CHAPTER-V
DOCTRINE OF PLEASURE AND ITS APPLICABILITY TO DEFENCE PERSONNEL

(A) Doctrine of Pleasure and Military Law

In India the pleasure doctrine has received constitutional sanction by being enacted in article 310 clause(1) of the Constitution. Unlike in the United Kingdom, in India it is not subject to any law made by Parliament but is subject only to what is expressly provided by the Constitution.

When the first draft of the Constitution of India was prepared, the common law doctrine of pleasure did not find any place in the beginning. It was later included at the suggestion made by the Ministry of Home Affairs, Government of India, on the ground that such a doctrine existed earlier in both the Government of India Acts of 1919 and 1935. It was proposed as Article 282-A by the Drafting Committee. It stated as follows:

282-A tenure of office of persons serving the Union of a State: Except as expressly provided by this Constitution, every person who is a member of a defence service of the Union or of an All India Service or any Civil post under the Union, holds office during the pleasure of the President and every person who is a member of a civil service of a state holds office during the pleasure of the Governor of the State.

Article 282-A of the draft Constitution was finally enacted as article 310 of the Indian Constitution incorporating the doctrine of pleasure which provides:

Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-

India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President.

While framing the provisions regarding the services, the drafting Committee also proposed article 282-AA dealing with dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. This article provided:

282-AA. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State:

(1) No person who is a member of a civil service of the Union or an All-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this clause shall not apply:

(a) where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing that it is not reasonably practicable to give that person an opportunity of showing cause.

(3) If any question arises whether it is reasonably practicable to give notice to any person under clause(b) of the proviso to the last preceding clause, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

This article was enacted as article 311 of the Indian Constitution. However, neither at the stage of drafting nor after the final adoption of the Constitution articles 282AA and 311
respectively made applicable to the members of the defence forces. This was so because the Ministry of Defence so desired in its letter to the Joint Secretary of the Constituent Assembly.  

At this stage it may however be mentioned that the analogy of article 311 of the Indian Constitution is found in section 19 of the Army Act read with rules 14 and 15.

The pleasure doctrine in fact relates to the tenure of a government servant. 'Tenure' means 'manner', conditions or term of holding something'. Invariably it is contended on behalf of the government servants that the pleasure doctrine is the relic of the feudal age - a part of the special prerogative of the Crown which was imposed upon India by an Imperial power and thus is an anachronism in this democratic socialist age and must, therefore, be confined within the narrowest limits. On the other hand, the contention of the government has always been that this doctrine was a matter of public policy and it was in public interest for public good that right to dismiss at pleasure a government servant who has made himself unfit to continue office should exist and the exercisable in the constitutional sense.

In the constitutional context, the concept of "doctrine of pleasure" has been discussed by the Supreme Court in its landmark ruling of Tulsi Ram Patel. The court has held that the

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2. Id. at 579-80.
4. Ibid.
pleasure doctrine has received constitutional sanction by being enacted in article 310(1) of the Constitution of India. It would not be correct to say that pleasure doctrine is a prerogative of British crown which has been inherited by India and included into its Constitution, adopted to suit the constitutional set-up. The pleasure doctrine and the protection offered to the civil servants by clauses (1) and (2) of article 311 in India are based on public policy and in the public interest and are for public good.

It has been further observed by the Court that the pleasure of the President or the Governor is not to be exercised by the appropriate authority specified in the Acts made under article 309 or in rules made under such Acts or made under the proviso to article 309.

Article 310 of the Constitution of India provides that every person who is a member of a defence service shall hold office during the pleasure of the President. The analogy of this constitutional rule has also been incorporated under section 18 of the Army Act which reads as follows:

Every person subject to this Act shall hold office during the pleasure of the President.

Article 311 which incorporates limitations on the exercise of the rule of pleasure is not applicable in regard to members belonging to the defence services. Infact, article 311 only deals with civil servants and is silent in regard to the defence services. As the Constitution specifically does not deal with the limitations on the rule of pleasure qua the members of the
defence services, section 19 of the Army Act deals with this aspect in a limited manner. It reads as follows:

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.

Rules 14 and 15 enacted under the Army Act provide the details which need to be followed by the Central Government while exercising its power under section 19 of the Act. It would also be relevant here to reproduce section 45 of the Army Act.

Any officer, junior commissioned officer or warrant officer who behaves in a manner unbecoming his position and the character expected of him shall, on conviction by courts-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and if he is a junior commissioned officer or a warrant officer, be liable to be dismissed or to suffer such less punishment as is in this Act mentioned.

