SUPREME COURT OF INDIA

U.O.I. & ORS.

Vs.

HARJEET SINGH SANDHU

11/04/2001

(CJI, R.C. Lahoti & Brijesh Kumar)

Appeal (civil) 2721 of 2001
Appeal (civil) 2722 of 2001

JUDGMENT

R.C. Lahoti, J.

Harjeet Singh Sandhu, the respondent in S.L.P.(C) No.5155/1998 was a captain in the Army. On the night intervening 27th & 28th March, 1978, the respondent along with three other officers interrogated one Bhagwan Das, who was also a defence employee, in connection with an incident of theft. During the course of interrogation the respondent and his co-associates used third degree methods in orders to extract a confession as a result whereof Bhagwan Das died. A General Court martial (GCM, for short) was convened under Section 109 of Army Act, 1950 which tried the respondent and the other officers. On 26.12.1978 the GCM awarded the sentence of forfeiture of three years service for purpose of promotion and severe reprimand to the respondent. The confirming authority formed an opinion that the sentence passed on the respondent was very lenient and therefore vide order dated 19.4.1979, in exercise of the powers conferred by Section 160 of the Army Act sent the case back for revision. On 10.5.1979, the GCM, on revision, enhanced the punishment inflicted on the respondent to forfeiture of three years of service for the purpose of promotion and also for the purpose of pay and pension. On 24.9.1979 the Chief of the Army Staff in exercise of the power conferred by Section 165 annulled the GCM proceedings on the ground that the proceedings were unjust. On 20.12.1979, a show cause notice was issued to the respondent under Section 19 of the Act read with Rule 14 of the Army Rules, 1954 (hereinafter the Rules, for short) calling upon the respondent to show cause why his services should not be terminated. Reply was filed by the respondent defending himself. On 16.7.1982 a fresh show cause notice was issued to the respondent requiring him to show cause why his service be not terminated under Section 19 read with Rule 14. Both the notices dated 20.12.1979 and 16.7.1982 recorded on the part of the Chief of the Army Staff - (i) a satisfaction that the respondents retrial by a court martial consequent to the annulment of the GCM proceedings was impracticable, and (ii) formation of opinion that the respondents further retention in the service was undesirable. The latter notice also stated that the earlier notice was thereby cancelled though the reason for such cancellation was not mentioned. The respondent filed a reply dated 9.9.1982 in defence of himself. On 2.1.1984 the Chief of the Army Staff passed an order dismissing the respondent from service. On 16.2.1984 the respondent filed a civil writ petition before the High Court of Allahabad laying challenge to the order of termination. The singular contention raised before the High Court was that the incident, in which the respondent was involved had taken place in the night intervening 27th & 28th March, 1978 and Court martial

proceedings had become barred by time on 28th March, 1981 under Section 122 of the Act whereafter Section 19 of the Act was not available to be invoked. The High Court of Allahabad in its impugned judgment, formed an opinion that the decision of this Court in Major Radha Krishan Vs. Union of India (1996) 3 SCC 507, squarely applies to the facts of this case and therefore the exercise of power under Section 19 read with Rule 14 was vitiated. The writ petition has been allowed and the impugned order of termination dated 2.1.1984 has been quashed.

In S.L.P.(C) No.3233/2000 the respondent Harminder Kumar was a Captain in the Army. In the year 1979 the respondent was found blameworthy for discrepancies in respect of stocks in Fuel Petroleum Depot, Leh between the period 10.3.1979 to 22.3.1979. Summary of evidence having been recorded, on 5.8.1981 a General Court Martial was ordered to be convened on 18.8.1981. On 14.8.1981 the respondent filed a civil writ petition under Article 32 of the Constitution of India in this Court wherein, by an interim order, the proceedings in the court martial were directed to be stayed. On 26.11.1982 the writ petition filed by the respondent was dismissed, consequent whereupon the interim order of stay also stood vacated. On 7.2.1983 the respondent was informed that General Court Martial against the respondent was fixed to be convened on 28.2.1984. However, on 28.2.1984 the Chief of the Army Staff in exercise of the power conferred by Section 19 read with Rule 14 issued a notice to the respondent calling upon him to show cause why his services be not terminated in view of the fact that the court martial proceedings against the respondent were impracticable and the Chief of the Army Staff was of the opinion that further retention of the rspondent in the service was not desirable. Immediately, the respondent filed a writ petition in the High Court of Delhi submitting that the general court martial proceedings having become barred by time against him on account of lapse of three years from the date of the offence, the notice issued to him was without jurisdiction. Vide order dated 8th September, 1998 the High Court has held, placing reliance on the decision of this Court in Major Radha Krishan Vs. Union of India (1996) 3 SCC 507, that once the court martial proceedings have become time-barred the Chief of the Army Staff could not have had recourse to Section 19 of the Act read with Rule 14 of the Rules. Consequently, the writ petition has been allowed and show cause notice dated 8th February, 1984 directed to be quashed.

The Union of India has filed these petitions for special leave to appeal.

Delay condoned in filing SLP(C) No.5155/1998.

Leave granted in both the SLPs.

We have heard Shri Altaf Ahmad, the learned Additional Solicitor General for the appellant and Shri Prem Prasad Juneja, Ms. Indu Malhotra and Shri A. Mariarputham, Advocates for the respondents. The principal plea raised on behalf of the appellant and forcefully pressed by the learned Additional Solicitor General at the time of hearing was that Major Radha Krishans case was not correctly decided and therefore needs to be reconsidered by this Court for two reasons : firstly, because Major Radha Krishans case is a decision rendered by two Judges-Bench which does not take notice of the law laid down by this Court in Chief of Army Staff Vs. Major Dharam Pal Kukrety - (1985) 2 SCC 412 which is three-Judges Bench decision; and secondly, the proposition laid down therein is too wide a proposition wholly unsustainable in the light of the express provisions contained in the Army Act and the Army Rules and the underlying scheme of the Legislation.

We would first set out the facts in brief and the ratio of the decisions rendered by this Court in the

case of Major Radha Krishan (supra) and Major Dharam Pal Kukrety (supra) before dealing with other contentions raised by the learned counsel for the parties because the major part of submissions made by the learned counsel centre around the abovesaid two decisions.

