

**FORM NO – 21**  
**(See Rule 102 (1))**

**ARMED FORCES TRIBUNAL, KOLKATA BENCH**  
**APPLICATION NO : O.A. 85 OF 2012**

**TUESDAY, THIS 11TH DAY OF DECEMBER, 2012**

**CORAM :**     **Hon’ble Mr. Justice Raghunath Ray, Member (Judicial)**  
                  **Hon’ble Lt. Gen. K.P.D. Samanta, Member (Administrative)**

IC-46298N Lieutenant Colonel Mukul Dev,  
Son of late S Dayal, presently posted at HQs-  
Bengal Area, 246, Acharya Jagadish  
Chandra Bose Road, Kolkata 700027

-VS -

1.     Union of India, service through Secretary  
       Government of India ,Ministry Of Defence  
       Sena Bhawan, New Delhi-110105
2.     The Chief of Army Staff, Army Headquarters,  
       Integrated Headquarters of Ministry of  
       Defence (Army), Defence Headquarters Post  
       Office, New Delhi 110011.
3.     General Officer Commanding in Chief, Central  
       Command, Central Command, PIN 908304,  
       C/o 56 APO
4.     Military Secretary, Integrated Headquarters of  
       Ministry of Defence (Army), Defence Head-  
       Quarters, Post Office, New Delhi- 110011.
5.     Maj Gen P S Rathore, Integrated HQ, MOD (Army) DHQ  
       PO, New Delhi-110011
6.     Lt. Gen (Retd.) Gautam Banerjee, AVSM, YSM,  
       Ex COS, HQs Central Command, R/o P-101, Sispal  
       Vihar, AWHO Society, Sector-49, Gurgaon, Haryana

..... Respondents

For the applicant : Mr. Rajib Mangalik, Advocate  
Ms. Maitrayee Trivedi Dasgupta, Advocate

For respondent : Mr. Farook M. Razack, Advocate  
Nos. 1 – 4 Mr. Sudipta Panda, Advocate

For respondent Nos. 5 & 6 :Col. R. Balasubramanian, Advocate

### **JUDGEMENT & O R D E R**

#### **Per Lt. Gen. K.P.D,Samanta, Member(A) :**

In this original application, the applicant, who is currently functioning as Lt. Colonel in the JAG Branch, Bengal Area, Kolkata in the Indian Army, has challenged the legality and validity of his two ACRs for the periods 01/12/08 to 31/05/09 and 01/06/09 to 03/05/10, as recorded by respondent No. 5, as initiating officer and reviewed by respondent No. 6. He has also called in question his non-empanelment to the next higher rank of Colonel based on these two ACRs. Incidentally it may be mentioned that the applicant had earlier filed an original application before the Principal Bench of AFT being OA 85 of 2010 on the same subject matter but subsequently, he withdrew the same with liberty to file it before appropriate Bench. Accordingly, the present OA has been filed before this Bench. During pendency of the OA, certain amendments were also sought for and allowed and the amended application is before us for consideration.

2. The facts of the case, as submitted by the applicant are stated very briefly and brought out in the subsequent Paragraphs.

2.1 The applicant was initially commissioned in the Indian Army as 2<sup>nd</sup> Lt. on 20.8.1988 and was allotted to the Corps of Artillery. While in service, he pursued higher studies and obtained Law degree and applied for Inter Arms Service Transfer (IAST) to

JAG (Judge Advocate General) Branch. The applicant was posted as Deputy Assistant Judge Advocate General (DAJAG) in the rank of Major in HQ CIF (U) in July 2004. He was promoted to the rank of Lt. Col. w.e.f. 16.12.2004 and started performing duties of Assistant Judge Advocate General (AJAG) in Headquarters Counter Insurgency Force 'U' (HQ CIF (U)) and had earned his ACR in the rank of Lt Col in the capacity of AJAG in the said CI Forces, which, according to him, was considered as criteria report for promotion to next rank. He passed the departmental examination in October 2005, but his induction to JAG Branch was possible only after the applicant obtained an order of the Hon'ble Delhi High Court dt. 17.8.07 and finally posted as AJAG at HQ, Central Command, Lucknow vide order dt. 18/1/08 (Annexure-A5). It was a criteria appointment necessary before promotion to the rank of Colonel.

2.2. However, the applicant alleges that the respondent No. 5, Brigadier P.S.Rathore, who at that relevant time, was functioning as Dy. JAG in the same HQ and was not in favour of his (applicant's) posting. HQ Central Command, allegedly with efforts of Respondent No 5, was trying to prevent the applicant from joining there in all possible manners and even sent letter to higher authority to divert his posting to some other place. However, at the intervention of the Army HQ, MS Branch, the applicant could finally join as AJAG in the HQ, Central Command on 18.2.2008. The case of the applicant is that he belongs to 1989 batch and was to be considered by No. 3 Selection Board for next promotional rank of Colonel to be held on 25.8.2008. Since the applicant did not complete 90 days of mandatory period during the tenure from 18.2.08 to 15.4.08 in his new posting at HQ, Central Command, a Non Initiation Report (NIR) was initiated. The

case of the applicant was deferred by the selection board for not completing 20 months AE (Adequately Exercised) mandatory period. The applicant again moved the Hon'ble Delhi High Court by filing WP© 61113/2008, which was decided on 22.8.2008 on the assurance from the respondents' side that the petitioner's interest would be protected when his case would be considered by the Board after completion of 20 months' mandatory period of residency in criteria appointment.

2.3 The applicant avers that after being relieved from the appointment of AJAG, he was in the 'Q' branch of the same HQ rendering legal assistance to the Colonel 'Q' (lands-2) of the 'Q' branch, which is a separate branch under a different Brigadier, for facilitating disposal of cantonment appeal cases. According to the applicant, since respondent No. 5, who was his immediate superior while he was in the JAG branch, was not favourably disposed towards him as on several occasions the applicant protested against illegal legal advice given by respondent No. 5 and for other reasons, the said respondent No. 5, in collusion with respondent No. 6 (reviewing authority) was trying to side track and post him (applicant) out of JAG Branch knowing fully well that the applicant was in a criteria appointment. As a result of such consistent efforts on the part of respondent No. 5, an order was issued on 20.3.2009 (annexure-A5), when the applicant was not present, being away on a court martial duty, whereby the applicant was transferred out to 'Q' Branch on the ground that there was sudden increase in cantonment board appeals and for speedy disposal of such appeals, a dedicated full time JAG branch officer was needed. Thus, in terms of this transfer order dt. 20.3.2009, the applicant was relieved from JAG Branch on 23.3.09 and joined in the new

assignment in the 'Q' Branch of the same Command HQ on 24.3.09. The issues regarding transfer to 'Q' branch and being relieved from the post of AJAG are all documented and had been adequately discussed and adjudicated in OA 110/2011; Order dated 15-06-2012 (Annexure A-21). As per army regulations, a Part II order was mandatorily required to be published in the matter of his transfer from JAG Branch to 'Q' Branch. It was thus initiated and published on 4.4.2009 showing that the applicant having relinquished the post of AJAG on 23.3.09 from JAG Branch assumed the appointment of "SO" in Q (Lands-2) HQ Central Command on 24.3.09. The applicant submitted a non-statutory complaint against his transfer out from a criteria post. Eventually, the higher authorities did not view the action of the applicant in initiating publication of Part II order on 4.4.2009 wherein he, allegedly, designated himself as "SO", a non-existing post. Subsequently, a court of inquiry (COI) was ordered in which the applicant was found guilty as also respondent No. 5 and others. Based on such report of COI, a show cause notice was issued to the applicant on 21.8.2009 and finally punishment of "severe displeasure (recordable)" was awarded to him, though no action was taken against respondent No. 5. The applicant preferred a statutory complaint against such punishment on 29.10.2009. When the complaint was not disposed of for a fairly long time despite several reminders, the applicant approached this Tribunal (AFT, Kolkata Bench) by filing an OA being OA 110 of 2011, which was disposed of by allowing the prayers, by a judicial Order dated 15.6.2012. In that OA, the applicant sought for quashing of the impugned order dt. 29.9.09 and also for a direction to initiate action against respondent No. 5, who, according to the applicant, was also found guilty in the COI and was held

responsible for his harassment and posting him out of a criteria appointment and thus ruining his career prospects. The Tribunal allowed the OA and set aside the punishment but left the issue of action to be taken as per COI report against respondent No. 5 at the discretion of the competent authority.

2.4 In view of his posting out to 'Q' Land, the applicant requested for initiation of NIR for the period 1.12.08 to 23.3.09 since he did not complete 90 days period under respondent No. 5. This was, however, returned on the ground that by his posting to 'Q' Land Branch, there was no change of channel of reporting and the applicant still remained in JAG Branch under respondent Nos. 5 and 6. The applicant filed non-statutory complaint against his posting out to Q land from an AE criteria appointment as AJAG and ultimately filed an application before the Principal Bench being OA 85 of 2010 challenging the disposal of non-stat complaint and also praying for direction upon respondent Nos. 5 and 6 not to deal with his ACRs for the relevant period when he was posted in the Q Land Bench, which was not part of JAG Branch nor a criteria appointment for AE. During the pendency of the said OA that was filed on 5-2-2010 before Principal Bench, the respondents 5 and 6 initiated the first impugned ACR (01-12-2008 to 31-05-2009) on 22 Feb 2010 and second impugned ACR (01-06-2009 to 03-05-2010) of the applicant on 03-08-2010. These very IO and RO were the respondents in the ibid OA. They could not have been objective while assessing these ACRs and in fact were prejudiced and biased, as per the applicant. As already stated, this OA was subsequently withdrawn and filed before this Tribunal.

