REPORTABLE

2026 INSC 366

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 6929 - 6930 OF 2009

EX. SQN. LDR. R. SOOD **... APPELLANT**

VS.

UNION OF INDIA & ORS. **... RESPONDENTS**

J U D G M E N T

DIPANKAR DATTA, J.

THE CHALLENGE

1. Appellant is a septuagenarian by now. He happened to be an Indian Air Force[1] personnel, prior to his dismissal[2] more than three decades back by the Central Government[3]. Power under Section 19 of the Air Force Act, 1950[4] read with Rule 16 of the Air Force Rules, 1969[5] was exercised by the Government owing to the appellant having used criminal force against a junior officer and leaving him in a desolate place in the night, from where his mortal remains were later found. A Single Judge of the High Court of Delhi[6] set aside the dismissal[7] on the ground that the administrative act of dismissal was barred by the three-year limitation

[1] Air Force
[2] *vide* order dated 22nd September, 1993
[3] Government
[4] AF Act
[5] AF Rules
[6] High Court
[7] *vide* judgment dated 23rd September, 1999 in Civil Writ Petition No. 4019 of 1995

period, envisaged in Section 121 of the AF Act. However, while hearing an intra-court appeal[8] preferred by the Government and its officers, *vide* the impugned judgment and order dated 11th January, 2008[9], a Division Bench reversed the judgment and order of the Single Judge under challenge holding that the bar of limitation did not apply. Also, upon perusal of the case records, the Division Bench noted additional grounds in support of such dismissal (to be discussed at a later part of this judgment). Consequently, the order of dismissal was restored, giving rise to Civil Appeal No. 6929/2009 by special leave granted on 5th October, 2009.

FACTUAL MATRIX

2. Facts, relevant for our decision on this appeal, are as follows:

a. Appellant was commissioned in the Air Force as Pilot Officer in the year 1972.

b. The incident is of the year 1987, at which time the appellant was posted as 'Senior Operation Officer' to 147 Squadron of the Air Force.

c. The said squadron was posted in a remote village in the Thar desert and stationed in a building belonging to the General Reserve Engineer Force[10].

d. It was alleged that an individual[11], employed as a driver with GREF, in an inebriated state had caused damage to the radar, an

[8] LPA No. 545/1999
[9] impugned order
[10] GREF
[11] driver

instrument of critical operational importance in desert conditions, and committed certain other acts of misconduct.

e. On the night of 29th March, 1987, the appellant along with four others, took the driver away from the camp in a jeep and left him at a secluded location approximately 5 kilometres from the nearest Border Security Force post and about 30 kilometres from the Air Force camp. A missing report was lodged with the civil police on 31st March, 1987, and on 2nd April, 1987, the mortal remains of the driver recovered from the same location.

f. From the records, it is discernible that the appellant acted pursuant to the directions of his superior, a Wing Commander[12], who had instructed him to remove the driver from the camp on account of his disruptive conduct under the influence of alcohol, and with a view to preventing any untoward incident in anticipation of an inspection by the Air Officer Commanding-in-Chief, South Western Air Command[13], being the highest ranking officer commanding a major command in the Air Force, on the next day.

g. On the basis of these allegations, an FIR was lodged by GREF personnel against the appellant and others. Simultaneously, a Court of Inquiry was instituted. Nearly two years later, in January 1989, "disciplinary proceedings" were initiated against the appellant; however, in the same month, the Air Force abandoned such

[12] Wg. Cmdr.
[13] AOC-i-C

proceedings by exercising its powers under Section 124[14] of the AF Act, opting instead to have the appellant tried by a criminal court rather than by a Court Martial.

h. More than two weeks before the lapse of one year, i.e., on 12th January, 1990 to be precise, all the accused (appellant and others) were discharged of all offences by the Sessions Court which found that no *prima facie* case was made out against them and also because sanction under Section 197 of the Code of Criminal Procedure, 1973 had not been obtained. The said order of discharge, having not been challenged, attained finality.

i. Thus, the criminal proceedings against the appellant stood closed. What followed was an administrative action, which forms the crux of the *lis*.

j. The three-year period from the date of the alleged offence (29th March, 1987) expired on 28th March, 1990. As per Section 121(1) of the AF Act *"no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years from the date of such offence"*. Thus, initiation of court martial by the time the appellant was discharged by the criminal court had become time barred.

