exception of specialised cores, such as, the Army Medical Core, Army Educational Core and Judge Advocate General Core. Taking into consideration the number of soldiers, namely, J.C.Os. N.C.Os. and other Ranks numbering above 7.5 lacs and the Regular Commissioned Officers numbering about 40,000 and their different educational levels, grant of study leave has been restricted only to Regular Commissioned Officers.

14. The second ground on which denial of study leave to other personnels is sought to be justified is that the study leave is not a matter of right, but is only a matter of discretion. The fundamental condition and pre-requisite for grant of study leave is that the subject sought to be studied is useful to the officer's arm in particular and Army in general. In the case of J.C.Os , N.C.Os. and other ranks, the army is running and organising various Courses in various disciplines, which it considers useful for the arm to which an individual belongs and to the Army in general, which is not so in the case of Regular Commissioned Officers. therefore, study leave is available only to the officers holding Regular Commission in the Army and none else and for this reason also Short Service Commissioned Officers and Special List Officers etc. are not entitled to any study leave.

15. The third and last ground on which different treatment as regard study leave is sought to be supported is that an officer in the Army is likely to be obeyed immediately and punctually. If the men under his command respect him for his leadership qualities, which necessarily imply that the Officer is better qualified and more intelligent than the other individuals, the spirit of obedience and punctual willingness to obey orders is likely to suffer where the individual has the ability to analyse the order, its implications and impact. Analytical and questioning approach is likely to creep in whenever an individual is more qualified as compared to an officer. Thus, it is stated that in order to avoid any indiscipline in services, the study leave is made available only to Officers and not to the others.

16. The Petitioner filed rejoinder to the aforementioned affidavit and also placed reliance upon number of other documents. It has been stated by the Petitioner that he is not only a General Duty Clerk, but a Civil Duty Clerk and also is required to serve with various Formation Headquarters, such as Army Headquarter, Command Headquarters, Corps Headquarters, Area Headquarters, Station Headquarters etc. In addition to this, the Petitioner can also be posted abroad. The Petitioner, who has already done his M.A. in English and obtained Law degree, in case he wants to do Post-graduation in Law, if is allowed the

study leave, the further education qualification to be acquired by him will not only be useful to arm to which he belongs but also to the Army in general. It is alleged by him that all the Formation Headquarters have "A" branch or legal branch. Legal cells of the Army are also manned by Clerks of the category to which the Petitioner belongs. Due to the awareness in the Army personnels of their legal rights day in and day out cases are brought to the Court throughout the country. Being a Post-graduate in Law, the Petitioner would be in a better position to assist the already busy J.A.G. branch officers of Army as also the Central Government Standing Counsel. Having served approximately for a period of 15 years, as a Staff Duty Clerk, obtaining of higher legal qualification by him will also serve the Army in number of other spheres. While submitting his application, the Petitioner also included two more subjects for higher studies, namely, computer technology/science and Media Mass Communication. With respect to those two subjects, the Petitioner stated that keeping in view the modernisation and computerisation of Armed Forces all over the world computer education will also be useful and helpful to the organisation. For the third subject opted by the Petitioner, it is stated by him that as the public relation offices in the Army are also manned by Clerks of his category, so his education on Media and Mass Communication will also prove worthwhile to the organisation.

17. The Respondents have placed on record, Army Order 11 of 1987, captioned as "Study Leave Rules-Regular Officers of the Army other than A.M.C. and A.D.C. The first rule itself says that all regular officers will be eligible for the grant of extra leave known as Study leave and says that the same is granted for pursuing extra studies, special studies in India or outside India under the conditions specified in Rule 2. Rule 2 says that study leave may be granted to enable an officer to undergo a non-academic full time regular course, as enhancing his usefulness as an officer in such of the subjects, which are mentioned in Appendix-A. The same shall not be granted to an officer, who is due to retire from service within five years of the date of return from study leave, in respect of Colonels and above and 7 years for Lt. Colonels and below. It is also not available to an officer having rendered less than 10 years of service. There is power to relax the minimum service. Rule 9 deals with the criteria for grant of study leave.