To appreciate the ratio of the abovesaid two cases it will be necessary to keep in view the provisions contained in Sections 19 and 122 of the Army Act, 1950 and Rule 14 of Army Rules, 1954 which are extracted and reproduced hereunder :-

Army Act, 1950

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.

122. Period of limitation for trial. - (1) Except as provided by sub-section (2), 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 [and such period shall commence, -

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the authority competent to initiate action, whichever is earlier.

(2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37.

(3) In the computation of the period of time mentioned in sub-section (1), any time spent by such person as a prisoner of war, or in enemy territory, or in evading arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in any exemplary manner for not less than three years with any portion of the regular Army.

Army Rules, 1954

[14. Termination of service by the Central Government on account of misconduct. - (1) When it is proposed to terminate the service of an officer under section 19 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in sub- rule (2) against such action -

Provided that this sub-rule shall not apply -

(a) where the service is terminated on the ground of misconduct which has led to his conviction by a criminal court; or

(b) where the Central Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

(2) When after considering the reports on an officers misconduct, the Central Government or the Chief of the Army Staff is satisfied that the trial of the officer by a court-martial is inexpedient or impracticable, but is of the opinion, that the further retention of the said officer in the service is undesirable, the Chief of the Army Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit in writing, his explanation and defence:

Provided that the Chief of the Army Staff may withhold from disclosure any such report or portion thereof if, in his opinion, its disclosure is not in the interest of the security of the State.

In the event of the explanation of the officer being considered unsatisfactory by the Chief of the Army Staff, or when so directed by the Central Government, the case shall be submitted to the Central Government, with the officers defence and the recommendation of the Chief of the Army Staff as to the termination of the officers service in the manner specified in sub-rule (4).

(3) Where, upon the conviction of an officer by a criminal court, the Central Government or the Chief of the Army Staff considers that the conduct of the officer which has led to his conviction renders his further retention in service undesirable a certified copy of the judgment of the criminal court convicting him shall be submitted to the Central Government with the recommendation of the Chief of the Army Staff as to the termination of the officers service in the manner specified in sub-rule (4).

[(4) When submitting a case to the Central Government under the provisions of sub-rule (2) or sub-rule (3), the Chief of the Army Staff shall make his recommendation whether the officers service should be terminated, and if so, whether the officer should be -

(a) dismissed from service; or

(b) removed from service; or

(c) Compulsorily retired from the service.

(5) The Central Government after considering the reports and the officers defence, if any, or the judgment of the criminal court, as the case may be, and the recommendation of the Chief of the Army Staff, may -

(a) dismiss or remove the officer with or without pension or gratuity; or

(b) compulsorily retire him from the service with pension and gratuity, if any, admissible to him.

Other provisions of the Act and the Rules, to the extent necessary, shall be adverted to as and when required.

In Major Radha Krishans case the officer had committed misconduct and the trial thereof by Court martial had become time- barred under Section 122 of the Act whereafter, on 10.9.1990, a notice was issued by the Chief of the Army Staff to the officer which inter alia stated - and whereas the COAS is further satisfied that your trial for the above misconduct is impracticable having become time- barred by the time the court of inquiry was finalised and he is of the opinion that your further

retention in service is undesirable. This Court for the purpose of finding out the meaning of impracticable, the term occurring in sub-rule (2) of Rule 14, referred to dictionary meanings of impracticable, and inexpedient and then concluded that impracticability is a concept different from impossibility for while the latter is absolute, the former introduces at all events some degree of reason and involves some regard for practice. As the provision of limitation prescribed under the Act prohibited a trial by court martial being held on expiry of the period of limitation such a provision could not be overridden by invoking Section 19 and thus achieving a purpose by an administrative act which could not be achieved by holding a trial under a statutory provision. Once a misconduct was rendered legally impossible and impermissible to be tried on account of bar of limitation it could not be said that the trial of the officer was impracticable and therefore resort could not be had to sub-Rule (2) of Rule 14. Vide para 10, yet another reason assigned by this court is that the satisfaction with regard to inexpediency or impracticability of a trial by Court martial must be arrived at only on consideration of the reports of misconduct for the purpose of resorting to Rule 14. The satisfaction regarding the inexpediency or impracticability to hold a Court martial must flow from the nature and the context of the misconduct itself and not from any other extraneous factor such as that the Court martial proceedings had become time-barred. This contention advanced on behalf of the officer was, in the view of the court, indefensible. Vide paras 11 and 12, this court held that the misconduct and other attending circumstances relating thereto have to be the sole basis for obtaining a satisfaction within the meaning of Rule 14(2) and dispensing with a trial on a satisfaction de hors the misconduct - like the bar of limitation - will be wholly alien to rule 14(2). Dharam Pal Kukretys case was neither placed before nor considered by the learned judges deciding Major Radha Krishans case.

Major Dharam Pal Kukrety was a permanent commissioned officer of the Indian Army holding the substantive rank of Captain and acting rank of Major. He was tried by a general court martial on four charges referable to certain incidents which had taken place on November 6 and 7, 1975. On March 13, 1976 the court martial announced its finding (subject to confirmation) of not guilty of all the charges. The confirming authority did not confirm the verdict and by order dated April 3, 1976 sent back the finding for revision. The same general court martial re-assembled on April 14, 1976. Once again the general court martial, adhering to its original view, announced the finding that the respondent was not guilty of all the charges (subject to confirmation). On May 25, 1976 the confirming authority refused to confirm the finding and promulgated, as required by Rule 71, the charges against the officer, the findings of the court martial and the non-confirmation thereof. Thereafter, the Chief of the Army Staff exercising power under Rule 14 issued a show cause notice dated November 12, 1976 which notice recorded inter alia the satisfaction of the COAS that a fresh trial by a court martial for the said offences was inexpedient, as also his opinion that the officers misconduct rendered his further retention in the service undesirable. The officer filed a civil writ petition in the High Court of Allahabad laying challenge to the validity of the show cause notice. The contention of the officer was that there was an initial option either to have the officer tried by a court martial or to take action against him under Rule 14 and the option having been exercised to try him by a court martial and the officer having been acquitted both at the time of the original trial and on revision, it was not competent for the Chief of the Army Staff to have recourse to Rule 14. The contention found favour with the High Court. The High Court held that the officer having been in fact tried by a court martial twice and a verdict of not guilty having been rendered twice the impugned notice under Rule 14 was without jurisdiction. In the appeal preferred by Chief of the Army Staff before this Court two contentions were raised on behalf of the officer : firstly, that it could not be said that the trial of the officer by a court martial was inexpedient or impracticable as in fact he had been tried by a court martial; and secondly, that on a true construction of Rule 14 the

