
(2020) 06 AFT CK 0007
In the Armed Forces Tribunal
Case No : Original Application No. 507 Of 2017

T.C Malhotra

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 25-06-2020

Acts Referred:

Regulations For The Army, 1987 — Regulation 337

Citation : (2020) 06 AFT CK 0007

Hon'ble Judges : Sunita Gupta, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : Neela Gokhale, Ham Paridi, Shardha Agrawal, K.S. Bhati, Dinkar Adeeb, Anand Kumar

Final Decision : Dismissed

Judgement

1. The challenge in this O.A is directed against the order dated 15.02.2019, whereby the Central Government rejected the statutory complaint of the

applicant, a serving Brigadier of the Indian Army, wherein he had prayed for setting aside the 'Displeasure (Recordable)' awarded to him by the

Director General, Assam Rifles (DGAR) vide censure order dated 23.09.2017.

2. In order to appreciate and analyse the issues raised before us, it would be beneficial to first set out the factual milieu, from which the present case

arises:

The applicant was commissioned in the Indian Army on 17.12.1988 in the Infantry Corps of Rajput Regiment. According to the applicant, he is an

officer having outstanding service profile and impeccable integrity throughout his career. He has handled various prestigious and sensitive

appointments, including Brigade Major of an Infantry Brigade, Staff Officer in U.N Mission in Lebanon, DAMS/AMS at M.S Branch Army HQ,

Colonel G.S of Infantry Division, DIG of an Assam Rifles Sector and HQ Northern Command and Commandant of Rajput Regimental Centre,

Fatehgarh. Based on his high credentials and reputation, it is stated that he was sent on deputation as Deputy Inspector General (DIG), 23 Sector

Assam Rifles (AR) at Aizawl. As part of his duties, he was to ensure financial probity and other service rules/customs in his formation and units/sub units under him.

3. On 18.04.2016, the DGP, Mizoram informed the applicant that Col. Jasjit Singh, former Commandant, 39 AR along with one JCO and 08-09 other

ranks of his unit was involved in a gold smuggling case, which allegedly had taken place on the night of 14/15.12.2015, based on which, in his capacity

as DIG and being the immediate superior of Col. Jasjit Singh reported the same to his superior officer IGAR (E). Accordingly, a first information

report was lodged against Col. Jasjit Singh and others. On receipt of the FIR and other documents, the applicant ordered a Court of Inquiry (CoI) to

investigate into the matter and detailed CO 1 AR as the Presiding officer. On 24.04.2016, the CoI was ordered to be cancelled the very next day. The

applicant, in due discharge of his duties, handled the aforesaid smuggling case as per the service regulations and directions of his superior officers. The

investigation resulted in the arrest and suspension of all the accused personnel involved, including Col. Jasjit Singh. Col, Jasjit Singh was released on

conditional bail by the Sessions Judge, Aizawl on 31.05.2016.

4. After the completion of his deputation tenure, the applicant was posted to Rajput Regimental Centre, Fatehgarh under the Central Command. On

02.07.2016, the applicant received a letter dated 10.06.2016, whereby he was informed by Maj Gen. M.V. Chandran, IGAR (E) that a demi-official

letter had been sent by Col Jasjit Singh to Lt Gen Praveen Bakshi, the then GOC-in-C, Eastern Command levelling certain allegations against the

applicant. The allegation in the complaint given by Col. Jasjit Singh was that the applicant had indulged in borrowing money from Col Jasjit Singh, ex-

Commandant 39 Assam Rifles while getting air tickets booked for his wife Mrs. Manjula Malhotra on 01.12.2014 from Delhi-Kolkata/Aizawl and

return journey on 10.12.2014 from Aizawl-Delhi amounting to Rs.16,578/- and then for his son Master Gandhary Malhotra on 23.12.2015 from