18. In order to understand the submission made by the Petitioner and the case set up by the Respondents in the returns, it would be necessary to quote Rules 1, 2 and 9 of the Rules in verbatim, as under:

1. All Regular Officers will be eligible for the grant of extra leave known as Study Leave for pursuing special studies in India or Ex-India under the conditions specified in para 2 below.

2. Conditions for the grant of study leave are as under:

(a) Study Leave will be admissible to officers of all Arms and Services.

(b) Study Leave may be granted to an officer enabling him to undergo, in or Ex-India, a non-academic full time regular course/programme/doctoral studies

leading a recognised formal diploma/degree in institutions recognised by the Ministry of Education, Science and Technology, certified by Army Headquarters as enhancing his unusefulness as an officer. Study Leave will not be granted for correspondence courses, part time courses and attending night classes. A detailed list of approved subjects for study leave is attached at Appendix "A".

(c) Study Leave shall not be granted to an officer who is due to retire from service within 5 years of the date of return to duty from study leave in respect of Cols and above, and, 7 years for Lt. Cols and below. Residual service will be calculated in the rank of the officer at the time of sanction of study leave. Study leave shall not be granted to an officer who has rendered less than 10 years service. However, the minimum service can be lowered under special circumstances on merits of the case by the sanctioning authority. Residual service for battle casualties and permanent low medical category officers whose category is either attributed or aggravated due to uncongenial military service shall be 3 years.

(d) The maximum period of study leave will be upto 24 months. It may be extended by a period of two months annual leave (if not already availed) of the year in which study leave commences, plus an additional two months furlough entitlement of the three years cycle spanning the study leave period, if so required for the specific study being undertaken. Furlough rates of pay will be admissible during furlough leave when granted. The maximum period of study leave, including annual leave and furlough, will be 28 months during the entire service of the officer.

(e) Study Leave Ex-India will ordinarily be admissible for those non-academic courses which are not available at any University or Institution in India.

(f) Study Leave will be admissible not more than twice throughout the service, subject to the over all 28 months limit prescribed in sub-para (d) above.

(g) Study Leave vacancies will be filled up.

* * * * *

9. The criteria for approving study leave to be followed by the Screening Committee will be as per the priorities given below:

(a) Usefulness of the subject of study to Arms/Service.

(b) Subjects contributing to an officer's employability in the Service.

(c) Residual Service of the officer from the point of view of utility of his education to the Service.

(d) Officers who have obtained admission in recognised Universities or Institutions will be preferred.

(e) Officers who have been away from regimental duties for the last 2 years after specialised courses or post graduate courses will be given lower priority.

(f) Officers with a good career profile will be given preference.

(g) Battle casualties and disabled officers who have limited scope for furthering their career will be given preference.

19. The aforementioned instructions have further been clarified and supplemented. On 6th March, 1991, a clarification was issued reducing the period of residual service from three to two years in the case of battle casualties and permanent low category officers. Through another instructions dated 12th March, 1988, it has been pointed out that since a few officers are not graduate they can only be given one year study leave to pursue computer application training, provided they have opted for computer. Non-graduate officers, who have opted for other studies are advised to attain graduation, prior to the grant of study leave. The instructions, which were issued on 16th September, 1991 says that preference should be given to junior officers, while sanctioning study leave so that the organisation gets the maximum benefit from the longer years of residual service. In the said communication also the aim of study leave has been stated to offer an opportunity to upgrade the officer's knowledge for the benefit of the organisation. Applying for study leave on the ground of post-retirement settlement or on other compassionate ground has been stated to be as rendering no useful purpose to the organisation.