Central Government or the Chief of the Army Staff had an initial option to have the officer tried by a court martial or to take action against him under Rule 14 and if the decision to have the officer tried by court martial was taken then action under Rule 14 was not permissible in case of finding of acquittal being rendered by the court martial. Vide para 14, this court noticed decisions rendered by different High Courts of the country throwing light on the issue before the Court. Allahabad High Court was of the view that in spite of non-confirmation of the finding and sentence passed by the court martial such finding and sentence did exist though they could not be put into effect for want of confirmation and therefore a second trial by court martial would be barred. Jammu & Kashmir High Court was of the view that the Legislature could not have reasonably intended that an officer convening a general court martial can go on dissolving such courts martial and reconstituting them ad infinitum until he obtained a verdict or a finding of his own liking. Such a decision would not only be against public policy and violative of the rule of double jeopardy but would also reduce the provisions of the Army Act to a mockery and give an appearance of mala fides. Having noticed the decisions of High Courts, this Court then concentrated on the question whether in such a case trial by a court martial is inexpedient or impracticable? Dictionary meaning of the term inexpedient was relied on. The Court then summed up its conclusion as under :-

In the present case, the Chief of the Army Staff had, on the one hand, the finding of a general court-martial which had not been confirmed and the Chief of the Army Staff was of the opinion that the further retention of the respondent in the service was undesirable and, on the other hand, there were the above three High Court decisions and the point was not concluded by a definitive pronouncement of this Court. In such circumstances, to order a fresh trial by a court-martial could certainly be said to be both inexpedient and impracticable and the only expedient and practicable course, therefore, open to the Chief of the Army Staff would be to take action against the Respondent under Rule 14, which he did. The action of the Chief of the Army Staff in issuing the impugned notice was, therefore, neither without jurisdiction nor unwarranted in law.

The decision of Allahabad High Court under appeal was reversed and the writ petition filed by the respondent therein was directed to be dismissed.

We would revert back to the above two decisions of this Court a little afterwards. We now proceed to notice the legislative scheme underlying Section 19 of the Act and Rule 14 of the Rules. Section 19 of the Act and Rule 14 of the Rules are to be read together and as integral parts of one whole scheme. Section 191 of the Act empowers the Central Government generally to make rules for the purpose of carrying into effect the provisions of this Act and without prejudice to the generality of such power, specifically to make rules providing for inter alia the removal, retirement, release or discharge from the service of persons subject to the Army Act. Section 19 empowers the Central Government to dismiss or remove from the service any person subject to this Act which power is subject to: (i) the (other) provisions of this Act, and (ii) the rules and regulations made under the Act. Under Section 193, all rules made under the Act shall be published in the official gazette and on such publication shall have effect as if enacted in this Act. Under Section 193-A, such rules shall be laid before each House of Parliament. In State of U.P. Vs Babu Ram - AIR 1961 SC 751 the Constitution Bench has held, quoting from Maxwell on Interpretation of Statutes, that rules made under a Statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction and obligation; an action taken under the Act or the rules made thereunder must confirm to the provisions of the Act and the rules which have conferred upon the appropriate authority the power to take an action. The Constitution Bench decision has been followed by this court in State of Tamil Nadu Vs. M/s Hind Stone - AIR 1981 SC 711 holding that a

statutory rule, while ever subordinate to the parent statute, is, otherwise, to be treated as part of the statute and as effective. [Also see Peerless General Finance and Investment Co.Ltd. Vs. Reserve Bank of India - AIR 1992 SC 1033, para 54.]

Section 19 and Rule 14 so read together and analysed, the following legal situation emerges :-

1) The Central Government may dismiss, or remove from the service, any person subject to the Army Act, 1950, on the ground of misconduct.

2) To initiate an action under Section 19, the Central Government or the Chief of the Army Staff after considering the reports on an officers misconduct ;

a) must be satisfied that the trial of the officer by a Court martial is inexpedient or impracticable,

b) must be of the opinion that the further retention of the said officer in the service is undesirable.

3. Such satisfaction having been arrived at and such opinion having been formed, as abovesaid, the officer proceeded against shall be given an opportunity to show cause against the proposed action which opportunity shall include the officer being informed together with all reports adverse to him to submit in writing his explanation and defence. Any report on an officers misconduct or portion thereof may be withheld from being disclosed to the officer concerned if the Chief of the Army Staff is of the opinion that such disclosure is not in the interest of the security of the State.

4) Opportunity to show cause in the manner as abovesaid need not be given to an officer in the following two cases :-

a) Where the misconduct forming the ground for termination of service is one which has led to the officers conviction by a criminal court;

b) Where the Central Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

5) The explanation of the officer shall be considered by the Chief of the Army Staff. If the explanation is found satisfactory, further proceedings need not be pursued. The explanation, if considered unsatisfactory by the Chief of the Army Staff or when so directed by the Central Government, in either case, shall be submitted to the Central Government with the officers defence and the recommendation of the COAS as to the termination of the officers service i.e. whether the officer should be (a) dismissed, or (b) removed, or (c) compulsorily retired, from the service.

6) The Central Government shall after taking into consideration the reports (on the officers misconduct) the officerss defence, if any, and the recommendation of the COAS, shall take a decision which if unfavourable to the officer may be (a) to dismiss or remove the officer with or without pension or gratuity; or (b) to compulsorily retire him from service with pension and gratuity, if any, admissible to him.