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[14] **124. Choice between criminal court and court-martial.—**When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the Chief of the Air Staff, the officer commanding any group, wing or station in which the accused prisoner is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in Air force custody.

k. A day after expiry of the limitation period as aforesaid, i.e., on 30th October, 1990, upon invocation of Section 19[15] of the AF Act read with Rule 16 of the AF Rules, a notice was served upon the appellant calling upon him to show cause why he should not be dismissed/removed from service. Rule 16(4) empowers the Chief of Air Staff to initiate administrative action against an officer where, upon consideration of the material on record, he forms the opinion that trial by court-martial is inexpedient or impracticable. Rule 16, to extent relevant, is reproduced below:

> **16. Dismissal or removal of officers for misconduct.—**
> (1) An officer may be dismissed or removed from service for misconduct by the Central Government but before doing so and subject to the provisions of sub-rule (2) he shall be given an opportunity to show cause against such action.
> (2) Where the dismissal or removal of an officer is proposed on ground of misconduct which has led to his conviction by a criminal court, or where the Central Government is satisfied that for reasons to be recorded in writing, it is not expedient or reasonably practicable to do so, it shall not be necessary to give an opportunity to the officer of showing cause against his dismissal or removal.
> (3) Where an officer has been convicted by a criminal court and the Central Government, after examining the judgment of the criminal court in his case and considering the recommendation about him of the Chief of the Air Staff, is of opinion that further retention of such officer in the service is undesirable that Government may dismiss or remove such officer from the service.
> (4) In any case not falling under sub-rule (3), when the Chief of the Air Staff after considering the reports on an officer's misconduct, is of opinion that the trial of the officer by a court-martial is inexpedient or impracticable but the further retention of the officer in the service is undesirable, he shall so inform the officer and subject to the provisions of sub-rule (5) furnish to the officer all reports adverse to him calling upon him to submit in writing within a reasonable period to be specified, his explanation in defence and any reasons which he may wish to put forward against his dismissal or removal.
> (5) The Chief of the Air Staff may withhold from disclosure any report adverse to an officer or any portion thereof, if in his opinion its disclosure is not in the interests of the security of the State.
> (6) ….

[15] **19. Termination of service by Central Government.**—Subject to the provisions of this Act and the rules and regulations made thereunder, the Central Government may dismiss, or remove from the service any person subject to this Act.

(7) ….
(8) ….

l. Appellant answered the notice to show cause by his response dated 19th February, 1991 by, *inter alia*, stating that:

i. Initiation of departmental proceedings against him was unsustainable in law, as he had already been discharged by a competent criminal court after due consideration of all available material. If the Air Force was aggrieved by the said discharge order, it ought to have challenged the same in revision; however, no such action was undertaken.

ii. There was not even an iota of evidence to establish that the body recovered was that of a male or female, much less that of the driver.

iii. There were serious procedural irregularities in the Court of Inquiry proceedings, including reliance on documents such as the FIR and Post-Mortem Report which were never formally produced or exhibited, coercion of witnesses, and the absence of the Inquiry Officer during substantial parts of the proceedings.

iv. The decision of the Chief of Air Staff declaring the trial by Court-Martial as inexpedient and impracticable was taken without due application of mind, particularly when the Air Force itself had opted for trial before a criminal court. It was further pointed out that the Appellant had been discharged on 12th January 1990, while the limitation period of three years expired on 28th/29th March 1990, thereby leaving sufficient time for initiation of

Court-Martial proceedings. Despite having over fifteen days available, no such action was taken by the Air Force.

m. However, the answer of the appellant not having been found satisfactory, on 22nd September, 1993, he was dismissed from service.

n. It is apposite to note that while the appellant was dismissed from service, the Commanding Officer namely, the Wg. Cmdr., on whose order the appellant allegedly took the driver away from the camp and left him at quite a distance, was awarded 'severe displeasure' of 3 years.

o. Dejected, the appellant filed a writ petition challenging his dismissal from service. The Single Judge allowed the petition and quashed the dismissal order after finding that the dismissal was time barred as per Section 121 of the AF Act (which barred commencement of court martial after three years from the date of offence). The intra-court appeal thereagainst carried by the respondents was initially dismissed on 18th September, 2000; however, on 15th February, 2002, the Supreme Court remitted the matter for fresh consideration. Upon remand, the Division Bench passed the impugned order.

IMPUGNED ORDER

3. Upon perusal of Section 121 of the AF Act, the Division Bench observed that the limitation period prescribed therein pertains to the commencement of "trial by a court-martial", whereas Rule 16 of AF Rules

concerns the power of the Air Force to initiate administrative action. Placing reliance upon the decision (more particularly paragraphs 43 and 44) of this Court in ***Union of India v. Harjeet Singh Sandhu***[16] (wherein this Court while interpreting analogous provisions of the Army Act, 1950[17] and the Army Rules, 1954[18] held that limitation period applicable to court-martial proceedings does not extend to administrative action), the Division Bench concluded that Section 121 of the AF Act does not prescribe limitation period for initiation of an administrative action under Rule 16 of the AF Rules.

4. Further, in ***Harjeet Singh Sandhu*** (supra), this Court had also held that if the initiation of administrative action is found to be a colourable exercise of power, such action would be liable to be vitiated. On this aspect, the Division Bench found no abuse of process in the initiation of proceedings against the appellant.