20. From the pleadings of the parties, as contained in the affidavits, exchanged by the parties, it can be noticed that in Army classification has been made, as regards grant of benefit of study leave. Whereas study leave is available to Regular Commissioned Officer, it is not available to others, such as, J.C.Os., N.C.Os. and other Ranks. This classification has been challenged as violative of Article 14 of the Constitution of India, on the ground that it is unreasonable classification having no nexus with the objects sought to be achieved.

Article 14 of the Constitution guarantees equal protection of State action. The guarantee of equal protection embraces within it the entire realm of State action. As such, it would extend not only when an individual is discriminated against, in the matter of exercise of his right or in the matter of imposing liabilities upon him but also in the matter of granting privileges. Article 14 has come to be identified with the doctrine of classification because the view taken was that the Article forbids discrimination and there would be no discrimination where the classification making the differentia fulfils two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that the differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action.

21. In *E.P. Royappa Vs. State of Tamil Nadu and Another*, the Court speaking through Bhagwati, J. opened up a new dimension of Article 14 and pointed out that the Article is of highly activist magnitude and it embodies a guarantee against any arbitrariness and said:

...The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

22. The aforementioned view was reiterated and affirmed in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, by saying that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment since the principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence. In Para 56 of the report, Bhagwati, J delivering the majority view observed:

Now, the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits....

23. In *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, considering the aforementioned new dynamic aspect given to Article 14, which was also

affirmed in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , again reiterated the same view by saying that the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution. In para 16 of the report, the Court said that:

...It must therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the Courts is not paraphrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority*" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.

24. In *Union of India and Another Vs. Tulsiram Patel and Others*, , the Court said that the Article 14 contains a guarantee of equality before law to all persons and protection to them against discrimination by any law. Law includes any Ordinance, Order, Bye-law, Rule, Regulation, Notification, custom or usage having in the territory of India the force of law. It was held that what Article 14 forbids is discrimination by law, that is, treating persons similarly circumstanced differently or treating those not similarly circumstanced in the same way or, as has pithily been put, treating equals as unequals and unequals as equals. Article 14 prohibits hostile classification by law and is directed against discriminatory class legislation. To treat one person differently from others, when there is no rational basis for doing so would be arbitrary and discriminatory. Arbitrariness can take many forms and shapes but whatever form or shape it takes, it is nonetheless discrimination.

25. In *Paradise Printers and Others Vs. Union Territory of Chandigarh and Others*, reiterating the basic principles, it was held that equality and arbitrariness are sworn enemies; one belonging to the rule of law in a republic, while the other to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and, therefore, violative of Article 14. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. Article 14, unlike other Articles in Part III of the Constitution is an injunction against the State that it shall not discriminate person to person, unless the action is supported by well known principles,

26. In Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, the basic principles were further asserted in the following words at page 102 of the report:

...The basic principles on which differentiation would not amount to discrimination, violative of either Article 14 or Article 16(1) of the Constitution are well settled. Article 14 of the Constitution strikes at the arbitrariness in State action and ensures fairness and equality of treatment. It is attracted where equals are treated differently without any reasonable basis. The principle underlying the guarantee is that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws must be applied equally and there should be no discrimination between one person and another if as regards the subject matter of either administrative action or of legislation, their position is substantially the same. Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation or administrative mandate. The classification must, however, be founded on an intelligible basis which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus with the object to be achieved by the differentiation made in the statute or order in question. In other words, there ought to be casual connection between the basis of classification and the object of the classification....

27. In the instant case, as noticed above, in so far as Regular Commissioned Officers are concerned, they form a class in themselves, to whom the privilege of study leave is allowed. The others, such as, J.C.Os. and N.C.O.s and Other Ranks, who for the purpose of grant of study leave have been grouped together and left out of the benefit of the privilege are being treated a separate class. It is the Respondents case that persons, other than the Regular Commissioned Officers have been treated alike. Thus, there is no question of discrimination, since they form a class in themselves.