The case of an officer whose service is proposed to be terminated on the ground of misconduct which has led to his conviction by a criminal court is to be treated differently. He need not be given an opportunity to show cause against the proposed termination. A decision as to termination in one of the modes provided by sub-rule (4) of Rule 14 can be taken by the Central Government on its own or on the recommendation of the Chief of the Army Staff if he considers that the conduct of the

officer leading to his conviction renders his further retention in service undesirable in which case his recommendation accompanied by a certified copy of the judgment of the criminal court convicting him shall be submitted to the Central Government which will take the decision in accordance with sub-rule (5).

The learned ASG submitted that the defence services under the law of the land are treated as a class apart as can be spelled out from the different provisions of the Constitution and the Army Act and other laws. As the defence of the country is involved, in the very nature of the things, a cautious approach has to be adopted while interpreting the several legal provisions, the security of the State and welfare of the nation being supreme. He submitted that under the scheme of the Legislation there is no warrant for holding that a decision to take action under Section 19 read with Rule 14 or to convene a court martial must be taken only in the first instance and before the time limited for commencing court martial proceedings comes to an end. He further submitted that power vesting in the Central Government and Chief of the Army Staff under Section 19 of the Act can be exercised whether before or after convening and holding trial by court martial and even after the expiry of the limitation prescribed by Section 122 for commencement of the court martial. On the other hand, the learned counsel appearing for the respondents (writ- petitioners before the High Court) submitted that the scheme of the Army Act and the Rules made thereunder provides for an officer subject to the Army Act being dealt with either by a criminal court or by a court martial or by an appropriate action under Section 19 of the Act and cannot be subjected to duality of the proceedings, or to one of the three proceedings after the other one of the three has been set in motion and accomplished. To be more specific, submitted the learned counsel, once an officer has been subjected to court martial proceedings or if such proceedings cannot be held or have proved to be abortive as having become barred by time or impossible or impermissible then Section 19 cannot be invoked. In order to test the validity of such rival contentions forcefully advanced before us we would examine the scheme of the Act and the implications of the relevant provisions contained therein.

Army defends the country and its frontiers. It is entrusted with the task of protecting against foreign invasion and preserving the national independence. The arduous nature of duties, the task they have to perform in emergent situations and the unknown lands and unknown situations wherein they have to function demand an exceptionally high standard of behaviour and discipline compared to their counterparts in civil services. That is why the military people command the respect of the masses. Such factors taken together demand the military services being treated as a class apart and a different system of justice __ military justice __ being devised for them. Article 33 empowers the Parliament to restrict or abrogate fundamental rights in their application to the members of the armed forces so as to ensure the proper discharge of their duties and the maintenance of discipline among them. Right to file special leave to appeal before the Supreme Court and power of superintendence vesting in the High Courts do not extend over judgment, determination, sentence or order passed or made by any Court or Tribunal dealing with armed forces. Members of the defence services hold office during pleasure of the President under Article 310 but they are not entitled to the protection offered by Article 311. The principles of interpretation of statutes which apply to any other statute also apply to the legislation dealing with defence services; however, the considerations of the security of the State and enforcement of a high degree of discipline additionally intervene and have to be assigned weightage while dealing with any expression needing to be defined or any provision needing to be interpreted.

Section 19, with which we are concerned, is to be found placed in Chapter IV of the Act entitled Conditions of Service. Chapter VI deals with offences. Sections 34 to 68, finding place in Chapter VI are very widely worded and embrace within their realm practically every type of misconduct, its

abetment and attempt as well, which any person subject to the Act may commit. Section 69 defines civil offences, the commission whereof shall be triable by a court martial. Section 70 defines civil offences not triable by court martial. Chapter VII deals with punishments. Therein Section 71 provides as under:

71. Punishments awardable by courts martial. __ Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by courts martial, according to the scale following, that is to say, __

(a) death;

(b) transportation for life or for any period not less than seven years;

(c) imprisonment, either rigorous or simple, for any period not exceeding fourteen years;

(d) cashiering, in the case of officers;

(e) dismissal from the service;

(f) reduction to the ranks or to a lower rank or grade or place in the list of their rank, in the case of warrant officers; and reduction to the ranks or to a lower rank or grade, in the case of non-commissioned officers:

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy;

(g) forfeiture of seniority of rank, in the case of officers, junior commissioned officers, warrant officers and non- commissioned officers; and forfeiture of all or any part of their service for the purpose of promotion, in the case of any of them whose promotion depends upon length of service;

(h) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;

(i) severe reprimand or reprimand, in the case of officers, junior commissioned officers, warrant officers and non- commissioned officers;

(j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service;

(k) forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal;

(l) stoppage of pay and allowances until any proved loss or damage occassioned by the offence of which he is convicted is made good.

According to Section 74, before an officer is awarded any of the punishments specified in clauses (a) to (c) of Section 71, he shall be sentenced to be cashiered. Other provisions in this chapter are not relevant for our purpose.

Under Section 101, any person subject to this Act, who is charged with an offence, may be taken

into military custody. Chapter X deals with Courts-Martial. Therein under Section 121, any person subject to this Act having been acquitted or convicted of an offence by a court martial or a criminal court shall not be liable to be tried again for the same offence. Section 122, provides period of limitation for commencement of trial by court martial. Once the period prescribed has expired a trial before a court martial cannot be commenced.

Under Section 153 no finding or sentence of a court martial shall be valid unless confirmed as provided by the Act. Section 158 gives power to confirming authority to mitigate, remit or commute sentences. Section 165 empowers the Central Government, the Chief of the Army Staff or any prescribed officer to annul the proceedings of any court martial on the ground that they are illegal or unjust.

Misconduct as a ground for terminating the service by way of dismissal or removal, is not to be found mentioned in Section 19 of the Act; it is to be read therein by virtue of Rule 14. Misconduct is not defined either in the Act or in the Rules. It is not necessary to make a search for the meaning, for it would suffice to refer to State of Punjab & Ors. Vs. Ram Singh, Ex-Constable, (1992) 4 SCC 54 wherein the term misconduct as used in Punjab Police Manual came up for the consideration of this court. Having referred to the meaning of misconduct and misconduct in office as defined in Blacks Law Dictionary and Iyers Law Lexicon, this court held :-

. . . . . the word misconduct though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.