5. Also, the Division Bench recorded additional reasons and found the dismissal of the appellant to be proper. Upon examination of the case records, the Division Bench noted the reasoning given by the authority preceding the dismissal of the appellant and ultimately ruled in favour of allowing the appeal of the respondents.

6. Consequently, the order of the Single Judge, which had held the disciplinary action to be time-barred, was set aside.

7. Para 16 of the impugned order reads as follows:

> 16. We have also examined the original file produced by the appellant - Indian Air Force. Reading of the notings on the said file will reveal

[16] (2001) 5 SCC 593
[17] Army Act
[18] Army Rules

> that order of summary dismissal was passed not merely on the ground that disciplinary action had become time barred, but on account of seriousness of the misconduct which it was felt was bordering on perversity, and also keeping in mind the relationship between the two services, viz. Indian Air Force and GREF. It was observed that it had far-reaching ramifications. It was felt that **there is sufficient moral convincing evidence to show culpability** of the officer in the sordid episode, which eventually resulted in loss of human life. It is in these circumstances it was held that it was inexpedient and impracticable to proceed departmentally against the officer but retaining him in the services was undesirable. ……
>
> (emphasis ours)

8. "Moral convincing evidence to show culpability … " ~ this aspect of the impugned order caught our attention prompting us to call for the original file of the disciplinary proceedings and the subsequent dismissal order.

ORIGINAL FILE

9. The original file having been placed before us by Ms. Archana Pathak Dave, learned Additional Solicitor General appearing for the respondents, we had the occasion to peruse the same.

10. We regret to record at the outset that the Division Bench omitted to notice substantial portion of the proceeding notes. At least, this is the impression we form upon reading the impugned order. It would, therefore, be our endeavour to refer to all relevant proceeding notes having a bearing on the issues which we are tasked to decide.

11. On perusal of the original file, it is observed that the Air Force, *vide* proceeding note dated 5th June, 1992, after recording its reasons, recommended to the Government that the appellant be dismissed from service. This recommendation was followed by a series of communications exchanged between the Government and the Air Force concerning the quantum of punishment to be imposed upon the

appellant. Queries were also raised as to why the appellant's commanding officer had been visited with a comparatively less severe punishment.

12. The Air Force, as noted, recommended on 5th June, 1992 that the appellant be dismissed from service.

a. Despite the appellant having been set free (not acquitted, but discharged) by a criminal court, what could have been the reason for the Air Force to initiate disciplinary action against the appellant? In this regard, we found paragraph 8 of the proceeding note dated 5th June, 1992 relevant, reading as follows:

> 8. In the meanwhile, civil police had filed a case against the Air Force personnel involved in the sordid episode under Section 146, 365 and 304 read with Section 149 of IPC in the Sessions Court at Jaisalmer. During the progress of the case two of the accused persons had retired from service. Since they were also co-accused in the case, it was not possible to take over the case and try them by a Court Marital. *Moreover, the facts and circumstances of the case dictated that it was advisable to wait for the verdict of the Court before deciding future course of action in the case*. The sessions judge has pronounced his judgment 'discharging' the accused persons on the grounds, firstly, that the prosecution has not been able to establish prima facie case against the accused persons on the charges preferred against them and secondly on grounds of some technical lapses on part of the prosecution. The net result of the accused person having been 'discharged' is that in the eye of law the accused persons have neither been acquitted nor convicted. Thus, Air Force Authorities are free to take action against those of the accused persons who are still serving in the AF.
>
> (emphasis ours)

b. Further, paragraph 9 discusses as to why criminal proceedings could not be initiated against the appellant and the convincing evidence finding him guilty. It reads:

> Although, the alleged misconduct constituted an offence under the air force Law, it would not be possible to bring Sqn Ldr Sood to book by resorting to disciplinary action as the offence has become time-barred. At the same time keeping in view the seriousness of the misconduct bordering perversity on the part of Sqn Ldr Sood, his

> seniority and the fact that he gave an extremely poor account of himself as an officer before his subordinates, with far reaching ramifications, as also for the maintenance of desirable relationship between the two services, it is felt that for what he has done, further retention of Sqn Ldr R Sood in the IAF is not desirable. Regardless of the fact that civil court has 'discharged' Sqn Ldr Sood on the ground that the prosecution had not obtained prior permission of the Central Government before instituting the criminal case against the accused. However, there is **sufficient morally convincing evidence** against him showing his culpability in the sordid episode resulting eventually in the loss of a human life.
>
> (emphasis ours)

c. The correctness of the reasons given by the authority (as aforesaid), shall be examined in the next segment of this judgment.