2.5 The contention of the applicant is that he did not serve under respondent No. 5 for the period from 23.3.09 (date of his transfer to Q Land) to 5.8.09 (the date when he returned back), making a total of 136 days (70+66 days for each ACR respectively), when, according to him, he was under the Col 'Q' (Land 2) in 'Q' branch. It is thus stated by the applicant that he did not physically serve under the IO for 90 days in case of the first impugned ACR. Therefore, that impugned ACR for the period 1<sup>st</sup> Dec 2008 to 31<sup>st</sup> May 2009 cannot be initiated by Respondent No 5 being in violation to policy as per Para 96 of Army Order No. 45/MS/2001. He further submitted that this ACR should be set aside being technically invalid. Similarly the second ACR (01-06-2009 to 31-05-2010) initiated by Respondent No 5 and reviewed by Respondent No 6 are defective and biased, because period from 01-06-2009 to 05-08-2009 (66 days) has not been discounted from physical service under the IO (Respondent No 5), who initiated this ACR; and, as brought out in this OA, IO and RO, ie, respondents 5 and 6 were prejudiced and biased against him. In order to emphasize on the sequence events and dates to highlight the point of bias, he has submitted that a C of I was convened 16 June 2009 where Army Rule 180 was invoked against the ratee, who was punished and against such punishment the ratee (applicant) had filed a Complaint with the MoD on 29-10-2009 that was pending. The IO (Respondent 5) was also blamed in the same COI. Moreover, they would be barred from initiating this ACR since his OA (OA 85/2010) was filed on 05-02-2010 in Principal Bench indicting the same very respondents, while both the impugned ACRs were initiated on 22-02-2010 and 03-08-2010 during the pendency of this OA.

2.6 In the meantime, the applicant was informed on 25.11.09 (annexure-A25) that since there was shortfall of 18 months in AE period, necessary step should be taken to make up the shortfall. The applicant came to know that the selection board on 6.1.10 (annexure-A2) considered his case but declared him as "Not Empanelled". On enquiry the applicant learnt that in terms of para 18 of policy letter No. 04479/MS policy dt. 18.8.05 (annexure-A1) the applicant was given 'Z' grading (i.e. not empanelled) for not completing 20 years of reckonable service. It is stated by the applicant that he had completed 20 years of service on 22.8.08; therefore, such finding was not proper. Relying on policy letter dt. 18.8.05, it is submitted that benefit of NIRs towards calculation of AE tenure is to be given and in that case the applicant completed mandatory 20 months criteria appointment w.e.f. 18.2.2008 prior to Nov. 2009. The grievance of the applicant is that in the first and final review, the selection board took into consideration the two impugned ACRs that were defective, technically invalid, biased and illegal. The entire period should have been treated as NIR and his earlier ACR as AJAG in CIF (U) should have been taken into consideration. He contends that similar benefit was given in respect of one Col. Devender Singh while the same was denied to him.

2.7 The applicant has also contended that technical reporting in ACR of 01 Jul 2011 to 30 June 2012 is to be done by Brig VC Chittravanshi, DJAG of HQ Eastern Command in the capacity of First Technical Officer (FTO). Similarly in the same technical reporting channel, respondent No 5, Brig (now Maj Gen) PS Rathore, JAG, Army HQ would be required to review as Higher Technical Officer (HTO)/ HOA (Head of Arm/ Service). The



applicant in his OA has submitted that Respondent No 5 has been impleaded as a party in this OA as well as the previous OAs (OA 85/2010, OA 110/2011/ and OA 85/2012) as a respondent wherein, besides other grievances, the applicant has sought for appropriate disciplinary action against the said respondent. He has further submitted that Brig Chittravanshi, as DJAG of Eastern Command, was regularly attending the Tribunal on dates only when OA 110/ 2011 and OA 85/ 2012 were listed, perhaps to monitor the interest of his superior (Respondent No 5) JAG. Moreover, the applicant tries to make case that since JAG branch is currently headed by respondent No 5 (Maj Gen PS Rathore) and he is not expected to be fair while endorsing on the applicant's ACRs as HTO or by his subordinates as FTO, he would have to be provided some protection till this OA is disposed/ implemented. For this he drew our attention to Para 36 and 37 of AO 45/2001; wherein, the spirits of the same Army Order, as submitted by him, must be adopted in his case while praying for debarring of this officer from initiating his technical report from 01 Jul 2011 to 30 June 2012 and thereafter till pendency of this OA.

2.8 In the above factual scenario, the applicant has prayed for the following reliefs:-

- i) To declare the action of the respondents as unjust, arbitrary and illegal and
- ii) To quash and set aside the impugned orders dated 6. 1. 2010 and all other similar orders in respect of the applicant passed by respondents regarding his Non Empanelment to the rank of Colonel as a result of all the No. 3 selection board held in respect of the applicant ; and
- iii) To direct the respondents to initiate disciplinary actions against all the officers responsible for side stepping the applicant and not allowing the applicant to complete his ACR under mandatory AE resulting in non-empanelment for promotion and adversely affecting the career of the applicant ; and

- iv) To quash and set aside the order dated 16 Dec. 2009 rejecting the non statutory complaint of the applicant; and
  - v) To quash and set aside the ACRs for the period 1 Dec. 2008 to 31 May 2009 and for the period 1 June 2009 to 3 May 2010 written by respondent no. 5 and reviewed by respondent no. 6 under para 96 of AO 45/2001 as technically invalid and biased ; and
  - vi) To direct the respondents that Brig VC Chitravanshi and respondent no. 5 shall not assess the applicant as FTO and HTO /HOS in the ACR for the period 1 Jul 2011 to 30 Jun 2012 and in the event the assessment has been done during the pendency of the present OA, quash and set aside the assessment of FTO and HTO /HOS in the ACR of the applicant for the period 1 Jul 2011 to 30 Jun 2012 ; and
  - vii) To quash and set aside the result of all the no. 3 selection boards held in respect of the applicant specifically considering the ACRs for the period 1 Dec 2008 to 30 May 2009 and for the period 1 June 2009 to 3 May 2010; and
  - viii) To direct the respondents to reconsider the petitioner for promotion to the post of Colonel through no. 3 selection Board as a fresh candidate considering the ACRs earned by the applicant as AJAG CIL (U) , as his AD ACRs and consider the applicant as Special review (Fresh) candidate by the no.3 Selection Board and restoring the seniority of the applicant of his own batch of 1989 ;
3. During the pendency of this application, on a prayer of the applicant, an interim order was passed on contest directing the respondents to keep one post of Colonel vacant for the applicant. The said interim order is still subsisting.
4. The respondents 1, 2 and 4 have filed a reply affidavit resisting the application. They have denied all the allegations of the applicant on all material points. It is the case of the said respondents that the applicant was originally commissioned in the Regiment of Artillery on 20.9.88. He applied for IAST (Inter Arms Service Transfer) to JAG's Deptt. in the year 2005 based on a law degree obtained in the year 2003 from a university at Meerut while he was posted at Faridkot and also in Assam and therefore, he could not

have fulfilled the required physical attendance in the LL B course, as prescribed by Bar Council and thus his prayer for ISAT was not processed. Being aggrieved, he filed a writ petition before Hon'ble Delhi High Court and on the direction of the Hon'ble High Court, the applicant was transferred to JAG Branch and posted as AJAG, HQ Central Command on 18.2.2008.

4.1 As per policy laid down in MS's Branch letter No. 04479/MS Policy dt. 19.11.2008, an officer for being considered for promotion to the rank of Col. is required to earn minimum two confidential reports in a criteria appointment for 20 months, and this period is tenanted in one continuous stretch, the officer must earn minimum one CR in each reporting year. If an officer, who has not been AE, is considered for promotion to the rank of Col. along with his batch mates, is given grading of "Deferred". After completion of AE, such an officer is considered by the selection board as "Fresh" case along with his original batch specification. After transfer to JAG Branch, AE period in respect of the applicant commenced from 18.2.2008 in the post of AJAG, which is a criteria appointment. On completion of AE, the applicant was considered for promotion to the rank of Col. by No. 3 Selection Board. However, the applicant was "not empanelled" on account of his overall profile and comparative batch merit. It is further stated that the applicant has disciplinary background which was also taken into consideration by the selection board. It is further stated that the applicant was considered by No. 3 Selection board in 2007 when he had not been transferred to JAG branch, but he was not empanelled. From the table given in page 6 it appears that

applicant was considered on 7 occasions, the last being in June 2012 but was not empanelled.