In the context in which the term misconduct has been used in Rule 14, it is to be given a wider meaning and any wrongful act or any act of delinquency which may or may not involve moral turpitude, would be misconduct, and certainly so, if it is subversive of army discipline or high traditions of army and/or if it renders the person unworthy of being retained in service. The language of sub-rule(2) of Rule 14 employing the expression the reports on an officers misconduct uses reports in plural and misconduct in singular. Here plural would include singular and singular would include plural. A single report on an officers misconduct may invite an action under Section 19 read with Rule 14 and there may be cases where there may be more reports than one on a singular misconduct or more misconducts than one in which case it will be the cumulative effect of such reports on misconduct or misconducts, which may lead to the formation of requisite satisfaction and opinion within the meaning of sub-rule (2) of Rule 14.

The learned counsel for the respondents submitted that a court martial convened under the Act is a high powered special tribunal vested with very wide jurisdiction. It cannot appropriately be called either a criminal court merely or a service tribunal simply. It is a combination of the two and much more than that. A perusal of the provisions of Section 71 clearly indicates that court martial is empowered to inflict such punishments which are otherwise inflicted by a competent criminal court while there are punishments such as those provided by clauses (d) to (l) thereof which belong to the

realm of service jurisprudence and can ordinarily be inflicted by way of penalty for a misconduct which a person in service may be found to have committed. The learned counsel went on to submit that the scheme of the Act and the Rules thus shows that a person subject to the Act having committed a misconduct amounting to an offence within the meaning of Chapter VI should ordinarily be subjected to trial by a court martial. And if that has been done, then the power to act under Section 19 is taken away. So also if the period of limitation for trial by court martial is over, then also by necessary implication resort cannot be had to Section 19. We find it the difficult to agree with the submission so made.

In Union of India Vs. S.K. Rao, AIR 1972 SC 1137 = (1972) 2 SCJ 645, the gross misconduct alleged against the delinquent officer was of having actively abetted in the attempt of brother officers daughter eloping with a sepoy. An inquiry into the grave misconduct was made by Court of Inquiry. The Chief of the Army Staff considered the conduct of the officer unbecoming of an officer. He also formed an opinion that trial of the officer by a general court martial was inexpedient and, therefore, he ordered an administrative action to be taken under Rule 14 by removing the officer from service. The order of removal was put in issue on the ground that the Army Act contained specific provision, viz. Section 45, for punishment for unbecoming conduct and as Section 19 itself suggests that power being subject to the provisions of this Act, Section 19 would be subject to Section 45 and therefore the Central Government would have no power to remove a person from the service in derogation of the provision of Section 45. The plea was repelled by this court holding that the power under Section 19 is an independent power. Though Section 45 provides that on conviction by court martial an officer is liable to be cashiered or to suffer such less punishment as mentioned in the Act, for removal from service under Section 19 read with Rule 14, a court martial is not necessary. The court specifically held that the power under Section 19 is an independent power and the two Sections 19 and 45 of the Act are, therefore, mutually exclusive.

It is true that some of the punishments provided by Section 71 as awardable by court martial are not necessarily punishments, in the sense of the term as ordinarily known to criminal jurisprudence, but are penalties as known to service jurisprudence. The fact remains that such penalties have been treated as punishments awardable by court martial under Section 71 of the Army Act, 1950. The power conferred by Section 19 on the Central Government and the power conferred on court martial by Section 71 are clearly distinguishable from each other. They are not alternatives to each other in the sense that the exercise of one necessarily excludes the exercise of the other. The distinction may be set out in a tabular form:-

Termination (dismissal or removal) by Central Government under Section 19 read with Rule 14
Termination of service as punishment awarded by courts martial

1. Is condition of service falling within the realm of service jurisprudence; penalty maybe dismissal/removal or compulsory retirement.

Is punishment awardable by court martial.; punishment can be of dismissal and/or cashiering (cannot be removal or compulsory retirement).

2. No enquiry is contemplated except affording opportunity to show cause as provided by Rule 14. Punishment can be awarded only on a trial being held in accordance with the provisions of the Act.

3. There is no bar of limitation provided for exercising the power Courts martial cannot inflict any punishment unless trial is commenced with in the period of limitation provided by Section 122.

4. Any person subject to Army Act dismissed or removed from the service by Central Government is not previous convict.

Any person subject to Army Act awarded a punishment under Section 71 is a person convicted by court martial

5. Any person proceeded against under Section 19 does not suffer any incarceration. Any person charged with an offence may be taken into military custody.

6. Satisfaction and formation of opinion in Rule 14 may be based on a single report of misconduct or more than one or series of such reports taken together. Punishment can be inflicted only on the misconduct forming subject matter of charge.

7. Penalty is guided by formation of opinion on undesirability of officer for future retention in the service. Punishment would be determined by gravity of proved misconduct amounting to offence.

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. The 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 Corpse 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. In the event of his being convicted if some further disciplinary action is still proposed to be taken, then it is the conduct of the officer leading to his conviction (as found by the criminal court) which is capable of being taken into consideration by the Central Government or the COAS under sub-rules (3), (4) and (5) of Rule 14 for the purpose of such action. The facts forming the conduct of the officer leading to his conviction shall alone form basis of the formation of opinion as to whether his further retention in service is undesirable whereupon he may be dismissed, removed or compulsorily retired from the service in the manner prescribed by the said sub-rules. But, on the other hand, if the initial decision was to have the delinquent officer tried not by a criminal court but by a court-martial, then under sub-rule (2) of Rule 14 it is for the Central Government or the COAS to arrive at a satisfaction whether the trial of the officer by a court-martial is expedient and practicable whereupon the court-martial shall be convened. The Central Government or the COAS may arrive at a satisfaction that it is inexpedient or impracticable to have the officer tried by court-martial then the court-martial may not be convened and additionally, subject to formation of the opinion as to undesirability of the officer for further retention in the service, the power under Section 19 read with Rule 14 may be exercised. Such a decision to act under Section 19 read with Rule 14 may be taken either before convening the court-martial or even after it has been convened and commenced subject to satisfaction as to the trial by a court-martial becoming inexpedient or

impracticable at which stage the Central Government or the COAS may revert back to Section 19 read with Rule 14. It is not that a decision as to inexpediency or impracticability of trial by court martial can be taken only once and that too at the initial stage only and once taken cannot be changed in spite of a change in fact situation and prevailing circumstances.