Bengaluru-Aizawl and return journey on 03.01.2016. Denying the allegation, the

applicant had stated that due to exigencies of service of travel at a short notice, non-availability of tickets online in general category, malfunction of internet connectivity and other factors, the air tickets were booked from the computer in the Computer Cell of 39 AR and had paid the ticket fare. The allegation against the applicant was that he had ordered Col. Jasjit Singh to purchase tickets online for his wife and son and did not repay him the ticket fare. The stand taken by the applicant was that this complaint had emanated belatedly after the applicant had reported to the competent authority about the alleged smuggling involvement of Col. Jasjit Singh and others. However, on 16-12-2016, HQ Eastern Command (DV) directed for convening of a Staff Col on this matter. Accordingly, a CoI was convened at HQ Inspector General Assam Rifles on 27 Feb 2017. On the basis of the findings in the CoI, a notice was issued to the applicant to show cause why censure should not be issued, in reply to which the applicant had stated that the findings of the Col were based on conjectures and surmises and that the complaint was filed only because the applicant had proceeded against Col. Jasjit Singh in the smuggling case. However, the reply given by the applicant was not found to be satisfactory by the competent authority and, therefore, the DG AR issued 'Censure Order Displeasure (Recordable) on 23.09.2017. Being aggrieved, the applicant filed a statutory complaint on 19.02.2018 against the award of 'Displeasure (Recordable)' by the DG AR. The competent authority rejected the statutory complaint filed by the applicant, vide the impugned letter dated 15.02.2019. Hence the instant O.A seeking the following reliefs:

- (a) Quash and set aside the order of rejection dated 15.02.2019, whereby the statutory complaint dated 19.02.2018 has been rejected;
- (b) Recall the order of censure (recordable) dated 23.09.2017 issued by the fourth respondent as illegal and untenable;
- (c) Direct the fifth respondent to erase the effect and operation of the censure order from the service records pertaining to the applicant and its effect especially in the relevant ACRs initiated by the respondents during the period from 10.06.2016 to date;
- (d) Direct the respondents to award consequential benefits to the applicant caused due to the censure order issued by the respondents.

Arguments by Counsel for the Applicant:

5. Ms. Neela Gokhale, learned counsel for the applicant, at the outset, submitted that the impugned order rejecting the statutory complaint filed by the applicant is illegal and has been issued in violation of the principles of natural justice. Furthermore, the censure of 'Displeasure (Recordable)' is disproportionate to the gravity of the offence alleged against the applicant. According to the learned counsel, Lt Gen. Shokin Chauhan and Lt Gen. Pravin Bakshi ought not to have considered the statutory complaint filed by the applicant, reason being the same officers had participated in the award of censure and handled the statutory complaint filed by the applicant. The learned counsel further pointed out that the show cause notice issued to the applicant is vague and ambiguous. In this regard, the learned counsel submitted that Clauses 10 to 20 of the policy dated 11.08.2017 provide for the procedure for award of censure and Clause 12 specifically states that show cause notice must contain definite and specific lapses in unambiguous terms, to which the explanation is sought. In support of her contention, she relied on the decision in *State of Andhra Pradesh and others v. Ch. Gandhi* (2013) 5 SCC 111.

6. Learned counsel for the applicant also contended that based on the summons received by him for attending the CoI, which was convened to inquire into the alleged delinquency against the applicant, he attended the Col and he requested for supply of relevant documents under Rule 184(2) of the Army Rules, 1954 (the Rules, in short), however, his request was not acceded to by the respondents. In April 2017 the Col submitted its report, in which the applicant was held to be blameworthy for the alleged offence. It is also her case that though Rule 180 of the Rules was invoked against the applicant, the relevant documents were not made available to the applicant. Having subjected the applicant to Rule 180 of the Rules, the CoI should not have denied the applicant the relevant documents. In support of her contention, the learned counsel for the applicant relied upon the following decisions:

- (i) *Maj. Harbhajan Singh v. Ministry of Defence and others* (21 (1982) DLT 262;
- (ii) *Lt Col Prithi Pal Singh Bed/ v. Union of India and others* (1983 SCR (1) 393;
- (iii) *Chief of Army Staff and others v. Maj Dharam Pal Kukrety* (1985) 2 SCC 412); and
- (iv) *L. Chandra Kumar v. Union of India and others* (1997(2) SCR 1186).