4.2 So far as the allegation of side stepping in Q Branch is concerned, it is submitted that the applicant was only co-opted there and not transferred and his channel of reporting was not changed. It is stated that there was no authorized appointment of SO Q (Lands 2) and the applicant designated himself on his own as SO though he remained a JAG Branch officer as AJAG during the period he was working in Q Land. This position was clearly apprised to the applicant on several occasions by higher authorities. In the meantime, a COI was convened for unbecoming conduct and on the basis of its report; the applicant was punished with "severe displeasure (recordable)" by the competent authority. It is further submitted that the applicant reverted back to JAG Branch on 5.8.09 and continued in that branch and therefore, there was no reason for not initiating his ACR during the relevant period. However, the applicant did not submit his CR form to the IO in accordance with laid down channel of reporting. Therefore, his CRs for the periods 1.12.08 to 31.5.09 and 1.6.09 to 3.5.10 have been correctly initiated under para 96 of AO 45/2001/MS. Both the CRs are technically valid and correct. It is further explained that calculation of physical service is governed by para 18 of Army Order 45/2001/MS read with Appendix D thereto. Since his temporary duty at Q land branch was an internal arrangement and not a transfer, therefore, the contention of the applicant that the period from 23.3.09 to 31.5.09 is to be excluded while calculating entitlement of IO and RO is not correct. It is submitted that the ACR was for the reporting year 01 Jun 2009 to 03 May 2010 and not for the period of 01.6.2009 to

5.8.2009, as sought to be projected by the applicant. A ratee is entitled to a CR if he has served for 90 days under the IO during the reporting year. Even if contention of the applicant is to be accepted, the applicant has served for more than 90 days between 6.8.2009 to 03.5.2010.

4.3 It is submitted that the applicant was considered for promotion to the rank of Col. by No. 3 selection board during Dec 2009 as fresh case of 1989 batch. At the time of consideration the applicant had only one CR for the period 6.08 to 11.08 in criteria appointment. Since applicant was not adequately exercised, before completion 20 years of reckonable commissioned service, he could not have been further deferred for consideration for completion of AE and was given definite grading of Z (not empanelled). However, considering the fact that the delay in IAST of the applicant was due to ongoing court case before Hon'ble Delhi High Court, a case was taken up and waiver was granted by the competent authority for completion of AE period beyond 20 year service. Accordingly, result of No. 3 Selection board held during Dec 2009 has been changed from "Not Empanelled" to "Deferred". After completion of AE, the applicant was considered again during December 2011 and was not empanelled on account of his overall profile and comparative batch merit.

4.4 It is also submitted that the applicant was posted as AJAG, CIF(U) before joining JAG. The CRs earned by the applicant, therefore, cannot be said to CR on criteria appointment against the policy. It is further submitted that the applicant raised the issue before the Hon'ble Delhi High court in WP (C) 6113/2008 which was not accepted. It is further submitted that Col. Devendra Singh was commissioned in JAG Deptt. and

had already completed AE period while posted in various appointments. Since the applicant was transferred to JAG Deptt in Feb 2008, he had to complete AE period in criteria appointment tenable by JAG Deptt officers. There is no comparison between the two cases and is misconception and deliberate attempt to mislead the court.

5. Respondent No. 3 has filed a separate reply in which it is submitted that the applicant joined on posting as AJAG on 18.2.08 and as per records, he earned an ACR covering the period 1<sup>st</sup> June to 30<sup>th</sup> November, 2008 initiated by respondent No. 6 and no complaint was raised by the applicant about the same. On 20.3.09, instructions were issued in writing that the applicant would work in Q branch till pending appeals were resolved. However, in the letter dt. 20.3.09, the word 'transfer' was inadvertently used which was clarified subsequently by letter dt 2.4.09 that there was no change in the appointment of the applicant and in his channel of ACR reporting. Additionally, the letter dt. 20.3.09 was cancelled by letter dt. 25.7.09 and it was clarified that the word 'transfer' has been misconstrued by the applicant as posting whereas it only meant working from another office for reasons explained. However, the applicant, on his own designated himself as SO1 Q (Land 2), whereas he was holding the appointment of AJAG only. He was also asked to desist from doing so in writing by letter dt. 30.6.09 but the applicant defied such lawful instructions. He also caused to publish Part II order and got his name included as SO1 Q in the strength return. When these facts came to light, the matter was taken very seriously and a court of inquiry was order in which the applicant, Col. S.K.Malhotra (Col. Q Branch), Lt Col. VM Singh, AAG and Maj Bahukhandi (Admn) were awarded punishment. The illegal part II order was cancelled by the order of the

GOC-in-C. Apart from the above, the applicant was also warned twice for number of lapses that he had committed which are on record.

It is further submitted that there was no NIR for the period from 1<sup>st</sup> December, 2008 to 23 March, 2009 as claimed by the applicant. However, a letter was received from Q branch requesting initiation of NIR for the said period but the issue of initiating NIR in the case of the applicant did not arise as he was all throughout working under the overall supervision and guidance of respondent No. 5 and 6. The applicant was deputed to Q Branch only to look after the legal cases and to expedite land appeal cases on behalf of GOC-in-C who was the appellate authority. The final order passed by GOC in C was vetted/seen by respondent No. 5 and 6 and therefore, all along the applicant's performance was being supervised by respondent 5 and 6. The applicant filed a non-statutory complaint which was processed as per procedure and was found to be untenable and the applicant was informed accordingly vide letter dt. 16.12.09. Since the non-stat complaint was rejected and his work was being supervised by respondent No. 5, the applicant had served under him till 31.5.09 i.e. for more than 90 days and therefore, there was no irregularity in initiating ACR of the applicant by respondent No. 5.

6. Respondent No. 5 has also filed a separate reply contesting the application. It is stated that when the applicant was posted to HQ Central Command as AJAG, he had not passed the mandatory JAG's departmental promotion examination which his junior had passed. Considering lack of qualification/experience vis-à-vis the nature of work and duties required to be discharged by the applicant being senior most next to the DJAG, it

was felt that he should be given adequate exposure to gain more experience before being posted in the appointment of the senior most AJAG in Central Command. With this sole aim and keeping the service interest, the respondent No. 4 was requested to divert the appointment of the applicant from Central Command which was, however, not accepted. There was no mala fide in such proposal, rather it was for the benefit of the applicant to be groomed properly. The allegation that the respondent No. 5 was trying to spoil the career of the applicant and to harass him are absolutely false and untrue. His posting to Q Land was done following earlier precedent when senior most AJAG of the command was detailed for handling such land cases.

7. It is admitted by the answering respondent No. 5 that a letter was received from the applicant requesting initiation of NIR for the period from 1<sup>st</sup> Dec 2008 to 23<sup>rd</sup> Mar 2009 but such initiation of NIR in case of the applicant did not arise as he was all along working under his supervision. It is also reiterated that there was no change of appointment and channel of reporting during the period from 18.2.08 to 3.5.10 but the applicant did not submit his CR form as per rules, therefore, ACR for the period 1.12.08 to 31.5.09 and 1.6.09 to 3.5.10 were initiated as per para 96 of AO 45/MS/2001. It is also pointed out that earlier for the period from 1<sup>st</sup> June 2009 to 30<sup>th</sup> November, 2008, ACR was recorded by the respondent No. 5 as IO but no grievance was raised by the applicant. So far as Brig. VC Chittravanshi is concerned, it is stated that he being in-charge of Legal Cell of Bengal Area, where the applicant is presently posted, has been doing his official duty to oppose cases filed against the Govt. and it is baseless that he is also biased against the applicant as he was involved in trying to get the interim order



passed against promotion of respondent No. 5 vacated. It is stated that interim order was passed by a court of law and it is the duty of concerned law officers to take appropriate legal step to safeguard the interest of the Govt. as per their charter of duty.

8. Respondent No. 6 (since retired) has also contested the applicant by filing separate reply. It is stated that during 2008-09 he was functioning as COS, HQ, Central Command, Lucknow and the applicant was posted as AJAG in Feb 2008 under his command. He has denied all allegations brought by the applicant against him and submitted that there was no question of any bias or mala fide against the applicant in any manner whatsoever.

9. The applicant has filed separate rejoinders against all the reply affidavits filed by different respondents. He has reiterated his contentions that were raised in the OA.

10. We have heard the learned advocates appearing for different respondents at length spreading over consecutive days and have also gone through various documents and records produced before us. Respondents have also produced the original 3 ACRs of the applicant including the two impugned ACRs, which we have gone through carefully. After conclusion of hearing, all parties were given opportunity to file written notes of arguments which they have done and we have gone through the same.

11. Before proceeding into the merit of the case, we may first deal with the preliminary objections raised by the side of the respondents.

12. Mr. Farook, Id. adv. for the respondents 1 to 4 has raised a preliminary objection regarding limitation. His contention is that the applicant inter alia has challenged order dt. 16.12.09 (annexure-A3) rejecting the non-statutory complaint of the applicant

against his alleged side stepping to Q branch and writing of ACR by respondent Nos. 5 and 6 etc. but the present application has been filed in mid 2012 i.e. more than two years thereafter and hence the OA is barred by limitation as per Sec. 22 of the AFT Act, 2007 by which it is provided that the Tribunal shall not admit an application if it is not made within six months period of the adverse order. There is also no separate application for condonation of delay. By referring to a recent decision of the Hon'ble Supreme Court in **D.C.S.Negi –vs- UOI & Ors** ( SLP No 3709/2011 arising out of an order of Delhi High Court ) decided on 7.3.11, he contends that this application is not maintainable being barred by limitation. Ld. adv. for the applicant has, however, resisted such argument by contending that the applicant had earlier moved the Principal Bench on the same issue by filing OA 85 of 2010 but subsequently withdrew the same on ground of territorial jurisdiction as provided in the AFT Act and the Principal Bench by order dt. 2.7.12 granted liberty to withdraw and to file it before appropriate Bench. Therefore, question of limitation would not arise in this case. Mr Farook, however, responded by arguing that this matter was not transferred nor did the Principal Bench make any mention in their order to overlook the period of pendency in their Bench while being admitted elsewhere. No prayer was made by the applicant before this Bench to condone this as well. Therefore the question of limitation may be decided by this AFT Bench before proceeding further with the main matter.