Section 127 was to be found in the Army Act as originally enacted which provided that a person convicted or acquitted by a court martial could be tried again by a criminal court for the same offence or on the same facts subject to previous sanction of the Central Government. The provision was deleted by Act No.37 of 1992. This deletion is suggestive of the legislative intent to confer finality to the finding and sentence of court martial subject to their being confirmed and not annulled. Power to confirm finding and sentence of court martial and the power to annul the proceedings on the ground of being illegal or unjust, both provisions read together indicate that the finding and sentence of court martial if legal and just have to be ordinarily confirmed but they may be annulled on the ground of illegality or unjustness. An obligation is cast on the confirming authority to examine the legality and justness of the proceedings before confirming them. Questions of correctness, legality and propriety of the order passed by any court martial and the regularity of any proceedings to which the order of court martial relates can be raised by way of petition under Section 164. Once the finding and the sentence, if any, have been confirmed, the court martial being a special tribunal dispensing military justice, it would not be permissible to exercise additionally the power conferred by Section 19 read with Rule 14 and to inflict a penalty thereunder if the court martial has not chosen to inflict the same by way of punishment under Section 71. To permit such a course would be violative of the principle of double jeopardy and would also be subversive of the efficacy of the court martial proceedings, finding and sentence. So long as a final verdict of guilty or not guilty, pronounced by court material and confirmed by competent authority so as to be effective is not available, the power to proceed under Section 19 read with Rule 14(2) exists and remains available to be exercised.

The learned counsel for the respondents submitted that the term impracticable has been used in Rule 14 in contradistinction with impossible or impermissible and therefore if a trial by court martial though practicable but has been rendered impermissible because of a bar created by the rule of limitation or rendered impossible because of a fact situation then resort cannot be had to Section 19 read with sub- rule (2) of Rule 14 by treating the impossibility or impermissibility as impracticability. The learned counsel for the respondents went on to submit that even Dharam Pal Kukretys case required reconsideration as in their submission it does not lay down the correct law. It was urged that to the extent Dharam Pal Kukretys case treats impermissibility as impracticability it is a mistaken view. On the other hand, the learned ASG submitted that Dharam Pal Kukretys case has correctly laid down the law and mistake has been committed by this court in deciding Radha Krishans case by over looking Dharam Pal Kukretys case and therefore Radha Krishans case must be held to have been decided per incuriam.

Let us first examine what is the meaning of term impracticable in sub-rule(2) of Rule 14?

In Major Radha Krishans case this court has held, ..When the trial itself was legally impossible and impermissible the question of its being impracticable, in our view cannot or does not arise. Impracticability is a concept different from impossibility for while the latter is absolute, the former introduces at all events some degree of reason and involves some regard for practice. According to Websters Third New International Dictionary impracticable means not practicable; incapable of being performed or accomplished by the means employed or at command. Impracticable presupposes that the action is possible but owing to certain practical difficulties or other reasons it is

incapable of being performed. The same principle will equally apply to satisfy the test of inexpedient as it means not expedient; disadvantageous in the circumstances, inadvisable, impolitic. It must therefore be held that so long as an offer can be legally tried by a court-martial the authorities concerned may, on the ground that such a trial is not impracticable or inexpedient, invoke Rule 14(2). In other words, once the period of limitation of such a trial is over the authorities cannot take action under Rule 14(2).

The above passage shows that the learned Judges went by the dictionary meaning of the term impracticable, placed the term by placing it in juxta position with impossibility and assigned it a narrow meaning. With respect to the learned judges deciding Major Radha Krishans case, we find ourselves not persuaded to assign such a narrow meaning to the term. Impracticable is not defined either in the Act or in the Rules. In such a situation, to quote from Principles of Statutory Interpretation (Chief Justice G.P. Singh, Seventh Edition, 1999, pp. 258-259), when a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Therefore, when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers. As stated by KRISHNA IYER, J. Dictionaries are not dictators of statutory construction where the benignant mood of a law, and more emphatically, the definition clause furnish a different denotation. In the words of JEEVAN REDDY, J.: A statute cannot always be construed with the dictionary in one hand and the statute in the other. Regard must also be had to the scheme, context and to the legislative history. JUDGE LEARNED HAND cautioned not to make a fortress out of the dictionary but to pay more attention to the sympathetic and imaginative discovery of the purpose or object of the statute as a guide to its meaning.

In Words and Phrases (Permanent Edition, Vol.20, page 460- 461) it is stated that the term impossible may sometimes be synonymous with impracticable; impracticable means not practicable, incapable of being performed or accomplished by the means employed or at command; impracticable is defined as incapable of being effected from lack of adequate means, impossible of performance, not feasible; impracticable means impossible or unreasonably difficult of performance, and is a much stronger term than expedient. In Law Lexicon (P. Ramanatha Iyer, Second Edition, page 889) one of the meanings assigned to impracticable is not possible or not feasible; at any rate it means something very much more than not reasonably practicable. In The New Oxford Dictionary of English (1998, at p.918), impracticable (of a course of action) is defined to mean impossible in practise to do or carry out. The same dictionary states the usage of the term in these words __ Although there is considerable overlap, impracticable and impractical are not used in exactly the same way. Impracticable means impossible to carry out and is normally used of a specific procedure or course of action, . Impractical, on the other hand, tends to be used in more general senses, often to mean simply unrealistic or not sensible.