28. The principle underlying the guarantee enshrined in Article 14 is that all persons similarly circumstanced shall be treated alike both in the matter of privileges conferred and liabilities imposed. Article 14 forbids only class legislation but permits reasonable classification. The requirement, however, is that the classification must, however, be founded on an intelligible basis which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus with the object sought to be achieved by the differentiation made. In the facts and circumstances of the case, what is required to be considered is that the classification, which has been made by grouping of Regular Commissioned Officers together and leaving others out of that group, in the matter of grant of study leave, satisfies the test that this differentia has a rational nexus with the objects sought to be achieved, namely, enhancing usefulness as members of the Armed Forces. In case the object sought to be achieved by granting study leave for perusing special studies within or outside the country is enhancing the

usefulness of member of armed forces, the fact that two classifications have been made for the same by including the category of Regular Commissioned Officers therein and excluding the category of Junior Commissioned Officers, Non-Commissioned Officers and other Ranks, whether there is any question of discrimination by treating two groups differently.

29. The first ground is that in the case of Regular Commissioned Officers, there is only one minimum qualification standard required for being inducted into army, except in some specialised fields, such as Army Medical Corps, Army Education Corps or J.A.G. Corps etc. in case of others, there are several different minimum education levels and that number of Regular Commissioned Officers is less, namely, about 40,000 in the entire country, whereas number of others is 7.5 lacs. This fact that for inducting in the army, there are separate standards or that number of Regular Commissioned Officers is less as compared to the others cannot be held to be a valid and legitimate ground for treating the two groups differently, since it has neither any direct, nor remote connection with the object sought to be achieved, namely, enhancing usefulness of the members of the organisation. It is not necessary that study leave is to be granted to each and every Junior Commissioned Officer, Non-Commissioned Officer or other Ranks. The study leave, if applied for, has to be granted subject to certain limitations, for which purpose number of factors are required to be taken into consideration, as are incorporated in the Study Leave Rules- It also cannot be visualised that at one point of time all the Regular Commissioned Officers will apply for study leave. The mere fact that number is large or less is immaterial. In case large number of other Ranks are likely to apply for pursuing special studies for enhancing educational level, not available within the framework of the organisation, which ultimately will have the effect of enhancing the usefulness as a member of armed force, denial of study leave will amount to defeating the object sought to be achieved.

30. Even the ground of different education levels for Regular Commissioned Officers and others cannot be said to be having a rational nexus with the objects sought to be achieved by granting the benefit of study leave. The minimum educational qualification for being inducted as a Regular Commissioned Officers through National Defence Academy is matriculation, whereas as per the instructions contained in the document, namely, Army Headquarters Note No. B/0784I/CLK/Org. 2 (MP) (c) dated 8th January, 1990, on the subject of remusteration into Clerk (GD) category from other trades/categories, it is stated that acceptable civil education qualifications for remusteration will be in the following priority:

(a) Priority one. B. A./B. Sc./B. Com. (b) Priority two. Intermediate/10+2/Equivalent. (c) Priority three. S.S.L.C./Higher Secondary/Matriculation.

31. On the functioning and management of clerical staff in lower formation of Headquarters, the Army Headquarter letter dated 31st March, 1984, emphasis that the standard of Clerk must improve. All measures be taken towards the

better education and training of Clerks. Officers are enjoined, at all levels, to insist on not accepting substandard work from the clerical staff working under them. In case the criteria for remustering from the other trade or categories into Clerk (GD) is the higher education qualification and priority is to be given for efficiency in addition to educational qualification, it is not understood as to how the attainment of higher education standard by the other Ranks will not affect the efficiency of the clerical staff. Much emphasis has been laid in letter dated 31st March, 1984, which says that not only the clerical staff, on the given standard of work, but their proficiency for advancement should be objectively judged, based on performance and reported upon by the officers for further advancement. A person with higher education level is likely to be more efficient than the one who is not better qualified. In case the attainment of the educational qualification is in law the same is further likely to be beneficial in the organisation. From the reply filed by the Respondents, it is not clear as to how the acquiring of higher legal education, by the Petitioner, will not be helpful, in any manner, in the army.