7. According to the learned counsel for the applicant, the prosecution has failed to prove the case beyond reasonable doubt and the benefit of doubt

should go in favour of the applicant. That apart, it is a well settled principle of criminal jurisprudence that if two views are possible on the evidence

adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be

adopted. In this regard, the learned counsel for the applicant relied upon the decision in *Ghurey La! v. State of Uttar Pradesh* (2008) 10 SCC 450,

wherein the Hon'ble Supreme Court quoted Para 7 of the decision in *Bhagwan Singh and others v. State of M.P and others* (2002) 4 SCC 85), which

reads as under:

7. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced

in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.

Such is not a jurisdiction limitation on the appellate court but a Judge made guidelines for circumspection. The paramount consideration of the court is

to ensure that miscarriage of justice is avoided.

8. Learned counsel for the applicant further contended that the action taken against the applicant is penal in nature and the censure order would

remain in his file for 10 years, which indicates that the order is penal in nature and not merely of administrative nature and the procedure to be

followed cannot be capricious nor fanciful but demonstrative of application of mind. In this regard, she relied on the decisions in *State of Rajasthan v.*

Uchhab La! Chhanwal (2014) 1 SCC 144 and *Food Corporation of India v. A. Prahalada Rao* (2001) 1 SCC 165.

9. Ms. Gokhale, learned counsel for the applicant submitted that the alleged incident was of 2014, that the complaint was made only in 2016 and that

action was taken in 2017. There is no justification for the delay in making the complaint. Furthermore, asking for financial favors from Col. Jasjit Singh

as alleged does not fall within the scope and ambit of Para 337. That apart, the finding of the Col was based on conjectures and surmises. The only

witness from the side of the applicant 2IC Thomas George had clearly stated in his evidence that he was not aware whether any payment was made

by Col Jasjit Singh from his own sources towards booking of air tickets for the

family members of the applicant.

10. Concluding her arguments, learned counsel for the applicant submitted that the spirit and intent of Army Order 22/2000 dealing with indebtedness

clearly indicates that the organization seeks to discourage their personnel from living beyond their means and in that sense, advised against borrowing

and lending. The said AO cannot be stretched to include booking of air tickets by a colleague through his credit/debit card.

Arguments by Counsel for the Respondents:

11. On the other hand, Mr. Bhati, learned Senior Central Government Standing Counsel submitted that there is no illegality or irregularity in the

impugned order rejecting the statutory complaint of the applicant dated 19.02.2018. He also pointed out that the Co! had complied with the provisions

of Rule 180 of the Rules and that the applicant was given adequate opportunity to cross examine the witnesses. The applicant indulged in borrowing of

money from Col Sasjit Singh, ex Commandant 39 AR while getting air tickets booked for his wife Mrs. Manjula Malhotra on 01.12.2014 from Delhi-

Kolkata-Aizwal and return journey on 10.12.2014 from Aizwal-Delhi amounting to Rs.161578/- and then for his son Master Gandhary Malhotra on

23.12.2015 from Bengaluru-Aizwal and return journey on 03.01.2016 amounting to Rs.26,914/- in contravention of Para 337 of the Regulations for the

Army 1987 (the Regulations, for brevity), whereby the applicant, in his private capacity, became a debtor. Para 337 of the Regulations lays down that

no officer, JCO, WO or other ranks will lend or borrow money to or from any person belonging to the Force or any Regimental institution run by

civilian contractor or engage in any transaction whereby he will become in a private capacity a debtor or creditor to any person belonging to the Force

or the civilian contractor. Therefore, the action of the respondents in rejecting the statutory complaint filed by the applicant is according to the

provisions of the Regulations.

12. With regard to the booking of the air tickets, Mr. Bhati, learned counsel for the respondents submitted that Army is a hierarchical organization with

proper command control chain. Army also is a pyramidal organization where the lower the rank held, the earlier is the retirement age. Thus, for a

longer service one must get his select grade promotions in time and in a pyramidal organization like Army only the best i.e. one with very high

Appraisal reports (ARs) have a good chance to get promoted. Hence it is difficult for a junior to resist the demands of his boss if he aspires for

promotion. It is in this specific working culture of Army that Regulation 337, which bars borrowing and lending of money has to be understood. Col.