We may with advantage refer to certain observations made by the Constitution Bench (majority view) in Union of India & Anr. Vs. Tulsi Ram Patel, (1985) 3 SCC 398. Article 311(2), proviso (b) contemplates a government servant being dismissed or removed or reduced in rank, dispensing with an enquiry, if it is not reasonably practicable to hold such enquiry. The Constitution Bench dealt with meaning of the expression reasonably practicable and the scope of the provision vide para 128 to 138 of its judgment. The Constitution Bench pertinently noted that the words used are not reasonably practicable and not not practicable nor impracticable (as is the term used in sub-rule(2)

of Rule 14 of the Army Rules). Thus, the decision in Tulsi Ram Patels case may not ipso facto throw light on the issue before us but some of the observations made by the Constitution Bench can usefully be referred to. A few illustrative cases mentioned by the Constitution Bench, wherein it may be not reasonably practicable to hold an enquiry, are:-

(i) a situation which is of the creation of the concerned government servant himself or of himself acting in concert with others or his associates;

(ii) though, the government servant himself is not a party to bringing about of a situation yet the exigencies of a situation may require that prompt action should be taken and not taking prompt action may result in the trouble spreading and the situation worsening and at times becoming uncontrollable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities.

The Constitution Bench has further held that disciplinary enquiry is not expected to be dispensed with lightly or arbitrarily or out of ulterior motive or merely to avoid the holding of an enquiry or because the departments case against the government servant is weak and must fail. It is not necessary that a situation which makes the holding of an enquiry not reasonably practicable should exist before the disciplinary enquiry is initiated against the government servant; such a situation can also come into existence subsequently during the course of an enquiry. Reasonable practicability of holding an enquiry is a matter of assessment to be made by the disciplinary authority. The satisfaction of the authority is not immune from judicial review on well settled parameters of judicial review of administrative decisions. However, if on the satisfaction reached by the authority two views are possible, the court will decline to interfere.

As the term used in sub-rule (2) of Rule 14 is impracticable and not not reasonably practicable, there is more an element of subjectivity sought to be introduced by this provision in the process of arriving at the satisfaction, obviously because the rule is dealing with the satisfaction arrived at by the Central Government or the Chief of the Army Staff, in the matter of disciplinary action on account of misconduct committed by an officer of Army which decision would have been arrived at by taking into consideration the then prevailing fact situation warranting such decision after considering the reports on officers misconduct.

The learned Additional Solicitor General cited a few examples wherein the trial by court martial may be rendered impracticable, to wit:-

i) a misconduct amounting to an offence having been rendered not triable by court martial by expiration of the period of limitation prescribed by Section 122;

ii) a court martial having been dissolved after its commencement on account of the number of officers required by the Act to validly constitute a court martial being reduced below the minimum or any other exigency contemplated by Section 117 occurring and the court martial cannot be convened to commence afresh on account of bar of limitation under Section 122 having come into play;

iii) The Central Government, the Chief of the Army Staff or any prescribed officer having annulled the proceedings of any court martial on the ground that they are illegal or unjust within the meaning of Section 165 of the Act and by that time the bar of limitation under Section 122 having come into play;

iv) Any finding or sentence of a court martial requiring confirmation having been ordered to be revised by order of the confirming authority but in spite of such revision having not been confirmed once again and a subsequent revision of finding or sentence being not contemplated by the provisions of the Act; rather a revision once only having been provided by Section 160;

v) A person subject to the provisions of Army Act having secured a stay order from a court of law on commencement of court martial and by the time the stay order is vacated by the court of law the bar of limitation provided by Section 122 coming into play.

On the meaning which we are placing on the term impracticable as occurring in Rule 14(2) we proceed to provide resolutions to the several problems posed by the illustrations given by the learned ASG. According to us:

In illustration (i) the expiry of the period of limitation prescribed by Section 122 renders the trial by court-martial impracticable on the wider meaning of the term. There is yet another reason to take this view. Section 122 prescribes a period of limitation for the commencement of court-martial proceedings but the Parliament has chosen not to provide any bar of limitation on exercise of power conferred by Section 19. We cannot, by an interpretative process, read the bar of limitation provided by Section 122 into Section 19 of the Act in spite of a clear and deliberate legislative abstention. However, we have to caution that in such a case, though power under Section 19 read with Rule 14 may be exercised but the question may still be __ who has been responsible for the delay? The period prescribed by Section 122 may itself be taken laying down a guideline for determining the culpability of delay. In spite of power under Section 19 read Rule 14 having become available to be exercised on account of a trial by a court-martial having been rendered impracticable on account of bar of limitation created by Section 122, other considerations would assume relevance, such as __ whether the facts or set of facts constituting misconduct being three years or more old have ceased to be relevant for exercising the power under Section 19 read with Rule 14? If there was inaction on the part of the authorities resulting into delay and attracting bar of limitation under Section 122 can it be said that the authorities are taking advantage of their own inaction or default? If the answer be yes, such belated decision to invoke Section 19 may stand vitiated, not for any lack of jurisdiction but for colourable or malafide exercise of power.

In illustration (ii), the court martial has stood dissolved for fortuitous circumstance for which no one is to be blamed __ neither COAS nor the delinquent officer. The delinquent officer, howsoever grave his misconduct amounting to offence may have been, would go scot free. It would be fastidious to hold that bar of limitation under Section 122 would also exclude the exercise of power under Section 19 read with Rule 14.

In illustrations (iii) and (iv) also, in our opinion, the exercise of power under Section 19 read with Rule 14 cannot be excluded. The finding and sentence of the court martial are ineffective unless confirmed by the confirming authority. The Act does not contemplate that the finding and sentence of a court martial must necessarily be confirmed merely because they have been returned for the second time. Section 165 vests power in the Central Government, the COAS and any prescribed officer, as the case may be, to annul the proceedings of any court martial if the same are found to be illegal or unjust. The delinquent officer cannot be allowed to escape the consequences of his misconduct solely because court martial proceedings have been adjudged illegal or unjust for the second time. The power under Section 19 read with Rule 14 shall be available to be exercised in such a case though in an individual case the exercise of power may be vitiated as an abuse of power. The option to have a delinquent officer being tried by court martial having been so exercised and

finding as to guilt and sentence having been returned for or against the delinquent officer by the court martial for the second time, on just and legal trial, ordinarily such finding and sentence should be acceptable so as to be confirmed. Power to annul the proceedings cannot be exercised repeatedly on the sole ground that the finding or the sentence does not meet the expectation of the confirming authority. Refusal to confirm is a power to be exercised, like all other powers to take administrative decision, reasonably and fairly and not by whim, caprice or obstinacy. Exercising power under Section 19 read with Rule 14 consequent upon court martial proceedings being annulled for the second time because of having been found to be illegal or unjust, the exercise would not suffer from lack of jurisdiction though it may be vitiated on the ground of inexpediency within the meaning of Rule 14(2) or on the ground of abuse of power or colourable exercise of power in a given case.