13. In subsequent proceeding notes, we found that the appellant's Commanding Officer, the Wg. Cmdr., was also found guilty by the Court of Inquiry and subsequently awarded 'severe displeasure for 3 years'. However, as recorded, this approach of grant of such petty punishment to the Wg. Cmdr. was questioned by the officers themselves in various proceeding notes.

a. In proceeding note dated 19th June, 1992, signed by the Under Secretary, we found:

> 2. Perusal of COI proceedings of AF & GREF reveal that the CO, Wg Cdr … has been held responsible along with Sqn Ldr Sood for the unfortunate demise of Shri … . It is not understood as to why Wg Cdr … has been let off by 'SD' for 3 years and Sqn Ldr Sood has been rec. for dismissal from service.
> 3. Wg. Cdr … instead of concealing the episode should have reported the matter to higher authorities.
> 4. File relating to Wg Cdr … may kindly be linked.
>
> (emphasis ours)

b. The then Squadron Leader responded to this query of the Under Secretary (recorded in proceeding note dated 30th June, 1992) by stating that the death of the driver was directly attributable to the appellant. The note reads:

4. It would thus be seen from the above that the misconduct on the part of Wg Cdr … was of supervisory in nature which did not directly contribute to the death of … . Whereas the misconduct of Sqn Ldr Sood in leaving … who was totally drunk, almost naked and mentally and physically a wreck at a far away deserted place in the middle of night, was not only bordering on perversity but devoid of any humane feelings. Death of … was directly attributable to his this callous action. Because skeleton of … was found exactly at the same place where he was left on the night of 29-30 March 87.

5. In view of the above, a more severe punishment is called for Sqn Ldr R Sood that what has been awarded to Wg Cdr … .

(emphasis ours)

c. The Under Secretary again questioned this approach in proceedings dated 28th August, 1992 and asked for an opinion of the Legal Advisor (Defence):

15. It is not understood as to why Wg Cdr … 's case has not been forwarded to the Ministry for dismissal/removal for his misconduct after the stay was vacated by the High Court of Punjab and Haryana, Chandigarh. It may be seen from the para-wise comments given by Air HQ vide Encl 2-A in the link file, that Wg Cdr … gave instructions to Sqn Ldr Sood to take … to BSF Post at Miyajilar Road on 29th March, 1987. Next morning he was informed by Sqn Ldr Sood that … instead of being dropped at BSF Post, had been left at a place far beyond BSF Post. Wg Cdr … reacted by telling Sqn Lar Sood that if somebody enquired about the whereabouts of …, he should be informed that they had let him off. Thus it is quite clear that Wg Cdr … instructed his sub-ordinate to supress the truth regarding the whereabouts of … .

16. Wg Cdr … is also worth blaming for not reporting this unusual incident to higher authorities at 41 Wing AF.

17. From the above, it is quite evident that Wg Cdr … being the commanding officer of 147 Sqn AF is equally responsible for the unfortunate death of … of 95 RCC (GREF). It is suggested that the file may be sent to L.A. (Defence) for seeking his considered opinion regarding dismissal/removal in the case of both Sqn Ldr R.Sood, Adm and Wg Car …, who has been awarded severe displeasure for three years by CAS. This will ensure that no discriminatory approach is followed in the case of officers who are found to have done more or less similar misconduct.

(emphasis ours)

d. The legal advisor replied (note dated 9th September, 1992) by stating that action taken against the Wg. Cmdr. cannot be reopened due to lack of competency. The note reads:

> The case of Wg Cdr … appears to be distinguishable for the misconduct in question was never committed by Sq. Ldr. Sood with the connivance and concurrence of Wg. Cdr. … . Furthermore, the Dept is said to have awarded severe displeasure to Wg Cdr … . That being so, the administration competency seems to have been exhausted and the matter is closed and the same cannot be revived for reviewing/revising by the concerned authority in the absence of an enabling provision. Though as regards Sq. Ldr. Sood, the Dept's proposal seems to be in order. However, in view of the aforesaid the matter may be personally discussed by the concerned Dept officer with the undersigned on a prior appointment.
>
> (emphasis ours)

e. The case, at one point, was discussed by the Joint Secretary (Air) with the Defence Secretary, whose query and answer thereof are traceable in proceeding note dated 18th February, 1993, reading as under:

> 4. The next query raised by Defence Secretary is about the culpability of the Commanding Officer especially when he had ordered his junior to leave the deceased in an out of the way place. Defence Secretary also desired to know what exactly was the CO's recorded order. ……
>
> 6. Wg Cdr … , the C.O., retired on 30.11.92 on superannuation and no further action can be taken against him, even if it is accepted that he was equally culpable. In any case, the fact that he was punished administratively by the Air Force authorities effectively foreclosed the option of further action against him. This certainly was not the correct course of action considering the fact that through this a C.O. was being allowed to escape the responsibility for the instruction given by him to his subordinates, and the action taken by them in pursuance of such instructions.
>
> 7. Sq. Ldr Sood has now been proposed for dismissal from service under Section 19 of the Air Force Act. The only question to be considered now is whether Sqn Ldr Sood should get some benefit, like compulsory retirement rather than dismissal, from the leniency shown by the Air Force authorities in the case of Wg Cdr … . If approved, CAS could be asked to personally review the case and give his well considered views on the punishment to be given to Sqn Ldr Sood.
>
> (emphasis ours)

f. The case was again sent back to the Chief of Air Staff seeking his views regarding the quantum of punishment. *Vide* proceeding note dated 10th March, 1993, the then Air Marshal replied by stating that

"Central Government enjoys full powers to resort to any course of action without the need to make any subsequent reference to the CAS unless a new material fact has been received subsequent to the receipt of the case by the Central Govt."

14. This note was followed by the appellant's dismissal from service *vide* order dated 22nd September, 1993, reading as follows:

> 3. NOW THEREFORE, After considering the misconduct as stated in the aforesaid Show Cause Notice against the said Sqn Ldr R Sood, his defence and the recommendation of the CAS, the Central Gov in exercise of the powers conferred by Section 19, AF Act 1950 and Rule 16. Air Force Rules, 1969 hereby order the dismissal from the service of Sqn Ldr R Sood (12785) Adm.

ISSUES

15. Following issues arise for decision in the present case:

a. Whether the initiation of administrative action against the appellant was proper and justified after he had been discharged by a criminal court in respect of the same alleged offence arising out of the same set of facts?

b. Independent of the above, whether the reasons recorded in the proceeding note dated 5th June, 1992 are sustainable in law, or are vitiated on account of perversity?

c. To what relief, if any, is the appellant entitled should the answers to the above turn to be favourable to him?

INITIATION OF ADMINISTRATIVE ACTION – WHETHER PROPER AND JUSTIFIED?

16. Bare reading of the excerpts from the original file unmistakably reflects deep differences in the overall approach of the officers to the issue. The

ongoing deliberations left the officers divided, with one side pushing for aggressive action and the other advocating caution.

17. In the proceeding note dated 5th June, 1992, the authority, after taking note of the fact that the appellant had been discharged by a criminal court, noted that administrative action can still be initiated against the appellant since the effect of a discharge is that the appellant was neither "acquitted nor convicted" (see: paragraph 12). Based on this understanding, the authority proceeded to initiate disciplinary action against the appellant.

18. This understanding, at first glance, is fallacious. Discharge is a pre-trial termination of proceedings for lack of evidence. As and when ordered, discharge signifies and reinforces the position that there is no material against the accused for him to stand trial. Whereas, acquittal is a post-trial outcome declaring the accused either innocent due to lack of credible material or on account of grant of the benefit of doubt. Insufficient evidence to even frame charges for standing trial would lead to a discharge while evidence presented not proving guilt leads to acquittal. In that sense, an accused discharged of a criminal offence stands on a better footing than an accused who is finally acquitted after a full-fledged trial. It is not the law that an accused, unless he is acquitted, must still carry the label on his forehead that he is accused of a criminal offence. Once an accused has been discharged, he is entitled to avail of all benefits that are otherwise available to an acquitted person and cannot be placed in a less advantageous position. We are left

surprised at the understanding of the officer who prepared the proceeding note.

19. In support of our view of discharge standing on a 'better footing' than acquittal, one may profitably refer to the decision of this Court in ***Yuvraj Laxmilal Kanther v. State of Maharashtra***[19]. The relevant paragraph therefrom is reproduced below:

> **16.** Section 227 CrPC deals with discharge. What Section 227 CrPC contemplates is that if upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, the judge considers that there is no sufficient grounds for proceeding against the accused, he shall discharge the accused and record his reasons for doing so. At the stage of consideration of discharge, the court is not required to undertake a threadbare analysis of the materials gathered by the 17 prosecution. All that is required to be seen at this stage is that there are sufficient grounds to proceed against the accused. In other words, the materials should be sufficient to enable the court to initiate a criminal trial against the accused. It may be so that at the end of the trial, the accused may still be acquitted. At the stage of discharge, court is only required to consider as to whether there are sufficient materials which can justify launch of a criminal trial against the accused. By its very nature, a discharge is at a higher pedestal than an acquittal. Acquittal is at the end of the trial process, may be for a technicality or on benefit of doubt or the prosecution could not prove the charge against the accused; but when an accused is discharged, it means that there are no materials to justify launch of a criminal trial against the accused. Once he is discharged, he is no longer an accused.
>
> (emphasis ours)

20. At this juncture, we consider it apposite to refer to the decision of the three-Judge Bench of this Court in ***Harjeet Singh Sandhu*** (supra) again.