Jasjit Singh had stated before the CoI that, during the third week of November 2014, he was called by applicant, who was his immediate boss, to his

office and asked to book air tickets from Delhi to Aizawl for his wife Mr. Manjula Malhotra. Accordingly, the tickets were booked online for

01.12.2014 and 10.12.2014 at a cost of Rs 16578/-. Col. Jasjit Singh has further stated that when he handed over the tickets to applicant in his office,

he was told by applicant that he will pay him later but the same was never paid. The Colonel has further stated in CoI, with full documentary evidence,

that the applicant once again after about seven months i.e. in July 2015, made another demand for purchase of Air tickets for his son for his incoming

journey which was to commence after about five months i.e. 23.12.2014 from Bengaluru-Aizawl and return journey on 03.01.2016 from Aizawl-

Bengaluru for an amount of Rs.26,914/-, and this time when he handed over the ticket to applicant in his office he was asked to adjust the amount.

The learned counsel further stated that the reason cited by the applicant for asking Col. Jasjit Singh to buy tickets for his family like the exigencies of

the travel at short notice and malfunction of internet connectivity in his office sound hollow. The applicant had sufficient time to book the tickets. As

far as Internet connectivity is concerned, it is hard to believe that the internet connectivity would not be functioning in the office of a DIG level

officer of Brigadier rank, for weeks and months. Therefore, it is obvious that the sole idea of the applicant was to seek favors from Col. Jasjit Singh,

knowing very well that Col. Jasjit Singh being his immediate junior officer and under his direct command would not want to ruffle feathers with him on

financial issues.

13. As regards the delay, Mr. Bhati, learned counsel for the respondents, pointed out that though, during the CoI, the applicant had the opportunity to

cross examine Col. Jasjit Singh on this issue of delayed reporting of this incident, however he failed to do so. Further, during the CoI, the applicant was

given adequate opportunity to cross examine the witnesses. Right from the convening of the CoI to the award of censure, all the statutory provisions

had been complied with by the competent authority adhering to the principles of natural justice and as such, there was no violation of any of the provisions. The Col found that the applicant had asked Col. Jasjit Singh, in the third week of November 2014, for getting the air tickets booked for his wife Mrs. Manjula Malhotra on 01.12.2014 from Delhi-Kolkata-Aizawl and return journey on 10.12.2014 from Aizawl-Delhi for an amount of Rs.16,578/- and there after asked him again in July 2015 for purchase of air ticket for his son from Bengaluru-Aizawl for 23.12.2014 and return journey on 03.01.2016 from Aizawl-Bengaluru for an amount of Rs.26,914/-, which is equivalent to borrowing money and becoming a debtor in private capacity in contravention to Para 337 of the Regulations. 2 IC Thomas George not being aware of payments being made by Col Jasjit Singh towards booking of tickets does not mean that the money had not been paid by him. The evidence of Rfn/GD Manoj Kumar of 39 Assam Rifles, who had done the online bookings, shows that on the direction of Col Jasjit Singh, he had booked the tickets for the family members of the applicant using the debit card of Bijimon K.P, Deputy Commandant and that on the very next day, Col. Jasjit Singh had reimbursed the full amount in cash to him, which he in turn reimbursed to the Deputy Commandant Bijimon.

14. Mr. Bhati, learned counsel for the respondents further countered the statement of the applicant that there was no financial transaction between Col Jasjit Singh and himself because the very act of applicant, as the immediate boss of Col Jasjit Singh, to demand air ticket for his family without catering for the finances required for the same, is contrary to the provisions of Para 337 of the Regulations, in violation of which the show cause notice was issued to the applicant. Contending so, Mr. Bhati submitted that the award of censure 'Displeasure (Recordable)' is proportionate to the gravity of the offence committed by the applicant and, therefore, no interference is called for by this Tribunal and the rejection of his statutory complaint was legally justifiable.

Consideration by the Tribunal:

15. Heard the rival submissions and perused the records. In our opinion, this case primarily revolves around two questions, which need to be answered. They are:

(a) Does the act of the applicant in demanding Air tickets for his family members

from his immediate subordinate, makes him a 'borrower' in terms of Regulation 337 for the Army?

(b) Has the Col been fair to the applicant and applied Rule 180 of the Army Rules in a fair and correct manner?