32. As per Annexure-RB, which contains the duties of the officers and Junior Commissioned Officers, a J.C.O. is required to be provided in Army Education Corps His duties are specified in a unit to assist the Commanding Officer in the educational training of the army personnel. When attached to formation headquarters, he is required to assist A.E.C. officers in carrying out their duties. The lower staff, attached to the Officers, in case is better qualified and educated, will be helpful in the efficient discharge of the duties by the officers. Even the religious teachers in the Army, when inducted are graduates and some of them are postgraduates and few of them Ph.Ds. They are imparted free commissioned training at the Institute of National Integration Pune, with a view to give them a broad based exposure on various aspects relating to National Integration. Besides performing duties of religious teachers, it is expected that they can be gainfully employed in their units for imparting education. As per roster of duties of these religious teachers, it is stated that they are first as soldier and then they are teachers and are expected to carry out all tasks, as ordered by his Commanding Officer and are expected to participate in the unit activities and to maintain a good example of personal character and integrity and loyalty.

33. The aforementioned militates against the third ground. It has been highlighted in the affidavit of Col. K. Mohinder Singh dated 21st September, 1992, that in case members of armed forces, other than the Regular Commissioned Officers are allowed to avail the privilege of study leave, the same is likely to create indiscipline in the armed forces because an officer is likely to be obeyed immediately and punctually. The spirit of obedience and punctual willingness to obey orders is likely to suffer, where the individual has the ability to analyse the order, its implications and impact. Such analytical and questioning approach is likely to creep in whenever the individual is more qualified as compared to the officer. This is not only wholly irrational approach but also does not appeal. Every personal in the army, irrespective of his rank or position,

besides being an officer is primarily a soldier at the first instance. The army discipline teaches them to obey the commands of senior, which cannot be questioned by them. Command of the superior has to be obeyed, failing which the officer/official commanded is likely to expose himself to penal action or consequences under the Army Act. To say that attaining higher education standard leads to Indiscipline is wholly erroneous. On the other hand, education brings in discipline and sense of responsibility.

34. Another reason assigned in the affidavit that only regular commissioned officers are expected to attain higher education standard and not the others is also an irrational approach and cannot be accepted by us. In case within one wing of the organisation, the lower category staff is imparted higher education qualification that will help in attaining higher standards of efficiency. Computerisation of even non-technical branches of the army would require more efficient personnel. It is unreasonable to expect that in case an official, other than a Regular Commissioned Officer, in case wants to attain higher education in Computer Science, such attainment of computer efficiency will not be utilised in the organisation or that it will not be enhancing the usefulness of the official concerned. The remuneration into clerk from the other categories do provide that even if an individual figures in the three priority classes, he will be dissuaded from being remunerated into clerk's category unless he possesses a fairly good knowledge of typing, accounting and such other related clerical duties. It is the Respondents' case that the Petitioner has been discharging only clerical duties and obtaining of post-graduation in Law by him will neither be helpful to him, nor will it enhance his usefulness in the organisation. This also cannot be accepted. One of the documents produced on record is the commandine order dated 29th July, 1991, passed by Col, K. Mohinder Singh, convening a Board of Officers for disposal and destruction of obsolete classified documents/old files on the charge of "A" branch of the Headquarter Punjab, Haryana and Himachal Pradesh Area. The Petitioner is one of the three members of the Board. A Lt Colonel is the Presiding Officer and the other member is a Regular Commissioned Officer. "A" Branch in the army has to do with legal aspect of the matter. The duties of clerical nature, it appears, are also more important and the stand taken by the Respondents that the higher education qualification is not necessary for the clerical staff cannot be accepted since this itself militates against the basic concept that to attain absolute efficiency, it is necessary that the persons who are deployed to man various jobs should be better qualified and well versed with army Rules and Regulations.