21. The said decision supports the case of the armed forces, inasmuch as it recognizes their authority to take disciplinary action even in circumstances where the option of convening a court martial has become

[19] 2025 SCC OnLine SC 520

time-barred. In this regard, paragraphs 43 and 44 of the said decision are relevant:

> **43.** We are also of the opinion that *Major Radha Krishan case* [(1996) 3 SCC 507 : 1996 SCC (L&S) 761] lays down propositions too broad to be acceptable to the extent it holds that once the period of limitation for trial by court martial is over, the authorities cannot take action under Rule 14(2). We also do not agree with the proposition that for the purpose of Rule 14(2), impracticability is a concept different from impossibility (or impermissibility, for that matter). The view of the Court in that case should be treated as confined to the facts and circumstances of that case alone. We agree with the submission of the learned Additional Solicitor-General that the case of *Dharam Pal Kukrety* [(1985) 2 SCC 412 : 1985 SCC (Cri) 222] being a three-Judge Bench decision of this Court, should have been placed before the two-Judge Bench which heard and decided *Major Radha Krishan case* [(1996) 3 SCC 507 : 1996 SCC (L&S) 761] .
>
> **44.** Reverting back to the two cases under appeal before us, we are of the opinion that the High Court was not right in allowing the two writ petitions filed by Harjeet Singh Sandhu and Harminder Kumar, respectively, by placing reliance on the decision of this Court in *Major Radha Krishan case* [(1996) 3 SCC 507 : 1996 SCC (L&S) 761] *and holding that the exercise of power under Section 19 read with Rule 14 by the Chief of the Army Staff was vitiated solely on account of the bar of limitation created by Section 122 of the Act*. …….
>
> (emphasis ours)

22. The aforesaid paragraphs were duly considered and relied upon by the Division Bench while passing the impugned order, on the basis of which it was held that the disciplinary action against the appellant were not time-barred. We quite agree with this part of the impugned order.

23. However, significantly, another crucial aspect of the very same decision – one that squarely operates against the armed forces (emphasis ours) – appears to have escaped the attention of the Division Bench.

24. In ***Harjeet Singh Sandhu*** (supra), while examining Sections 19 and 125 of the Army Act and Rule 14 of the Army Rules, which are *pari materia* Sections 19 and 124 of the AF Act and Rule 6 of the 1969 Rules, respectively, this Court observed that where the commanding officer,

exercising discretion vested in him to choose between a trial by a criminal court and a court-martial, opts for trial before a criminal court, an acquittal of the accused by such court brings finality to the matter. In such circumstances, the initiation or continuation of disciplinary action would not be sustainable. The relevant passage from the said decision is reproduced below for facility of appreciation:

> **26.** It is relevant to note that when an offence is triable by a criminal court and also by a Court Martial, each having jurisdiction in respect of that offence, a discretion is conferred by Section 125 on the officer commanding to decide before which court the proceedings shall be instituted. Parliament has obviously made no such provision in the Act for the exercise of a choice between proceeding under Section 19 or convening of a Court Martial. The element of such option, coupled with the factors which would be determinative of the exercise of option, is provided by Rule 14(2). When an officer, subject to the Army Act, is alleged to have committed a misconduct, in view of Section 125 and Section 19 read with Rule 14, the following situation emerges. If the alleged misconduct amounts to an offence including a civil offence, Section 125 vests discretion in the officer commanding the Army, Army Corps Division or independent Brigade in which the accused person is serving or such other officer as may be prescribed, to decide before which court the proceedings shall be instituted i.e. before a Court Martial or a criminal court. If the decision is to have the delinquent officer tried by a criminal court and if he is acquitted by the criminal court, then that is the end of the matter. The pronouncement of judicial verdict would thereafter exclude any independent disciplinary action being taken against the delinquent officer on the same facts which constituted the misconduct amounting to an offence for which he was charged before the criminal court. …"
>
> (emphasis ours)

25. Though the law laid down in ***Harjeet Singh Sandhu*** (supra) is on consideration of the provisions of the Army Act and the Army Rules, there is no reason why it would not squarely apply to a case covered by *pari materia* provisions of the AF Act and the AF Rules.

26. True though, as per ***Harjeet Singh Sandhu*** (supra), initiation of administrative proceedings is barred when an accused is 'acquitted'; however, we find no reason for the ratio of the decision to not apply in

a case where the accused is 'discharged' (which stands on a better footing than acquittal, as discussed supra). Once the appellant has been discharged by the criminal court, that should mark the end of the matter.

27. Thus, the Air Force upon electing to have the alleged offence tried by the criminal court[20], it is clear (in view of the discussion above) that they then cannot fall back on either a court martial or any disciplinary action. Once the road is chosen, the traveller must walk it to the end.

28. Initiation of administrative proceedings for disciplinary action against the appellant, we unhesitatingly hold, was bad in law and *non-est*.