In the light of the provisions mentioned above, the position regarding the members of the defence service, vis-a-vis, protection under articles 310 and 311 has been examined by the High Courts and Supreme Court in various cases which will be examined hereinafter in this chapter. However, the detailed submissions to evaluate the actual constitutional and legal portion would be made later in the end after discussing all these cases.

Judicial Attitude in Regard to Applicability of Doctrine of Pleasure to Defence Personnel

In the first instance it would be appropriate to make it

5. The relevant details of rules 14 and 15 will be dealt with in the later part of this Chapter.
clear that civilians working in the defence services cannot claim the benefit of the protections given under article 311. This is the view which has been expressed by the different High Courts as also by the Supreme Court.

The position regarding the members of the defence services was examined as early as 1952 in Vishnu Krishnan Nambodri v. Brig. K. N. Kripal, where the services of some officers in the Army of State of Travancore-Cochin were decided to be terminated by the President under section 18 of the Army Act and Article 310 of the Constitution of India, the question of the legality of the proceedings relating to the sanction of the President was immaterial and could not affect the termination of services.

In the case of Union of India v. Ram Chand, Kapur, J., explained the position by recording:

The law in regard to defence services has remained the same. At no time in the Constitutional History of India has any similar protection against arbitrary dismissal, removal, or reduction in rank been provided in regard to these services. On the other hand they continued to hold office during the pleasure of the Crown and now they hold office during the pleasure of the President.


The court held that the question whether the dismissal or removal of a member of the defence service is arbitrary or not is not a justiciable issue.

Same view was reiterated by the Bombay High Court in C.B. Verma's case. It held that no provision of the Army Act can in any way affect or modify the general rule laid down in Article 310 of the Constitution and section 18 of the Army Act.

In O.P. Bhardwaj v. Union of India, the petitioner was dismissed from the Air Force on the grounds of moral turpitude under section 19 of the Air Force Act, 1950 which corresponds exactly to section 19 of the Army Act, 1950. While dismissing the petition Kapoor, J., observed that section 18 of the said Act provides for the tenure of service to be during the pleasure of the President. Section 19 gives an absolute power to the Central Government to dismiss or remove from service any person subject to the Act. He further added:

As the law, however, stands at present it seems to recognise that employment in Army is not a right but only a privilege revocable by the sovereign at will and efficient management demands that power to appoint should necessarily include the power to dismiss. In army matters the legislature has conferred on the Government the same proprietary rights as provided to employers to hire and fire without restrictions.

In S.K. Rao v. Union of India, before the Delhi High Court, the issue regarding scope of section 19 of the Army Act was raised. The petitioner was a commissioned officer attached

12. 1968 Lab. I.C. 60 (Delhi).
to the Army Ordinance Corps Training Centre, Secundrabad. It was alleged that on 4th April, 1958, he committed acts of gross misconduct in helping another officer's daughter to elope with a soldier. An enquiry into the matter was made by the Court of Enquiry. The Chief of the Army Staff based on the proceedings of the court of enquiry considered that the conduct of Captain Rao was most unbecoming an officer and as he considered that the trial of the officer by a General Court Martial was inexpedient, he ordered administrative action to be taken under rule 14 of the Army Rules, 1954. The petitioner was called upon to submit his explanation and defence regarding the allegations against him. The explanation on being submitted, was placed before the Central Government who found it unsatisfactory and an order was passed removing Captain Rao from service by virtue of section 19 of the Army Act, 1950.

The Delhi High Court held that as the services of the petitioner were not terminated by the President, section 18 had no application. A distinction has been made in section 18 and 19 between the power of the President and the Central Government; while the President could terminate the services of the petitioner at pleasure, the Central Government, under section 19, could only act subject to the provisions of the Act and Rules and Regulations made thereunder. As the Act contained specific provisions for punishing "unbecoming conduct" in section 45, a rule could not have been validly framed in derogation of section 45 to give power to the Central Government
to remove an officer without being tried and convicted by a court martial. Rule 14 was, therefore, held to be ultra vires the provisions of sections 19, 45 and 191 of the Act. The court did not agree with the view adopted by Kapoor, J., in O.P. Bhardwaj's case\textsuperscript{13} pointing out that the distinction between sections 18 and 19 of the Airforce Act, 1950 was not urged before the court and the effect of the words "subject to the provisions of this Act", occurring in section 19 of the Act was not taken into consideration. An appeal was preferred before the Supreme Court against this judgement. Before the Supreme Court could decide the appeal, certain other cases came up. The decision of the Delhi High Court in S.K. Rao,\textsuperscript{14} was followed by the Punjab and Haryana High Court in Jagjit Singh Dhillon v. Union of India.\textsuperscript{15} It was held that the power of dismissing an Army Officer under section 18 are quite distinct from the powers of the Central Government under section 19. The action under section 19 has to be taken by the Central Government though in the name of the President and it is to such cases that article 77 of the Constitution\textsuperscript{16} applies. Article 77 of the Constitution does not apply to the pleasure of the President under section 18 of the Army Act.