35. The departure from the normal rule of equality can be justified only on equality oriented grounds, which must satisfy the test of equality. The concept of equality under the Constitution is a dynamic concept. In *Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others*, it was held that the concept of equality takes within its sweep every process of equalisation and protective discrimination. Equality must not remain mere idle incantation but it must become a living reality for the large masses of people. In para 13 of the report, it

has been held that:

...In a hierarchical society with an indelible feudal stamp and incurable actual inequality, it is absurd to suggest that progressive measures to eliminate group disabilities and promote collective equality are antagonistic to equality on the ground that every individual is entitled to equality of opportunity based purely on merit judged by the marks obtained by him. We cannot countenance such a suggestion, for to do so would make the equality clause sterile and perpetuate existing inequalities. Equality of opportunity is not simply a matter of legal equality. Its existence depends not merely on the absence of disabilities but on the presence of abilities. Where, therefore, there is inequality, in fact, legal equality always tends to accentuate it. What the famous poet William Blake said graphically is very true, namely, "one law for the Lion and the Ox is oppression. Those who are unequal, in fact, cannot be treated by identical standards; that may be equality in law but it would certainly not be real equality. It is, therefore, necessary to take into account de-facto inequalities which exist in the society and to take affirmative action by way of giving preference to the socially and economically advantageously placed, in order to bring about real equality. Such affirmative action though apparently discriminatory is calculated to produce equality on a broader basis by eliminating de-facto inequalities and placing the weaker sections of the community on a footing of equality with the stronger and more powerful sections so that each member of the community, whatever is his birth, occupation or social position may enjoy equal opportunity of using to the full his natural endowments of physique, of character and of intelligence.

36. It was also held that equality in law must produce real equality; de-jure equality must ultimately find its *raison d'être* in de-facto equality; and the State must resort to compensatory State action for the purpose of making people, who are factually unequal in their wealth, education or social environment, equal in specified areas.

37. In order to attain the aforementioned objectives, it will not be unreasonable even to interpret the army regulations in such a manner so that the benefit of privilege of study leave be extended to all members of the army and not to Regular Commissioned Officers only.

38. In *Keshav Chandra Joshi and others etc. Vs. Union of India and others*, it was held that service rules must be carefully applied in such a manner as not to violate the rules or equality assured under Article 14 of the Constitution. Equity is an integral part of Article 14 and every attempt would be made to minimise, as far as possible, inequity. Disparity is inherent in the system of working out integration of the employees drawn from different sources, who have legitimate aspiration to reach higher echelons of service. A feeling of hardship to one, or heart burning to other should be avoided. At the same time equality is accorded to all the employees.

39. During the service career, the army order provides that study leave is

granted, as has been stated by the Respondents in reply, with the sole object to enable an officer to enhance his usefulness as an officer, which privilege is made available only to the Regular Commissioned Officers and it is stated that only officers are excepted to attain higher education level and not the others such as Junior Commissioned Officers, Non-Commissioned Officers and other Ranks. In case the stand taken by the Respondents is accepted as correct, there are certain provision in the instructions, which will go against the stand. It is provided that the study leave is not to be allowed to an officer, who is to retire from service within five years of the date of the return to duty after availing leave. The idea behind, in making such a provision is that the qualification attained by the official concerned may be utilised in the organisation for its benefit instead of an individual officer benefiting himself, either by taking voluntary retirement or resigning. Clarification issued from time to time also have highlighted that study leave with dubious aims should be discouraged. In letter dated 16th September, 1991. It was highlighted that there has been an increase in the tendency to request for mis course termination of study leave on premature retirement. In order to avoid the same, an amendment was carried out in the instructions that premature abandonment of study leave after commencement or failure to serve during the compulsory liability period of three years, after return from the study leave, except on ground of ill health and other compassionate grounds, will result into refund of the actual amount of leave salary, study allowance etc.