13. We have gone through this decision of the Apex Court wherein the provision of Sec. 21 of the A.T. Act, 1985, which is more or less *pari materia* with Sec.22 of the AFT Act 2007, was elaborately explained. The Apex Court has observed that -

“.....it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under relevant section 21(3)

In the present case, the Tribunal entertained and decided the application without even advertent to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised, by which, we have not felt impressed. In our view, the Tribunal cannot abdicate its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non-applicant is not at all relevant. “

14. In the present case, as pointed out by the Id. adv. for the applicant, earlier an original application on same issue was filed before the Principal Bench immediately after the impugned order was passed and that case was subsequently withdrawn in July 2012 and filed before us in terms liberty granted. However, Mr. Farook has pointed out that in the withdrawal order there is no mention that limitation point is to be overlooked and therefore, limitation would count from December 2009 when the impugned order was passed and not from the date of withdrawal of the OA from the Principal Bench. We are not impressed by this argument. As argued by the Id. adv. for the applicant, the applicant has been posted in Kolkata and was last posted at Lucknow, and therefore, as per rule 6 of AFT (Procedure) Rules, 2008, the application ought to have been filed either before Lucknow Bench or Kolkata Bench. Since the matter was being pursued before wrong forum, the time consumed therein has to be excluded for counting the period of limitation as per Sec. 14 of Limitation Act. That apart, when an application is allowed to be withdrawn with liberty to file it before appropriate forum, it is implied therein that the applicant would file the same within a reasonable time.

However, in the absence of any rider, “if not otherwise barred by law” it is to be construed that the limitation would not run from the date of order impugned. In such a situation, the applicant should get the benefit of Sec. 14 of Limitation Act and as such, this application cannot be considered as time barred. Objection in this regard is thus overruled.

15. Secondly, continuing with another issue on the point of maintainability, Mr. Farook has pointed out that the applicant has not exhausted departmental remedy and therefore the application is premature and barred by Sec. 21 of AFT Act which stipulates that an application is not to be admitted unless other remedies are exhausted. By referring to Annexdure-A26 dt. 6.5.10, it is contended that the statutory complaint filed under Army Act by the applicant was not decided on merit but was returned to the applicant for re-submission as per prescribed norms. Therefore, no final order was passed and hence this application cannot be entertained. However, we find that the complaint was returned on the ground that it was voluminous, and it should be within 2-3 pages. We find that the applicant re-submitted his complaint by letter dt. 26.5.10 without any change and the same was not processed vide order dt. 8.6.10. Thus, it cannot be said that the applicant did not exhaust departmental remedy. Moreover, in a Full Bench decision in the case of **Ex. Hav. Parameshwar Ram –vs- UOI – Full Bench at AFT Principal Bench decided on 19.10.201 and reported in Mil. LJ 2010 (AFT) (PB) 162 –** where it has been inter alia held as under:

Whether exhausting remedy is precondition for entertaining appeal u/S 15 of AFT Act. Sec. 164 (2) of Army Act – representation against court martial proceeding – held tribunal is exercising judicial power whereas under Sec. 164 only administrative power is exercised against the decision of court martial

proceeding- the word 'ordinarily' used in Sec. 21 of AFT Act is not mandatory – even where such departmental remedy is not exhausted, tribunal can entertain an appeal – Jaipur Bench decision overruled.

16. In view of the above, we are unable to accept the contention of Mr. Farook that the application is not maintainable due to non-exhaustion of other remedies u/s 21 of AFT Act.

17. We may now advert to the merit of the case in detail. Mr. Rajib Mangalik, Id. adv. for the applicant being assisted by Mrs. Maitrayee Trivedi Dasgupta, Id. adv. has very persuasively argued and referred to various averments and documents on record to contend that the applicant has been badly treated by respondent Nos. 5 and 6, who have colluded to ruin the career prospect of the applicant in various deliberate manners. Firstly, when the applicant was inducted in JAG Branch and given a posting as AJAG in HQ Central Command, Lucknow, respondent No. 5 was the DJAG there and would exercise authority as the immediate superior of the applicant. Since he was ill disposed towards the applicant from the past, he tried his best so that the posting of applicant was diverted to some other post. For this purpose, HQ Central Command took up a case officially with the MS Branch, Army HQ through a letter dated 04 Feb 2008 (annexure-A34 of rejoinder to the reply of respondents 1, 2 & 4) to divert the applicant to some other place. This letter was signed on behalf of the GOC-in-C with a copy endorsed to JAG branch of HQ Command HQ which was being headed by Respondent No5. It was further submitted by the Id counsel for the applicant that respondent No 5 was always in the loop on matter relating to the diversion attempts of the applicant's posting. However, MS branch did not agree to such proposal and insisted for posting of

the applicant at HQ Central Command. Same request to sidestep the applicant was also made by Lt Gen Gautam Banerjee, the then COS of HQ Central Command, but turned down by the Army HQ. Only thereafter, the applicant could join. This also infuriated the said respondents and concerted efforts were made to side step the applicant within the HQ aiming to somehow keep him out of the JAG branch; and ultimately, when the applicant was on outstation duty, order was issued on 20.3.09 posting the applicant to Q Land Branch which was not a criteria appointment. Although the applicant protested against such posting, but he was compelled to relinquish his post as AJAG, hand over charge to another officer on 23.9.09 and he took over charge in his new post as an obedient officer of Indian Army. Even in his new job, when a formal Part II order was published as required under the rules, the authorities tried to punish the applicant by initiating a court of inquiry and he was ultimately punished with recordable "severe displeasure". However, in the said court of inquiry, the said respondent No. 5 was also indicted but no action was taken and ultimately, the applicant had approached this Tribunal by filing OA 110 of 2011 for redressal of his grievance. The Tribunal finally granted him relief and the punishment imposed was quashed. It was held therein that the applicant was indeed transferred to a different position although respondents tried their best, as in the present case as well, to establish that it was not a case of transfer but temporary assignment for a short period of time. In this situation, since the applicant was in a different job and not physically working under respondent No. 5 or 6, he prayed for initiation of NIR which was rejected by respondent No. 5 vide letter dt. 4.6.09(pg 56 of the OA).Ld. Counsel has also referred to another communication dt.

7.7.11 at page 28 of the rejoinder ibid written by respondent No. 5, even after his transfer to South Western Command as DJAG. In this letter, he has made several caustic remarks against the applicant which amply prove the alacrity and animosity, he bore against the applicant. In spite of all these, the said respondents wrote the two ACRs, impugned in this OA, in biased, prejudiced and mala fide manner, although the applicant specifically took up the point that he did not work for 90 days under him or respondent No. 6 (reviewing authority) and as such as per policy guidelines, he was entitled to NIR which was refused. Based on these two ACRs, the applicant's case for promotion was considered in the negative and thus, the applicant was deprived of his due promotion while his juniors got such promotion and superseded him. Id advocate has very earnestly prayed that the said two ACRs be quashed and the applicant be freshly reviewed by the selection board.

18. Mr Farook, the Id advocate appearing for the respondent number 1 to 4 along with the recorded government counsel Mr Sudipta Panda has very strenuously argued to refute the allegations raised by the applicant. It is contended that there was no mala fide, bias or ill will against the applicant by anybody and all are imaginations of the applicant, who was looking at everything through a tinted glass of malice. He contended that it was time and again intimated to the applicant through various channels including in writing that there was no change of reporting for his temporary posting to Q land which was only to clear certain spate of litigation in cantonment land cases. By producing record, he has pointed out that instruction was issued that during the period the applicant would remain in Q land, his work will also be supervised by respondent

No. 5 and copies of appellate order drafted by the applicant would be sent to him for scrutiny. Therefore, even though the applicant was working at a different place, his work was being scrutinized by the respondent No. 5 and hence, there was no irregularity or illegality in writing ACR by respondent No. 5 and reviewing by respondent No. 6. In any event the applicant still remained the AJAG under the supervisory control of the respondent No. 5 and 6. By producing the ACRs of the applicant, Ld. adv. has pointed out that all the allegations raised by the applicant against respondent No. 5 would not stand as the said respondent as IO has given very high grading to the applicant. This proves that there was no such mala fide or bias on the part of respondent 5 and all such allegations are baseless and incorrect. He has also pointed out that the applicant was earlier warned on two occasions because of some misconduct vide annexure to reply of respondent No. 3. He has also contended by referring to a decision of the Apex Court in **Amrik Singh –vs-UOI & Ors**, (2001) 10 SCC 424 in which an earlier decision in the case of **UOI –vs- Lt. Gen. Rajendra Singh Kadyan** (2000) 6 SCC 698 was relied on; that it is not the duty of the court or tribunal to upset the grading given by the IO or RO and to substitute it by the court's own assessment. He has also submitted that the case of the applicant will be considered again by the next selection board by way of review in view of changed development as the punishment has since been quashed. Lastly, he contends that the applicant has not been able to make out any case and hence the application should be dismissed.

19. Mr Farook brought out during the course of his oral arguments, as also in Para 31 of his written notes of arguments, that the manner and source of file notes and



official letters that were produced by the applicant was improper and the court should take note of this issue.

20. Col. Balasubramanian, Id. adv. appearing for respondents 5 and 6 has vehemently raised objection against the allegation of mala fide and bias as brought out against his clients. He points that there was no occasions for any bias or mala fide motive against the applicant on their part. The said respondents acted bona fide in accordance with rules and there was no question of any bias being shown against the applicant. He has also relied on the decision of the Apex Court in the case of **Chairman-cum-MD, Coal India Ltd. & Ors –vs- Ananta Saha & Ors**, (2011) 5 SCC 142, to buttress his argument.