16. As far as the first question is concerned, we notice that the applicant stated that if Col. Jasjit Singh had not received any reimbursement from him

as alleged, the charge of lending/borrowing was not attracted. It was also stated in reply that the applicant had not taken any loan from him physically

to purchase the tickets, therefore, it was not a case of lending/borrowing. However, we are of the considered opinion that money is not just the

transaction of physical currency notes, money includes plastic money i.e., debit/credit card transactions and also includes request for a service or

facility with a promise to pay it at a later date. We have noted that the booking of Air ticket as per the applicant was necessitated because his own

office Internet was not working and the internet of his subordinate officer i.e. Col. Jasjit Singh was working hence due to urgency, he requested the

officer to book Air tickets for his family. We have also noted that booking of online air ticket requires plastic money i.e. debit or credit card and since

the applicant had made no provision for paying this money through his own debit/credit card and left this responsibility to Col. Jasjit Singh, therefore, in

our opinion the applicant becomes a 'borrower' to Col Jasjit Singh after the actual purchase of online Air tickets by him and remains in the category of

'borrower' till the money spent on tickets is refunded.

17. As far as the second question is concerned, i.e. has the Col been fair and applied Rule 180 in a fair and correct manner on the applicant, we have

noted that, based on the inputs received, the HQ Eastern Command (DV) had directed convening of a Staff CoI to investigate the issue with respect

to booking of air tickets by Col Jasjit Singh for the family members of the applicant and non-reimbursement of the amount spent for booking of the air

tickets by him. As far as the convening of the Col is concerned, certain relevant legal aspects of Col are as given below:

(a) The Hon'ble Supreme Court in *Maj Gen Inderjit Kumar v. Union of India and others* (1997) 9 SCC 1 has held that:

7. Under Rule 177 of Army Rules, 1954, a Court of Inquiry can be set up to collect evidence and to report, if so required, with regard to

any matter which may be referred to it. The Court of Inquiry is in the nature of a fact-finding inquiry committee. Army Rule 180 provides,

inter alia, that whenever any inquiry affects the character of military reputation of a person subject to the Army Act, full opportunity must

be afforded to such a person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish

to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character of military reputation and

producing any witnesses in defence of his character of military reputation.

(b) Rule 180 of the Army Rules being relevant, the same is reproduced below:

180. Procedure when character of a person subject to the Act is involved.-- Save in the case of a prisoner of war who is still absent

whenever any inquiry affects the character or military reputation of a person subject to the Act, full opportunity must be afforded to such

person of being present throughout the inquiry and of making any statement, and of giving any evidence he may wish to make or give, and

of cross examining any witness whose evidence in his opinion, affects his character or military reputation and producing any witnesses in

defence of his character or military reputation. The presiding officer of the court shall take such steps as may be necessary to ensure that

any such person so affected and not previously notified receives notice of and fully understands his rights, under this rule.

18. In view of the above mentioned important aspects of CoI, we have noticed that in the instant case, due to the nature of inquiry, Rule 180 of the

Army Rules was invoked on the applicant, even prior to calling of the first witness and the applicant was afforded the opportunity to be present

throughout, cross-examine all witnesses and make a statement. We have also observed that the applicant has cross examined other witnesses and

fully participated in the CoI. As far as the conduct of CoI is concerned, we have noted following significant aspects:

(a) We find that the initial complaint that was lodged against the applicant by Col. Jasjit Singh contained very serious allegations.

(b) He pointed out in the complaint that the applicant was antagonized against him for reasons other than military. He was importuning him for unjust

monetary demands. The applicant asked him to purchase number of air tickets

for his family members and when Col Jasjit Singh asked for the reimbursement, the applicant told him to adjust in the accounts. This statement has been reiterated in his evidence as well.

(c) He also stated in the complaint that "'last few months I was not able to meet his ever incr demands i.e. procuring of Teak wood furniture which strained our relationship'. During cross examination, Col. Jasjit Singh was asked who actually bought the tickets and made the payments to the respective airlines, to which he specifically answered, "'After you told me to get the air bookings done for Mrs Manjula Malhotra and Gandhary Malhotra, I went back to my Bn and told Rfn Manoj Kumar to get the bookings done on the date specified by you. He did the bookings online and gave me the itinerary of tickets, which I handed over to you. However, you did not pay the money to me; thereafter I paid the amount due to Rfn Manoj Kumar for the online bookings done as I felt obligatory since I told him to book the tickets'". The CoI, based on its findings, had come to the conclusion that the allegations in the complaint stood proved. Additionally, after considering all the facts involved in the conduct of CoI, we are of the opinion that the Col was conducted in compliance with the provisions of the Army Act and the Rules made thereunder and that Rule 180 was applied on the applicant in a fair and correct manner.