29. This reason alone is sufficient to allow the present appeal. However, we do not propose to rest our decision on this sole reason; we take the discussion forward as to why, independent of the aforesaid discussion, the disciplinary action is also otherwise considered by us to be flawed. It is solely for the reason that the decision in ***Harjeet Singh Sandhu*** (supra) is subsequent to the appellant's dismissal from service and we wish to test whether, even in view of the law prevailing prior thereto, disciplinary action which had been taken was justified on facts and in the circumstances.

REASONS GIVEN IN PROCEEDING NOTE DATED 5TH JUNE, 1992

30. The reasoning given in the proceeding note dated 5th June, 1992 has been noted above. From the same, we find absolutely no discussion on the merits of the case.

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[20] See italicized part of paragraph 8 of the proceeding note dated 5th June 1992 (paragraph 12 of this judgment)

31. What is found is that there was sufficient *"morally convincing evidence"* against the appellant. Such an expression, vague and indeterminate in nature, falls far short of the standard required for recording findings in disciplinary proceedings. It neither discloses the material relied upon nor indicates the process of reasoning by which the authority arrived at its conclusion.

32. Further, as noted above at paragraph 2(l), the appellant, in his reply to the show cause notice, had raised various contentions which required due consideration by the competent authority. However, it is a matter of surprise that there is a complete absence of any discussion on such contentions, particularly concerning the lack of evidence and the illegality of the proceedings before the Court of Inquiry. Although some discussion was undertaken regarding the permissibility of initiating disciplinary proceedings after the appellant's discharge by a criminal court, even that aspect, in our view, remains doubtful (as discussed supra). While adverting to the appellant's reply, the authority merely noted their dissatisfaction in respect thereof, at paragraph 15 of the proceeding note dated 5th June, 1992:

> 15. At the outset, it must be stated that the reply to the show cause notice submitted by the officer was considered by us as well as the Deptt. of JAG (Air) and it was found to be not satisfactory. In our view, he has seriously misconducted himself, as a result of which a human life was lost.

33. While courts ordinarily refrain from examining the sufficiency or adequacy of evidence in disciplinary matters, such restraint operates only where the finding of guilt is preceded by a duly conducted inquiry. In cases such as the present, where no regular inquiry was conducted

and the delinquent was deprived of the opportunity to test the evidence through cross-examination, the scope of judicial review necessarily becomes a bit more intrusive. In such circumstances, the show cause notice, the reply thereto and the final order assume critical importance as the primary safeguards of natural justice. Consequently, where the delinquent furnishes a detailed explanation which is not *ex facie* frivolous or untenable, the competent/disciplinary authority is under a legal obligation to consider the same and pass a reasoned order demonstrating due application of mind as to why the defence raised was perceived to be unacceptable. A cryptic or mechanical rejection, particularly one which does not even advert to the specific contentions raised, falls foul of the principles of natural justice and renders the decision arbitrary and unsustainable in law.

34. In the instant case, where the appellant was not privy to the proceedings preceding his dismissal, any irregularity in the proceedings, if at all, can only be raised at the time of judicial proceedings. Keeping this in view, we have examined and reproduced the relevant notes from the original file in detail.

ARBITRARINESS IN PUNISHMENT

35. Even assuming, for the sake of argument, that the decision to take disciplinary action was otherwise proper, we find that the punishment imposed upon the appellant is manifestly unreasonable.

36. What the Government missed is that the appellant was caught between the devil and the deep sea. Had he disobeyed the instruction of the Wg.

Cmdr. by not removing the driver from the camp, he would risk being proceeded against for insubordination and indiscipline. On the other hand, the appellant has been punished for relocating the driver to desolate surroundings; this, he did while acting on the instructions of his superior. Though there is no definite material, we would assume that the corpse found was of the driver who, having been left to fend for himself, did not survive the harsh climate of the Thar; but , at the same time, there is also no definite material to suggest that such relocation was made by the appellant with any motive of harming him. Indeed, it is revealed from the records that to keep the driver away from the next day's anticipated visit of the AOC-i-C (so that the driver does not create any ruckus) was the real object intended to be achieved. It is also evident that the Wg. Cmdr. had given specific instructions, which later were even viewed as encouraging his subordinates to suppress the truth. Possibly, the appellant had no other option but to obey the orders of his superior. Non-consideration of these circumstances in course of the decision-making process being writ large together with the absence of reasoning in the order punishing the appellant, renders the same arbitrary and unsustainable in law sufficient to vitiate the entire proceedings against the appellant.