21. Mr. Mangalik, the Id counsel for the applicant, at this stage rebutted on points raised by Mr Farook, emphasizing and drawing our attention to the following issues:-

a) **Issue of 'Transfer' from JAG branch to 'Q' branch.** This matter was considered at length in OA 110/2011 in this AFT, which was settled and adjudicated through a judicial order vide AFT Kolkata Bench Order dated 15-6-2012 (Annexure A-21 of OA). This Order has been complied and not challenged anywhere. Therefore, raising the same issue again and again with no new evidence is an utter disregard to an unchallenged judicial order.

b) **Bias and Prejudice by Respondents 5.** The Respondent 5 even after being transferred to Jaipur to another Command (South Western Command), continued to influence the DJAG at Central Command with uncalled for comments on the statutory complaint of the applicant that was being progressed

with the MoD. Our attention was drawn to Page 28 of Annexure A-34 (coly) of the Rejoinder affidavit of the applicant in response to respondents 1 to 4. This document is in the form a DO letter (No 51115/JAG/2011 dated 07 Jul 2011) written by respondent No 5 addressed to the DJAG of HQ Central Command (new superior authority of the applicant at Lucknow). Through this letter he had sent draft comments on the applicant's statutory complaint on disciplinary award to the new DJAG incumbent in Central Command. It contains damaging and uncalled for comments belittling the applicant whereas he had no authority to write such things. It shows the bias and prejudice that he had been harboring for the applicant. Mr Mangalik seeks to rely upon copies of two letters ; 1) Central Command Dy MS letter No 114004/B/NS/MD/MS 4A dated 23 Jul 2009 addressed to respondents No 5 and 6 amongst others and 2), ION No 230106/COS Sectt/A dated 20 Jul 2009, which were brought on record through an affidavit affirmed by the applicant himself. The first letter of 23 Jul 2009 was a comment on the applicant's complaint on transfer to Q branch internally attempting to highlight that the events and documents clearly indicate that such a transfer was indeed carried out. The second letter of 20 Jul 2009, however, as highlighted by Mr Mangalik, indicates that the Respondent No 6 had instructed Respondent No 5 to put the applicant in 'adverse report', thus making a point that both these respondents were biased and prejudiced against the applicant and had colluded with a closed mind to damage his CR any way. This according to Mr Mangalik, was an evidence of open connivance between the respondents

to damage the applicant. The contents of those afore-mentioned documents were not disputed by the respondents, especially by respondent Nos. 5 and 6.

22. We have given our anxious consideration to the contentions advanced by the contesting parties. It appears that the entire case of the applicant centers round the two impugned ACRs, which resulted in his non-empanelment to the rank of Colonel though his case was considered by the selection board duly. These two ACRs were written by respondent No. 5 and reviewed by respondent No. 6. The contention of the applicant is that these two respondents were all along acting against him as they bore personal grudge against him and did not want him to be posted in Central Command from the very beginning. Even before his joining, efforts were made on their part to divert him to another appointment. Reference has been made to annexure-A34 to the rejoinder which is a letter written by Lt. Col. AF Shah for GOC-in-C, Central Command to MS Branch where in it was pointed out that the applicant on his posting at JAG Branch would become senior most AJAG but he lacked adequate experience and also did not possess requisite qualification. Therefore, it was proposed to side step him to any other appointment as AJAG. According to the applicant, this is one instance which proves that these respondents had a preconceived opinion about him and were thus not in his favour and wanted to side step him. However, he could join at Central Command at the intervention of MS Branch. Although the respondent No. 5 claims that he was not in the picture nor he wrote such letter; but we find that the ibid letter dated 4.2.08 issued by Lt Col Shah (Annexure A34) has a copy endorsed to the JAG branch of HQ Central Command that was then headed by Respondent No 5. If the contents of the letter are

considered in its true perspective, it can be seen that the concerned authorities were anxious about the position after joining of the applicant who would become senior most by virtue of his past service and would sit over the existing incumbents of AJAG in the Command HQ. The applicant was converted to JAG from another arm of the Army and would carry his seniority which would naturally hurt the prospects of the direct entry JAG officers, who despite longer service in JAG branch would become junior to him. This is a common service rivalry amongst existing and new entrants and could be a genesis of prejudice. In any event, it is pointed out that even after joining at Central Command, these respondents continued with efforts to side step the applicant and ultimately he was posted out to 'Q' (Land) Branch. The respondents have given their explanation and suggested that this was done on the instruction of higher authorities and his work was also being supervised by respondents 5 and 6. However, we need not deliberate on this issue whether it was a case of transfer or a temporary assignment as contended, as in an earlier OA being OA 110 of 2010, this question was elaborately discussed and it was held that the applicant was indeed transferred to Q (Land 2).

23. The applicant has raised serious allegation of mala fide and bias against respondent No. 5 and 6 and, according to him, the ACRs written by them are illegal and tainted with bias. What is mala fide and bias and how to test it, has been dealt with by the Hon'ble Supreme Court in a catena of decisions, which were also relied upon by Mr Farook while contesting this point. It will be beneficial to consider some such cases to see whether the allegation as raised by the applicant can stand judicial scrutiny.

In **E.P.Royappa –vs- State of Tamil Nadu & Anr**, AIR 1974 SC 555 it has been observed by the Hon'ble Apex Court that –

“Secondly, we must not also over-look that the burden of establishing mala fides is very heavy on the person who alleges it....The court would, thee, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration.....”

In **State of Punjab –vs- V.K.Khanna & Ors**, (2001) 2 SCC 330, it has been held as under :-

“Whereas fairness is synonymous with reasonableness – bias stands included with the attributes and broader purview of the word ‘malice’ which is common acceptation means and implies ‘spite’ or ‘ill will’. One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purposes of indication or ill will. There must be **coherent evidence** available on record to come to the conclusion as to whether in fact, there was existing a bias or a mala fide move which results in the miscarriage of justice. In almost all legal inquiries, ‘intention as distinguished from motive is the all important factor’ and in common parlance a malicious act stands equated with an intentional act without just cause or excuse.”

In **Jasvinder Singh and Ors –vs- State of J & K and Ors**, 2003 (2) SCC 132 it has been held that burden of proving mala fides lies very heavily on the person who alleges it. A mere allegation is not enough. The party making such allegations is under the legal obligation to place specific materials before the court to substantiate the said allegations.

The Apex Court in **International Airport Authority of India –vs- K.D.Bali & Anr.** [AIR 1988 SC 1099] has held

“The purity of administration requires that the party to the proceedings should not have apprehension that the authority is biased and is likely to decide against the party. But it is not every suspicion felt by a party which must lead to

the conclusion that the authority hearing the proceedings is biased. The apprehension must be judged from a healthy, reasonably and average point of view and not on mere apprehension of any whimsical person.”

24. In the backdrop of above legal position, we may examine the documents that have been produced by the applicant to see whether there was indeed any bias, prejudice or malice on the part of respondent Nos. 5 and 6.

25. The first document relied on by the applicant is at annexure-A34 to the rejoinder dt. 4.2.08, by which the applicant's initial posting to Central Command was attempted to be scuttled by the respondents 5 and 6. We have already dealt with this document in the preceding paragraph and we found no illegality in the said letter. On the face of it, this document does not clearly prove any bias or mala fide motive of any one. We cannot, however, ignore that respondent No 5 was aware of this development since a copy was endorsed to his branch. Therefore, it cannot be such that efforts to sidestep the applicant out of the JAG branch of HQ central Command even before he could join was being undertaken without the knowledge and insistence of respondent 5 and 6. It appears that authorities at HQ Central Command were not keen to accept the posting-in of the applicant as AJAG and thus the posting was being contested at all levels. We cannot also ignore that the applicant was just a Lt Col (not a senior rank officer at Command HQ level) who was to report to another Brigadier. Therefore it is quite uncommon for a GOC in C or COS (both Lt Gen and the highest functionaries in a Command HQ) to take up such a small matter without the insistence or inputs of the head of JAG branch in Command HQ, who happens to be the respondent 5; or the

applicant's presence in the Command HQ was apprehended to be extremely uncomfortable to them.