19. On perusal of the proceedings of the Col, the competent authority found that the applicant had indulged in borrowing of money from Col Jasjit Singh while getting air tickets booked for the wife and son of the applicant. Therefore, the competent authority thought that it would be appropriate if censure is called for. Accordingly, a show cause notice was issued to the applicant to explain why censure should not be awarded for the aforesaid lapses. Pursuant thereto, the applicant replied that there was no lapse, in any manner, on his part in contravention of Para 337 of the Regulations. The applicant had stated that if Col. Jasjit Singh had not received any reimbursement as he alleged, the charge of lending/borrowing was not attracted. It was also stated in reply that the applicant had not taken any loan from him physically to purchase the tickets, therefore, it was not a case of lending/borrowing. If it was a transaction, the transaction on both occasions was completed only when respective tickets were handed over to the applicant and he paid the cost thereof immediately and that it was carried out

with the actual buyers of the tickets in question. Therefore, Col. Jagjit Singh had no cause of action and locus stand/ as he was a mere courier with his role restricted only to carriage of booked tickets to the applicant and then handing over the cost thereof paid by him to actual buyers and as such, Col. Jagjit Singh cannot be an aggrieved party as he had not paid for the tickets out of his pocket.

20. The competent authority was not satisfied with the reply of the applicant hence the censure order was issued, the relevant portion of which reads as under:

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2. I have concluded that IC-48282F Brig TC Malhotra, Ex Deputy Inspector General, HQ 23 Sector Assam Rifles (now Comdt Rajput Regt Centre) has lapsed by indulging in borrowing of money from IC-56875H Cot Jasjit Singh, Ex Comdt 39 Assam Rifles whilst getting air tickets booked for Mrs Manjula Malhotra on 1 Dec 2014 from Delhi-Kolkata-Aizawl and return journey on 10 Dec 2014 from Aizawl-Delhi amounting to Rs.16,578/-(Rupees sixteen thousand five hundred seventy eight only) and then for Master Gandhary Malhotra on 23 Dec 2015 from Bengaluru-Aizawl and return journey on 03 Jan 2016 from Aizawl-Bengaluru amounting to Rs. 26,914/- (Rupees twenty six thousand nine hundred fourteen only) in contravention to Para 337 of the Regulations for the Army, 1987

3. I, therefore, direct that my Displeasure (Recordable) be conveyed to IC-48282F Brig TC Malhotra, Ex Deputy Inspector General, HQ 23 Sector A553177 Rifles (now Comdt Rajput Regt Centre).

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21. Being aggrieved, the applicant preferred a statutory complaint dated 19.02.2018 for setting aside the 'Displeasure (Recordable)' awarded to him and also for affording him all consequential benefits. The statutory complaint was rejected by the Central Government vide its impugned order dated 15.02.2019. We have gone through the impugned order, which is a speaking order and are in agreement with the views of the Central Government on this issue. The relevant portion of this speaking order reads as under:

4. ..., the record reveals that vide signal dated 02 March 2017 of HQ IGAR

(South), (Appendix of the Statutory Complaint), prior to commencement of proceedings of C of I, the Complainant had requested for four witnesses namely Maj Gen MV Chandran, YSM, SM IGAR (East), Col A Mukhopadhyay, Commandant 39 Assam Rifles, 2IC Thomas George, Ex 2IC 39 Assam Rifles and Dy Commandant Vasudevan Potty, Ex Camp Commandant HQ 23 Sector Assam Rifles. At the commencement of C of I, on 29 March 2017, after provisions of Army Rule 180 were invoked in respect of the Complainant, he only requested for 2IC Thomas George, whose statement was obtained through email as he was employed in United Nation Mission at Haiti. The record of the C of I, each page of which had been signed and authenticated by the Complainant, does not reveal that the Complainant requested for examination of any other witnesses whose names he had given earlier. The Complainant was present throughout the proceedings of the C of I and was given opportunity to cross examine the witnesses. Provisions of Army Rule 180 were, thus, complied with. Further, the contention of the Complainant that his submissions were partially recorded by the C of I is devoid of substance because each page of the proceedings of the C of I had been signed and authenticated by him and nowhere he mentioned any such fact about non-recording of his submissions as now alleged by him. Therefore, the said contention of the Complainant is nothing but an afterthought.