In illustration (v), the ball will be in the court of the delinquent officer. Once a stay order has been vacated, in spite of the expiry of limitation for commencement of court martial proceedings under Section 122 of the Act, the option to have the delinquent tried by a court martial or to invoke Section 19 read with Rule 14, depending on the facts and circumstances of an individual case, would still be available to the Central Government or the COAS. In Union of India & Ors. Vs. Major General Madan Lal Yadav (Retd.), (1996) 4 SCC 127, this court has invoked applicability of the maxim nullus commodum capere potest de injuria sua propria __ no man can take advantage of his own wrong __ to hold that the delinquent officer having himself created a situation withholding commencement of trial, he would be estopped from pleading the bar of limitation and the trial commenced on vacating of the judicial order of restraint on court martial shall be a valid trial. The learned Additional Solicitor General pointed out that although in the category of cases illustrated by (v) above in case of an offender who ceases to be subject to the Act, the Parliament has by Act No.37 of 1992 amended sub-section (2) of Section 123 so as to exclude the time during which the institution of the proceedings in respect of the offence has been stayed by injunction or order from computing the period of limitation but a similar provision is not made in respect of the period of limitation for trial by court martial of any person subject to the Act, as the respondents herein are. This deliberate omission by the Parliament to provide for exclusion from calculating period of limitation in Section 122 on the lines of the provision for exclusion in Section 123 lends strength to his submission that in as much as a person subject to the Act would be amenable to Section 19 of the Act even after the expiry of the period of limitation for trial, provision for extension in period of limitation under Section 122 was unnecessary. If the expiry of the period of limitation for commencement of court martial was to be given effect to, the consequence to follow would be that the person would not be liable to be tried by a court martial and hence would also not be liable to be inflicted with a wide variety of punishments awardable by court martial under Section 71; nevertheless he would be liable to be dismissed or removed from service under Section 19, though that action shall be capable of being taken subject to formation of opinion as to the undesirability of person for further retention in service. We find merit in the submission of the learned ASG.

Having thus explained the law and clarified the same by providing resolutions to the several illustrative problems posed by the learned ASG for the consideration of this court (which are illustrative and not exhaustive), we are of the opinion that the expiry of period of limitation under Section 122 of the Act does not ipso facto take away the exercise of power under Section 19 read with Rule 14. The power is available to be exercised though in the facts and circumstances of an individual case, it may be inexpedient to exercise such power or the exercise of such power may stand vitiated if it is shown to have been exercised in a manner which may be called colourable exercise of power or an abuse of power, what at times is also termed in administrative law as fraud on power. A misconduct committed a number of years before, which was not promptly and within the prescribed period of limitation subjected to trial by court martial, and also by reference to which

the power under Section 19 was not promptly exercised may cease to be relevant by long lapse of time. A subsequent misconduct though less serious may aggravate the gravity of an earlier misconduct and provide need for exercise of power under Section 19. That would all depend on the facts and circumstances of an individual case. No hard and fast rule can be laid down in that behalf. A broad proposition that power under Section 19 read with Rule 14 cannot be exercised solely on the ground of court martial proceedings having not commenced within the period of limitation prescribed by Section 122 of the Act, cannot be accepted. In the scheme of the Act and the purpose sought to be achieved by Section 19 read with Rule 14, there is no reason to place a narrow construction on the term impracticable and therefore on availability or happening of such events as render trial by court-martial impermissible or legally impossible or not practicable, the situation would be covered by the expression - the trial by court-martial having become impracticable.

Exercise of power under Section 19 read with Rule 14 is open to judicial review on well settled parameters of administrative law governing judicial review of administrative action such as when the exercise of power is shown to have been vitiated by malafides or is found to be based wholly on extraneous and/or irrelevant grounds or is found to be a clear case of colourable exercise of/or abuse of power or what is sometimes called fraud on power, i.e. where the power is exercised for achieving an oblique end. The truth or correctness or the adequacy of the material available before the authority exercising the power cannot be revalued or weighed by the court while exercising power of judicial review. Even if some of the material, on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material available on which the action can be sustained. The court would presume the validity of the exercise of power but shall not hesitate to interfere if the invalidity or unconstitutionality is clearly demonstrated. If two views are possible, the court shall not interfere by substituting its own satisfaction or opinion for the satisfaction or opinion of the authority exercising the power.

We are also of the opinion that Major Radha Krishans case 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 submission of the learned Additional Solicitor General that the case of Dharam Pal Kukrety being a Three- Judges Bench decision of this court, should have been placed before the Two-Judges Bench which heard and decided Major Radha Krishans case.

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 Krishans case and holding that the exercise of power under Section 19 read with Rule 14 by the COAS was vitiated solely on account of the bar of limitation created by Section 122 of the Act. Both the judgments of the High Court, which are under appeal, are accordingly set aside and the writ petitions filed by the two respondents are directed to be dismissed. However, consistently with the observation made by this court vide para 18 of Major Dharam Pal Kukretys case, we would like to impress upon the Chief of the Army Staff and the Central Government, as the case may be, that the incidents leading to action against the two respondents are referable to late 70s. By this time a period of more than 20 years has elapsed in between. Before any decision to initiate disciplinary action against any of the two respondents is taken, the conduct and behaviour of the respondents concerned during the intervening period shall also be taken into consideration while deciding upon

the desirability of proceeding further in the matter at this belated stage, and keeping in view, of course, the requirement of military discipline and the high traditions of the Indian Army. No order as to the costs.