26. The second document relied on is dated 7.7.2011, which is at page 28 of the *ibid* rejoinder (Annexure a 34 (colly)). This is a letter written by respondent No. 5 while he was posted as DJAG at South Western Command addressed to DJAG, Central Command i.e. his successor in response to a telephonic conversation. This is with regard to certain comments on the statutory complaint filed by the applicant with the MoD regarding setting aside a disciplinary award meted out to the applicant. We have gone through the same and we find that the said respondent has highlighted facts involving the posting of applicant to Q land. In the conclusion, however, certain damaging remarks touching upon the conduct of the applicant have been made. **These remarks, quoted below, have no connection with the 'draft Para-wise comments', but definitely are indicative of biased and prejudiced views harbored by Respondent No 5:-**

**".....The complainant has thus behaved in a most indisciplined manner and he is, therefore, a bad example to others. Any relief given to him in such circumstances would encourage other likeminded persons to ruin the discipline of the Armed Forces, as such, he does not deserve any mercy and his complaint be rejected in toto."**

We note that the other facts stated in this letter are not new and are also the stand taken by respondents in the present case as also in the earlier case (OA 110/2011) filed by the applicant. As is evident from the heading of the *ibid* document dated 07 Jul

2011, it was a draft comment on a statutory complaint that was being processed by the MoD to certain disciplinary action that had been taken against the applicant. It is very surprising and rather improper for a DJAG of another Command HQ at Jaipur to send such draft comments for adoption or consideration of the concerned Command HQ at Lucknow. Moreover, it is quite clear from the contents of the judicial order dated 15 June 2012 passed by the Kolkata Bench of AFT on OA 110/2011, that Respondent No 5, the author of the ibid document, was himself involved in the same C of I that resulted in award of punishment to the applicant against which the statutory complaint was made by him to the MoD. Therefore, without any official communication from the MoD, how was he (Respondent 5) rendering Para-wise comments on a document to which he should not have been even privy to, unless he had a motive and was perhaps aggressively following this case? Such officially unsolicited acts by Respondent 5 even after his transfer to Jaipur based Command HQ, makes us inclined to believe that he could be influencing the authorities at HQ Central Command in matters relating to the applicant besides enjoying unhindered access to the related documents! Under such circumstances, ibid document can to some extent establish that Respondent No 5 was harboring some grudge against the applicant and looked for opportunities to settle some score, leading to nurturing of bias and malice towards the applicant. He not only poisoned the mind of the applicant's superior with very damaging and adverse words about the applicant but has meddled into a confidential process of disposal of a complaint by the MoD and influenced to enable colored and inadequate comments to the MoD, thereby jeopardizing the complainant's efforts to obtain justice. He was so



spiteful and was allowed to remain so by the authorities that his harbored prejudice and malice towards the applicant continued.

27. The third and fourth documents are two new documents, which were earlier not annexed along with any written submissions, and were produced before us by the Id counsel for the applicant during the course of hearing and copy of these were served upon the opposite side. These two documents were, however, subsequently filed before this Tribunal through an affidavit affirmed by the applicant himself as earlier indicated. The first such document is COS secretariats letter No 230106/COS Sectt/ A dated 20 Jul 2009. The respondents in their written notes of arguments have not contested the existence of this letter. We have gone through this document that is dated 20-07-2009 wherein certain observations were made against the applicant and instructions were also issued by Respondent No 6, signatory to this document as its originator, to Respondent No 5 (DJAG) and others that perhaps smacks of prejudice and bias. Besides dwelling on confusion created on the issue of 'transfer' of the applicant from JAG branch to 'Q' branch, we observed certain directions which are damaging to the applicant. These are in Para 5 (e) of the said document and the same are quoted below:-

**“....It is a fit case for the officer to be notified for initiation of adverse report as per AO/45/2001/MS, either for the officer to be absolved based on his future conduct, or to be posted out as per the laid down procedure to redeem himself in another environment.”**

From the contents of the above communication drafted on 20<sup>th</sup> Jul 2009 it is quite evident that Respondent No 6 by then had a closed mind with regard to the applicant

with a proven malice and prejudice which stares before us when we go through such directions where a Lt Gen is directing a Brigadier to initiate an adverse report against a Lt Col serving under him. That besides, by directing Respondent No 5 to initiate an adverse report, he was in fact influencing his judgment, because Resp. 5 was then considered as the IO of the applicant. It is grossly improper and a definite act of prejudice for a senior officer of the rank of Lt Gen like the Respondent No 6, who would be placed as the RO of the ACR that was to be initiated on the applicant. We therefore tend to believe that CRs written by these two respondents on the applicant after this date (20 Jul 2009) would be biased with prejudice and the IO (Resp. 5) could in addition be under pressure from his immediate superior (Resp. 6). Under such circumstances unfortunately objective reporting is often the casualty making the ratee the sufferer. If this not a collusion between two reporting officers (IO and RO) in the chain of command with bias and prejudice then nothing can be more. We also observe that this letter was initiated on 20 Jul 2009 and both the impugned ACRs were initiated after this date on 22nd Feb 2010 and 03 Aug 2010 respectively. Therefore it will not be inappropriate for us to view that both the impugned ACRs could indeed have been initiated under circumstances where both IO and the RO colluded with prejudice and bias with intention to damage the applicant's career through very weak ACRs that would deny him promotion in a comparative merit system and yet not be bad enough to justify or come within the compulsion to communicate the contents to him.

28. The second letter produced before us was a letter from the MS branch of the Command HQ (No 114004/B/NS / MD/MS 4A dated 23 Jul 2009 in relation to a non-

statutory complaint dated 22 Jun 2009 regarding one of the impugned ACRs and the question of illegal sidestepping. In the said letter the Dy MS has dealt on the issue of illegal sidestepping pointing out certain important anomalies, although this complaint was ultimately turned down. Extracts of the ibid letter are as under:-

“(a) Case for initial sidestepping. When Lt Col Mukul Dev was initially posted with JAG Branch, HQ Central Command, and case was taken up for sidestepping him to Q (Lands2) with MS Branch, Army HQ. However, MS vide his DO informed that the said officer needed to be groomed in JAG’s Branch as he was inducted quite late in the service to the JAG Deptt. Employing Lt Col Mukul Dev now for the same assignment which earlier was not agreed to by the MS needs to be justified.

(b) Brig P&A had directly tasked the officer by name to transfer him to Q (Land-2). The detailment for the task appropriately should have been done by the JAG Branch.

(c) The officer was relieved from the JAG Branch wef 23 Mar 2009. Performances of other duties of AJAG were left vague by the Dy JAG in their official correspondence as also in the comments on the complaint.

(d) Since there was no change in the appt or channel of reporting the officer should officiate as Dy JAG when the Dy JAG is away from his appointment. This was not being done.

(e) JAG Branch in their correspondence has asked Col Q (Land2) to detail/direct the officer (Lt Col Mukul Dev) on certain issues. In case there is no

change in the appointment or channel of reporting JAG Branch should have corresponded directly with the officer whenever required.

(f) Office Requisites. xxxxxxxxxxxx”

29. The ibid document of 23 Jul 09 clearly brings forth the point that Respondent No 5, head of the Command JAG Branch, was instrumental in sidestepping/transferring the applicant from AJAG in JAG branch to another functionary in Q (Land2) branch for reasons not specified anywhere. In any case this is an aspect which has not been adequately investigated by the authorities so far and no one has been held responsible for effecting such illegal transfer/sidestepping. Even when we analyse AFT Kolkata Order dated 15 Jun 2012 (OA 110/2011) we find that although transfer of the officer out of the JAG Branch from 23 Mar 2009 to 05 Aug 2009 is amply clear, who could be responsible for this transfer has not been ascertained.

30. Considering the discussions made in the above paragraph we are of the view that such an inter-branch transfer was against the normal procedures since no one in Command HQ is authorized to execute such order being the prerogative of the Army HQ MS Branch. There could be some underlying mischievous motive to execute such illegal transfer order. The applicant who was posted to complete his AE as AJAG had to be the ultimate sufferer. Whether such suffering was caused by an ill advised Respondent No6 or Respondent No 5 would need a detailed investigation, which is best left to Respondent No 1 to conduct and take appropriate action if necessary.

31. The Id advocate for the official respondents during argument and also through written notes of arguments raised the issue questioning the possible dubious methods

by which the above documents were collected by the applicant and produced before this Tribunal. The applicant has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Magraj Patodia –vs- RK Birla & Ors, reported in AIR 1971 SC** to wherein it has been held **even if a document is procured by improper or even illegal means that will not be a bar to its admissibility if it is relevant and its genuineness is proved.** We need not enter into this controversy in this proceedings since authenticity of these documents have not been contested. The Respondents should have produced these documents on their own when the same were specifically referred to in para 4.27 page 10 of the amended petition itself asking to produce these documents. *We cannot but mention here that, when a person is sinking, he may catch hold of any object or a log to float and survive.*

32. Now, we shall go into the merits of the main issue, i.e. two impugned ACRs (01.12.08 to 31.5.09 and; 1.6.09 to 3.5.10) initiated by respondent No. 5 and reviewed by respondent No. 6. In order to apply ourselves on this issue adequately we need to peruse these ACRs as submitted in original by the respondents.

32.1. **ACR for the period from 1<sup>st</sup> Deember, 2008 to 31<sup>st</sup> May, 2009.**

This ACR in respect of the applicant in original was examined by us from the documents submitted by the respondents. Although this ACR is from 1<sup>st</sup> December, 2008 to 31<sup>st</sup> May, 2009, it was initiated by respondent No. 5 only on 22.2.2010 and reviewed by respondent No. 6 on 25.2.2010. From the numerical assessment of all qualities we find that the Initiating Officer (IO) has awarded a mix of 8 and 7 to the ratee who is the applicant. On the whole, out of 22 qualities (including qualities to assess

potential), seven of the qualities contained a grading of 7, but the box grading is 8. The respondent No. 6 while reviewing this ACR has awarded an even lower numeric grading with a box grading of 6 and the quality have a general mix of 6 and 7. In order to justify a difference of two points and the box grading, i.e. 8 by the IO and 6 by the RO (Reviewing Officer), the RO has written in Para 14(6) of the ACR **“the pen picture and box grading indicates that the IO has been cowed down by the officer’s offensive attitude.”** This itself is an adverse remark against the ratee (applicant) as well as the IO (respondent No. 5) for being cowed down. The SRO (Senior Reviewing Officer) has of course concurred with the RO in this case. This kind of report is likely to keep the applicant away from promotion to any select rank in a pyramidal structure of the Army purely on comparative merit. We also note that as per appendix ‘C’ to this ACR, the total number of days that the ratee had served under IO works out to 115 days. However, the period between 23.3.2009 to 31.5.2009 (70 days) the officer did not serve under IO as AJAG since during that period he was transferred to Q Branch and was serving under another Brigadier who was heading Q Branch. This matter has been adequately discussed in the AFT, Kolkata Judgement dated 15.6.2012 on OA No. 110/2011 which has been discussed separately in this order. This matter is undisputed since adjudicated by a judicial order. Under such circumstances, the applicant **does not complete 90 days of physical service under IO**, thus under provision of Army Order 45/2001/MS, this ACR should not have been initiated and therefore we are inclined to set aside this ACR, being technically invalid. **It is also important to note that this ACR was initiated on 22 Feb 2010, which is soon after the applicant, on 05 Feb 2010, had**

**filed an OA (OA 85/2010) in Principal Bench of the AFT impleading the same IO and RO as respondents.** It was thus initiated during pendency of the ibid OA.