37. Before parting, while recounting that the appellant's superior officer was visited with the penalty of 'severe displeasure for three years', whereas the appellant has been ordered to be dismissed from service, we find it imperative to bear in mind that queries were repeatedly raised as to the rationale for imposing such a comparatively lenient punishment upon

the senior officer, while punishing the appellant with dismissal. The only explanation forthcoming was that the superior officer had already superannuated and, therefore, no further action could be taken against him. This explanation does little to assuage our concern. Maintaining and carrying forward the high traditions and the standard of discipline in the armed forces cannot be over-emphasized. The punishment of 'displeasure' was imposed on the Wg. Cmdr. before he had superannuated. It is not for us to question the Government, in course of these proceedings, why the Wg. Cmdr. was let off leniently; however, the question that certainly looms large is why was the appellant singled out for a harsher punishment despite his discharge from the criminal case? The answer is not far to seek. The understanding of the law relating to discharge, as noted above, was fallacious. We unhesitatingly hold that when a comparatively less penalty has been imposed upon an officer with a more significant role, such disparity ought to have weighed with the authorities while determining the punishment to be inflicted upon the appellant. While we do not for a moment suggest that undue leniency shown to one should also be shown to the other, and are conscious that one mistake cannot justify another, this is a case where the ratio of the decision of this Court in ***Sengara Singh v. State of Punjab***[21] would seem to apply. In the absence of distinguishing features, the appellant ought to have been treated on a par with the Wg. Cmdr. The principle of equality would be violated when a subordinate officer is meted out the harshest punishment for complying with a

[21] (1983) 4 SCC 225

wrongful order of his superior, while the latter who issued it gets a lenient treatment leading to a reprieve of sorts. It could be so that to an extent, the appellant had exceeded in what he was required to do by the Wg. Cmdr., yet, sight cannot be lost that the order of the Wg. Cmdr., which was rooted in wrongdoing, was not demonstrated to be not binding on the appellant.

RELIEF

38. Premised on the above, justice demands that the ignominy with which the appellant had to survive the past more than three decades is obliterated, the wrongful termination of his service be revoked and his honour restored.

39. The order of dismissal from service dated 22nd September, 1993 stands set aside. Appellant having since crossed the age of superannuation, he cannot be reinstated in service. In law, however, he is entitled to claim all consequential service benefits which would have accrued to him, had he not been fastened with such illegal order of dismissal. Appellant could not work beyond 22nd September, 1993 admittedly because of the illegal order of termination and not owing to any fault on his part. Question therefore arises, whether the principle of 'no work, no pay' would be attracted? In view of the recent decisions of this Court in ***Ramesh Chand v. Management of Delhi Transport Corporation***[22] and ***Maharashtra State Road Transport Corporation v. Mahadeo***

[22] (2023) 19 SCC 97

Krishna Naik[23], the requirement for being entitled to 100% back wages is a statement on affidavit that the employee concerned has not been reemployed since illegal termination of service. Though a negative burden, such burden has to be discharged whereupon the onus would shift to the employer to deny/dispute such statement. Here, there is no material on record to show that the appellant did not take up any employment/was not employed after 22nd September, 1993. We, therefore, propose reduction of the claim to the extent of 50%.

40. Having regard to all relevant factors, we direct that the appellant shall be entitled to the following benefits: (i) arrears of salary and allowances to the extent of 50% from 23rd September, 1993 till the scheduled date of his retirement from service; (ii) notional promotion, for which the appellant's case may be placed before the Review Departmental Promotion Committee as per the governing rules for consideration; and (iii) pensionary benefits as are admissible to him in law. The financial benefits due and payable in terms of this order, including increased pay subject to notional promotion being accorded, be calculated and paid to the appellant with interest @ 9% per annum from the date of presentation of the writ petition before the High Court (an unspecified date of 1995, but the exact date must be gathered by the respondents from the records) till date of payment.

41. Irrespective of service benefits, restoration of honour remains the foremost concern of a defence personnel. We restore it with the direction that on a date to be fixed by the Chief of Air Staff, the appellant shall be

[23] (2025) 4 SCC 321

signed off in the normal manner he would have otherwise been entitled to, but for the order of dismissal.

42. Directions as aforesaid be complied with, within a period of 3 months from date of service of a copy of this judgment and order on the respondents.

CONCLUSION

43. The impugned order appears to have been passed in "LPA No. 545/1999 and CM No. 3803/1999". As per the record, Civil Appeal Nos. 6929/2009 and 6930/2009 arise from the final order passed in LPA No. 545/1999 and CM No. 3803/1999, respectively. However, there is no discussion in the impugned order or in the case file regarding the disposal of CM No. 3803/1999. It could be so that the said application was not formally disposed of by the High Court. Be that as it may, we set aside the impugned order of the High Court; as such, the order, if any, passed in CM No. 3803/1999 would also stand set aside. We order accordingly.

44. The appeals, thus, stand allowed.

45. Parties shall bear their own costs.

.....J.
(DIPANKAR DATTA)

.....J.
(K.V. VISWANATHAN)

New Delhi;
April 15, 2026.