5., the Complainant, admittedly, got the air tickets booked for his wife and son through Col Jasjit Singh. He was awarded the censure

for the said transactions on the ground that it amounted to violation of provisions of Para 337 of the Regulations for the Army, 1987 Ibid

Para, inter alia, lays down that no officer, Junior Commissioned Officer, Warrant Officer or Other Ranks will lend or borrow money to or

from any person belonging to the forces or any Regimental Institution run by civilian contractor or engage in any transaction whereby he

will become in a private capacity a debtor or creditor to any person belonging to the forces or the civilian contractor.

6. , in the instant case from the evidence available on record, it is manifestly clear that the Complainant had lapsed by violating the

provisions of Para 337 of the Regulations for the Army, 1987 Further, in a

disciplined force, any act of indiscipline is required to be dealt with appropriately for maintenance of discipline. Therefore, having considered the complaint, in its entirety along with material available on record, the award of 'Displeasure (Recordable)' to the Complainant by DGAR on 23 September 2017, is just, legal and commensurate to the gravity of the lapse committed by the officer.

7. , having considered the case holistically, along with connected documents on record, the Central Government rejects the Statutory

Complaint dated 19 February 2018 submitted by Brig TC Malhotra being devoid of any merit and substance.

22. Thus, in the sum and substance, we are of the opinion that a fighting force like Army, which has strict discipline requirements and a command

control chain wherein the orders and desires of a senior cannot be questioned, cannot afford to have situations where a junior is arranging for money

to meet the family requirements of a senior. This custom, traditions and ethos of Army is correctly reflected through the Army Regulation 337. In this

particular case, nothing can justify i.e. neither urgency of travel nor internet failure, for a Brigadier rank officer to get reservation done two weeks and

five months in advance for his wife's and son's air travel respectively, through his subordinate officer in the chain of command; without bothering for

the fact that who will pay for the booking of air tickets. It is extremely unfortunate and totally unacceptable, when a soldier, who is at the bottom of

hierarchy, has to run around in a lower Army formation requesting from junior officers to lend a credit card so that the bookings of air tickets for the

family of his super boss i.e. a DIG appointment and a Brigadier level officer can be done. There is hard evidence that the money for the air ticket was

paid by somebody else at the time of ticket booking and not by the applicant. It is hard to believe that in the year 2014, there was no serviceable

internet, in the applicant's office but the internet was serviceable all the time at his subordinate's office. It is also hard to believe that in the year 2014,

in the complete Aizawl town, which is the capital of Mizoram State, there were no travel agents or internet facility except in the office of immediate

subordinate officer of the applicant. The logic of getting air ticket booked through a subordinate in the chain of command five months in advance,

without providing in advance for the expenses involved, defies logic and

rationality and squarely attracts the provisions of Army Regulation 337. In these circumstances, we find no valid reasons to question the findings of CoI or the administrative action taken against the applicant. We do not agree with applicant's contentions that the censure was awarded to him in a mechanical and preordained manner and that the allegations were levelled against him on frivolous grounds to divert the attention of authority concerned from the gold smuggling case against Col Jasjit Singh. We also do not agree with the applicant that no evidence was established at the CoI to substantiate the allegations against him and that the applicant was not afforded full opportunity to defend himself in accordance with Army Rule 180 and his submissions before the CoI were only partially recorded. Additionally, the evidence on record clearly establishes that the applicant had violated the provisions of Para 337 of the Regulations for the Army and hence award of a recordable censure i.e. 'displeasure' is not disproportionate to the offence committed by the applicant. Being so, we do not find any merit in any of the contentions raised on behalf of the applicant.

23. Resultantly, the O.A fails and is dismissed. There will be no order as to costs.

Interim applications, if any, pending also stand disposed of. Pronounced in open Court on this the 25th day of June, 2020