32.2. **ACR for the period from 1.6.2009 to 3.5.2010**

Although this ACR covers the period from 01.06.2009 to 03.05.2010, it was **initiated by the respondent No. 5 as IO only on 03.08.2010** and reviewed by the respondent No. 6 as RO on 09.08.2010. We however note from the records that the ratee (applicant) was not serving under the IO till 5.8.2009 until when he returned from his assignment with the Q Branch of the same HQ to which he was transferred on 23.3.2009 (settled matter in accordance with Para 13 and Para 19 of the Kolkata AFT Bench judgement dated 15.6.2012 on OA 110/2011). These 66 days (1.6.09 to 5.8.09) have not been deducted from the calculation of 'physical service under the IO'. **While noticing the date of initiation of the ACR which was 3.8.2010, we cannot but observe that the applicant i.e. the ratee (applicant) had already filed an OA in the Principal Bench, New Delhi (OA No. 85/2010) on 5.2.2010.** Therefore, it is quite evident that this ACR was initiated on 3.8.2010 by respondent No. 5 and 6 after knowing fully well that an OA was pending in the Principal Bench impleading the same IO and RO as respondents. That besides, a court of inquiry was convened by the authorities in the HQ Central Command on 16-6-2009, in which the ratee as well as the IO (respondent No. 5) were both blamed but the applicant alone was punished; against which, he had filed a statutory complaint on 29.10.2009 before the Ministry of Defence. Army Rule 180 was applied in that Court of Inquiry. Yet the same respondents as IO and RO initiated the applicant's impugned ACRs on 22.2.10 and 3.8.10 respectively. Therefore this ACR was

initiated at a time when a great deal of animosity had already developed between the applicant and the IO/RO i.e. the respondent No. 5 and 6. Under such circumstances it is difficult to believe that absence of any bias was possible while this ACR was being initiated by respondent No. 5 and 6. Under such circumstances we also take notice of the spirit of an Army Order 45 of 2001 Para 36 and 37 regarding debarring of officers from initiating the ACR and Para 119(b) Part C of Army Order 45 of 2001 relating to instruction on wide variation.

32.3. We also note that on 20.7.2009 the respondent No. 6 had directed respondent No. 5 vide his letter No. 230106/COS/S/Sectt/A dated 20.7.2009 suggesting that the applicant was a fit case to be notified for initiation of adverse report under Army Order 45/2001. This incidence and the dates of initiation of the impugned ACRs clearly indicate that by the time this ACR (from 01.06.2009 to 03.05.2009) was initiated on 3.8.2010, the respondent No. 5 and 6 were adequately trying with a closed mind and bias to harm the applicant in any way. Under such circumstances fair, objective and judicious ACR in respect of the applicant could not have been initiated as long as the IO and RO continued to remain respondent No. 5 and 6. We are inclined to set aside this ACR purely from the point of view of bias, prejudice and lack of objectivity, besides a few defects in calculation of AE (Adequately Exercised) period considering that the applicant was not under the IO from 1.6.09 to 05.08.2009 during this reporting year.

32.4 For the sake of clarity it is important that the aspect of transfer from JAG Branch to Q Branch need not be debated since it has been settled through a judicial



order passed by AFT Kolkata on 15.06.2012 in OA No. 110/2011. The relevant portion of the said judgement is quoted below:-

*“19. From this entire episode of transfer /side stepping of the applicant from one Branch (JAG Branch) to another (Q Branch), though within the same HQ, we observe that it was authenticated by a written order and executed as well by relieving him from JAG Branch where he was posted in a promotion criteria appointment of AJAG . Physically the applicant was shifted to the Q Branch and he started functioning by reporting to the superior officers in Q Branch and not in JAG Branch. In such a situation, it is not appropriate for the authorities to even assure the applicant that his criteria appraisal reports would still be written by the Dy. JAG (respondent No. 5 Brig. Rathore), who was heading the JAG Branch and not the Q Branch.*

*20. It is worthwhile to note herein that upon a close scrutiny of the clarificatory order issued on 2.4.2009, it is absolutely clear that the said order has not cancelled the posting of the petitioner in the Q (Lands-2) Branch but only certain arrangements, as regards channel of reporting etc. has been restored. For all intent and purpose, the original transfer order to Q (Lands-2) Branch remains in existence. “*

33. This decision has neither been challenged nor superseded by any higher court, rather it is brought to our notice that the same has been implemented by the respondents. In that view of the matter, we are constrained to observe that the period when the applicant was away from the JAG branch (23 Mar 2009 to 05 Aug 2009) was still being counted as ‘physical service’ under the IO in those ACRs. Necessary endorsements should have been made and defect rectified by the concerned authorities

in MS branch when the ibid judicial order was being complied with; rather than ignoring the defect to germinate more litigation. A benevolent employer like the Govt, should not display such attitude towards its employees.

34. The next point we would like to apply our mind is with regard to the prayer that Brig. Chittravanshi, Dy. JAG of HQ, Eastern Command and Major General (then Brigadier) P S Rathore, JAG, Army HQ be debarred from writing any ACR from 01.07.2011 to 30.06.2012 and thereafter till pendency of this OA (OA No. 85/2012) in the AFT. Having analysed the issue we find that these two officers are not in the standard reporting channel of the applicant since the applicant is posted as OIC, Legal Cell, HQ Bengal Area. Accordingly in the normal course of hierarchy of reporting is IO, the RO and SRO who lie within the command channel of HQ Bengal Area and Eastern Command, i.e. Dy GOC (Station Commander), GOC, Bengal Area and GOC-in-C, HQ, Eastern Command. This aspect was confirmed also by the MS Branch representative during the course of hearing. However, it was also clarified to us that all JAG Officers when posted to such appointment are subjected to a channel of technical reporting as well. In this particular case Brig. Chittravanshi, Dy. JAG of HQ Eastern Command and respondent No. 5, Brig. (now Major General) P S Rathore, JAG, Army HQ would endorse his report as the First Technical Officer (FTO) and Higher Technical Officer (HTO). As per the procedure in vogue, in accordance with Rules, the ACR of the applicant after being initiated by the IO is to be endorsed by the FTO and then returned to RO and thereafter endorsed by HTO and then returned to the SRO for the final appraisal. Under such circumstances the applicant, having put forward certain documentary evidence, has

attempted to prove that respondent No. 5 would continue to be biased towards him as long as this OA remained in pendency. More so, because the applicant in one of his prayer has submitted that disciplinary action should be initiated against the respondent No. 5; and such other defaulters. He has further stressed through his counsel that the FTO, Brig. Chittravanshi comes directly under respondent No. 5 who is head of JAG Branch and therefore would be influenced by him, thus being instrumental in damaging his ACR. However, that is not enough to substantiate any serious apprehension that Brig. Chittravanshi would indeed get influenced and such an influence could be reflected while endorsing the applicant's ACR as the FTO. Be that as it may, we cannot overlook the fact that the respondent No. 5 has been the applicant's immediate superior when he was posted in Lucknow and the ACRs initiated by him during 2008 to 2010 have been challenged by the applicant through this OA. This fear and influence by respondent No. 5 who is now HOD of the applicant being the JAG at Army HQ could lead to any extent within the JAG Branch but the system could definitely have a method to proper balance and judiciousness. Considering all the matters discussed above, we are inclined to provide some protection to the applicant by means of dispensing with the requirement of any technical reporting in his case from 01.07.2011 to 30.06.2012 and thereafter till final implementation of this OA. However, that does not allow the applicant to function in an unrestrained manner in a situation where his technical appraisal would continue to remain inadequate. Therefore we could consider the FTO to write his impression about the technical functioning of the ratee (applicant) in this case which could be endorsed

directly to the RO (GOC, Bengal Area). The RO would objectively consider such technical impression from the FTO and take necessary steps.