40. The alleged object of grant of study leave to an officer to enable him to enhance the usefulness as an officer does not appear to be the sole object in case a reference is made to Sub-clause (c) of Rule 2 and subclause (g) of Rule 9. In the matter of grant of study leave, the screening Committee is required to give priority to battle casualties and disabled officers, who have limited scope for furthering their career and in their cases, the compulsory period to serve, after return from study leave has been kept now as two years instead of three years. The object of granting such a leave is that the officer, who has become disabled or has been injured in the battle field, may during the service period obtain the privilege of study leave with a view to further advance his career, which may become useful to him, when he leaves the army service. Thus, the object sought to be achieved is not solely usefulness to the army, but also enhancement of his own career outside the army, after discharge therefrom, for which purpose it will be highly discriminatory to distinguish one set of officials from the others.

41. In *Sri Srinivasa Theatre and Others Vs. Government of Tamil Nadu and Others*, the difference in the meaning of term Law in the two expressions, namely, "equality before law" and "the equal protection of laws" was drawn by saying that two expressions do not mean the same thing, even if there may be much in common. Meaning of these expressions has to be found and determined having regard to the context and scheme of the Constitution. It was held that equality before law is a dynamic concept having many facets and one of the same is the most commonly acknowledged one, namely, there shall be no

privileged person or class and that none shall be above law. The other facet is the obligation on the State to bring about, through the machinery of law, a more equal society envisaged by the Preamble and Part IV of the Constitution.

42. The right to education has been held to be directly flowing from the right to life, as enshrined under Article 21 of the Constitution. This proposition was upheld in *Unni Krishnan, J.P. and Ors. v. State of Andhra Pradesh and Ors.* (1993) SCC 645, but the content of such a right, as was broadly laid down in *Mohini Jain (Miss) v. State of Karnataka and Ors.* (1992) 3 SCC 666, was not approved in *Unni Krishnan's* case (*Supra*). In *Unni Krishnan's* case (*supra*), it was held that the magnitude and content of the components of the right to education would depend upon the extent of the economic development of the country. In both the decisions, right to education has been held to be a right flowing directly from a right to life under Article 21 of the Constitution of India.

43. Thus, from the above discussion, it has to be held that while issuing army instructions No. 11 of 1987, adequate care has not been taken to reasonably classify the persons. Study leave has been made applicable only to Regularly Commissioned Officers by leaving out the others, namely, Junior Commissioned Officers, Non-Commissioned Officers and other Ranks. Denial of study leave to them is not only irrational but arbitrary. The classification is not founded on an intelligible differentia and the same has also no rational relation to the object sought to be achieved. Study leave is a benefit available, which must be; applied equally to all. Instructions do contain sufficient guidelines and precautions that the benefit of higher education obtained will ultimately be utilised for the usefulness of the organisation since the incumbent is required to compulsorily serve the organisation, after availing the study leave, failing which he has to make good the economic loss to the organisation. Thus, the denial of the right to the Petitioner for study leave on the basis of the army instructions has to be held to be highly discriminatory by further holding that the army instructions to that extent whereby benefit of study leave is available only to Regular Commissioned Officers and not to the Junior Commissioned Officers, Non-Commissioned Officers and other Ranks including the Petitioner, are violative of Article 14 of the Constitution of India. Consequently, we strike down the same. In the army order No. 11 of 1987, the word Regular Officer and Officials has to be read as all Ranks in the army, so that benefit of privilege of study leave is available not only to the Regular Commissioned Officers, but also to others including the Non-Commissioned Officers and Junior Commissioned Officers and other Ranks.

44. Resultantly, the writ petition is allowed. The Respondents are directed to consider the request of the Petitioner for sanction of the study leave for doing post-graduation in law or any other subject, out of the other two subjects offered by him, in accordance with the instructions.

45. Keeping in view the facts and circumstances, the parties are left to bear their respective costs.