35. The other issue that has been raised and also finds a place among the prayers made by the applicant is that the applicant's ACR during the period when he was functioning as a JAG of Counter Insurgency Force 'U' (CIF-U) should be considered as his AE ACR since, as submitted by him, it was done in the case of one Col. Devender Singh on earlier occasion. The respondents in their reply have submitted that the applicant was not transferred to JAG Branch when he was posted to CIF(U). So far as Col. Devender Singh was concerned, he was a direct entry JAG officer, while this applicant was transferred to JAG Branch only on 16.02.2008. These are the facts that have not been refuted by the applicant at any stage. The respondents also drew our attention to a Delhi High Court Judgement dated 22.08.2008, the relevant portion submitted by the respondents in Hon'ble Delhi High Court, which is quoted below:-

*"... The criteria appointments are mentioned in the letter dated 28.4.2008.*

*These criteria appointments are as under:*

*1. Full Criteria.*

*(a) AJAG at ComdCorps HQ.*

*(b) AJAG (CM) at IHQ of MoD.*

*(c) AMS Legal Cell at MS Br., IHO of MoD.*

*(d) OIC Legal Cells."*

Wherein the respondents submit that such a prayer was rejected; we, having gone through the said judgement find that no such prayer was rejected. The factual matter is actually a submission made by the same respondents i.e. MS Branch, Army HQ before the Hon'ble Delhi High Court in which they had submitted that the

appointment of A JAG in any CIF is not a criterion appointment in accordance with their policy letter dated 28.04.2008. However, we find that there are no findings by Hon'ble Delhi High Court either affirming or rejecting the contentions of the respondents.

36. Having gone through the ibid judgement we find that the respondents have quoted the judgement with no relevance to the present issue and they have not placed the facts in a clean and transparent manner to explain their view point as to why the tenure spent by the respondent as AJAG in CIF U in 2004, which is prior to issuance of this letter, could not be considered as criterion appointment. The fact of the matter is that the revelation of the appointments which are considered as full criterion appointments, are based on a policy letter of 28.04.2008, whereas the applicant had served in the appointment of A JAG in CIF(U) in 2004, which is prior to the issue of such policy. In the absence of a clear cut response from the respondents, especially the MS Branch, we would consider to give weight to applicant's claim since he was indeed functioning as A JAG in a CIF HQ (CIF-U) although he may not have been technically transferred to the JAG Branch. In the absence of clear rule on the subject and a reserved response with inaccurate details submitted by the respondent MS Branch we may have to consider the whole prayer absolutely in accordance with the rules. It is, however, made clear that it is left to the discretion of the MS Branch whether this report will be considered as AE or not in ensuing promotion board for the applicant.

37. The applicant has prayed for quashing of the result of the selection committee which considered the impugned ACRs. However, since the selected candidates have not been impleaded as party in this proceeding, no order can be passed against them. Such prayer, therefore, being not legally tenable, cannot be accepted. Needless to say, as

assured by the Id. advocate for the respondents 1 to 4, the case of the applicant is to be reconsidered in the next selection board by way of special review as per rule in view of changed development as indicated above.

38. That leaves us with the prayer of the applicant to direct the respondent to initiate disciplinary proceedings against the persons involved in the applicant's illegal transfer from JAG Branch to Q Branch in HQ Central Command. We find that the applicant was indeed transferred, though illegally, from JAG Branch to Q Branch which was inappropriately made and he functioned in Q Branch under the Brigadier who headed Q Branch and not under the DJAG (Brigadier) who headed the JAG Branch. It was the root cause of most of the grievances that accrued thereafter. It also appears that there were authorities within the Command HQ, who were allegedly instrumental in making all out efforts to ensure that the applicant was not made to occupy the post of AJAG in HQ Central Command. The efforts were, as submitted by him, vivid from the number of correspondences and DO letters that were sent by various authorities in the HQ Central Command to Army HQ even before the applicant could join his new appointment of posting. Having started his tenure on the back foot the applicant had to be finally relieved by another officer as A JAG in March, 2009. This letter of handing over charge and relieve was authenticated by respondent No. 5 who counter signed the handing over letter. The written orders were issued and the officer was moved to function in another branch from 23<sup>rd</sup> March, 2009. This aspect has never been investigated in any manner. The issue of publication of Part II order of change of appointment on account of transfer was, however, investigated by a court of inquiry

convened by HQ Central Command in 2009. Under such circumstances it cannot be denied that a thorough investigation in the matter as to why and how the applicant was transferred by officials who had no authority to do so, may be required to be done by the executive authorities, if they so consider it necessary. We are inclined to suggest to respondent No. 1 that the matter could even now be investigated in an objective and fair manner to ascertain as to how an illegal transfer could be ordered and made effective in a Command HQ. However, it should be left to the discretion of the authorities. Further action on this aspect should be left to the discretion of the executive since this Tribunal is not inclined to step into the domain of the executive.

39. We have meticulously analyzed all points of facts and law, as presented before us with abundant care and caution. We also have considered the ratios, as relevant, of various decisions of the Hon'ble Apex Court, as cited by both parties and drawn some conclusive deductions, of which the following are brought out as they would be relevant for proper adjudication of the matter:-

- a) The applicant did not serve as AJAG under Respondent No 5 from 23 Mar 2009 to 05 Aug 2009 (136 days), of which 70 days are covered in the first impugned ACR (01 Dec 2008 to 31 May 2009) and 66 days as part of the second impugned ACR (01 Jun 2009 to 03 May 2010). During the aforesaid period the applicant was serving under Col Q (Land-2) in a non specified appointment over which Respondent No 5 had no jurisdiction.
- b) It is held in OA 110 of 2011 that the applicant was transferred to Q Branch of the same HQ after having handed over the charge of AJAG on 23 Mar

2009. The said transfer though made effective was through an illegal order from within the Command HQ, who had no authority to do so, being the prerogative of the Army HQ. None has been held responsible for issuing such illegal transfer order nor has the matter been investigated as yet.

c) The two impugned ACRs (1.12.08 to 31.5.09 and 1.6.09 to 3.5.10) were initiated on **22 Feb 2010** and **03 Aug 2010** respectively. Applicant filed the OA (OA 85/2010 with Principal Bench AFT) against the first impugned ACR on **05 Feb 2010** that remained pending till withdrawn and filed in this AFT on 31 Jul 2012.

d) The applicant has to a convincing extent succeeded in proving bias and prejudice by Respondent No 5 and 6 towards him through various valid deductions drawn from relevant documents that he produced, whose existence could not be challenged. The two documents dated 20 Jul 2009 and 07 Jul 2011 very aptly prove the point that these two respondents had not only colluded to harm the applicant in his ACR, but Respondent 5 continued to carry the grudge even after moving out of Lucknow to Jaipur on transfer. That besides, it is a matter of fact that the two impugned ACRs were initiated a week after the applicant went to the court (AFT, Principal Bench) against actions of respondent Nos. 5 and 6. Therefore, enough prejudice would manifest in the reporting of the two ACRs, since IO/RO remained the same, ie, Respondents 5 and 6. Therefore, the spirit of the contents of Para 36 and 37 of AO 45/2001/MS have been ignored by these respondents.



e) Respondent No 5 being the head of JAG department continues to remain in the technical reporting channel of the applicant and it is reasonable to believe that, besides his official influence over the senior JAG branch officers, he could still be retaining grudge and prejudice against the applicant till pendency of this OA, where the applicant has impleaded him as a party and has also prayed for action against him.

f) The applicant, though not converted to JAG Branch, was posted and functioned as AJAG in CIF (U) in 2004. The respondents quoted a policy letter of August 2008 in Delhi High Court to state that this post in CIF (U) was not a criteria appointment. Reliance on this decision (**Judgment of Delhi High Court dated 22.8.88 in WP© 6113/2008**) by the respondents is not at all relevant.

40. In view of the foregoing discussions, we dispose of this original application by issuing the following orders/directions:-

(a) Respondent No 4 shall rectify the defects in both the impugned ACRs by discounting the period from 23 March 2009 to 05 August 2009 from 'physical service under the IO' (Respondent No 5).

(b) The first impugned ACR for the period 1.12.08 to 31.5.09 be set aside, being technically invalid. This period shall be covered by the appropriate authority as per rules.

(c) The second impugned ACR for 01.06.09 to 31.5.2010 initiated by Respondent No 5 and reviewed by Respondent No 6 also be set aside since the

same is tainted with bias and prejudice. The said periods shall be covered by the appropriate authorities as per rules.

(d) Having complied with our directions contained in sub-paras (a), (b) and (c) above, Respondent No 2 and 4 shall arrange to hold a promotion board as special review (fresh) case with the changed profile of the applicant in accordance with rules as expeditiously as possible but not later than 30 days of receipt of this Order.

(e) The Respondent No 2 and 4 shall reconsider the validity of the applicant's ACR as AJAG in CIF (U) and take it as a criteria report if it was done for others placed in that appointment and in accordance with rules.

(f) The technical report in respect of the applicant shall not be endorsed by respondent No. 5. It shall, however, be given in the form of impression only, by the FTO for the ACR from 01.7.11 to 30.6.12, if not already initiated and thereafter till the directions given in this OA are implemented. The FTO shall comment on his technical performance through a written note to the RO of the ratee (applicant), who may take note of such considerations objectively while reviewing the ACR, if not already reviewed.

(g) As regards taking action against the officials responsible for causing illegal transfer of the applicant in Mar 2009; Respondent No 1 may take suitable action as it is deemed appropriate in the light of our observations only after proper investigation by a competent authority within the ambit of the Army Rules and Regulations.

- (h) The interim order already granted shall continue to remain in force till consideration of the case of the applicant by the next selection board where- after the same will automatically stand vacated.
- (i) There will be no order as to costs.
- (j) The three ACRs in original, as produced before us, be returned to the respondents after re-sealing on proper receipt.
41. Let plain copy of the order be given to all parties urgently.

(LT. GEN. K.P.D.SAMANTA)  
MEMBER(A)

(JUSTICE RAGHUNATH RAY)  
MEMBER(J)