In Union of India v. Ranbir Singh Sidhu,\textsuperscript{17} the plain-tiff-respondent was appointed second Lieutenant in the Regular Patiala Army in February 1933. During the second world war he was mobilised for war services and was promoted to the rank of Captain in February 1942. He returned to Patiala in July 1942.

\textsuperscript{13} Supra note
\textsuperscript{14} Supra note
\textsuperscript{15} A.I.R.1970 P&H 346.
\textsuperscript{16} Articles 77 of the Constitution which refers the Conduct of Business of the Government of India.
\textsuperscript{17} A.I.R.1971 All. 396.
and was promoted to the rank of an Acting Major in March, 1943. He came under the Indian State Forces' Officers' Scheme with the rank of Acting Major under superimposed India Emergency Commission. This scheme was to remain in force during the duration of war only. In June 1945 he was reverted to the Patiala Infantry Training Unit as second-in-command and the Indian Army Superimposed Emergency Commission was held in abeyance. He was again reverted to the Indian Army Establishment as the serving Indian State Forces' Officer with effect from June 1947 for a period of three years with seniority as substantive captain from July 1943. In June 1948, he was appointed as Commandant Refugee Camp Jammu and continued to that post till March, 1949. In March, 1949, he applied to the Military Secretary, Army Headquarters for regularising the acting rank of Brigadier on his appointment as Commandant and for regularising his seniority of services for promotion and appropriate appointment under the Post-War Policy. In June 1949, the Ministry of Defence granted regular commission to him in the Indian Army Force with effect from 12th April 1949 and with seniority against his name as Second Lieutenant from 1945 and as Lieutenant from July 1946. Against the above notification, he made a complaint under section 117A of the Indian Army Act claiming Brigadier's pay and rank etc., which was rejected. Finally, by an order dated 5.10.1951, he was informed to abstain from addressing anymore appeals on points in respect of which orders of the Central Government have already been passed. It was also mentioned that failure to comply with this direction
may lead to the compulsory removal of the officer. In spite of the above specific order of the Central Government, the plaintiff persisted in his representation. A show cause notice for the removal of the plaintiff from service was thereupon issued and he was finally removed from service by the order of the Central Government which was to take effect from 15.2. 1954.

The plaintiff unsuccessfully filed petitions and appeals against the order of removal and the suit was filed after notice under section 80 of Civil Procedure Code for the relief that order of his removal was illegal, without jurisdiction, ultra vires and inoperative. The trial court on an interpretation of the Indian Army Act, 1950 and relying on S.K. Rao's case as held that the charge of insubordination covered under section 42(e) of the Army Act, the Central Government was not authorised to act under section 19 ignoring section 42. The suit was, therefore, decreed for the declaration sought for. The lower appellate court confirmed the decree of the trial court. As a result of which the union of India filed a second civil appeal in the Allahabad High Court.

J.S. Trivedi, J., held that power of dismissal and termination of service etc., given in sections 18, 19 and 20 have no bearing or relation with the power of a court-martial to punish an Army personnel for the offences enumerated in the Act. Punishment for offences will not restrict the power of dismissal etc., expressly given in sections 18, 19 and 20. Subject to the provision of the Act, section 19 is only indicative of the

18. Supra note 16.
fact that the power exercisable by the Central Government should be in accordance with the Act and rules. If section 19 is intended to cover the case of offences alone, section 19 becomes redundant and the Central Government cannot dismiss or remove any person from service even though the section expressly authorises it to dismiss or remove in accordance with the rules and regulations made therein.¹⁹

The court further observed that the power given to the President and the Central Government under sections 18 and 19 are parallel powers to the distinct bodies. Section 18 is only a reiteration of the power given by the Constitution. Section 19 is an additional power given to the Central Government and has, therefore, been made subject to the provisions of Act and the rules. No section of the Act restricts the power of dismissal and removal conferred by section 19. In a democratic constitution where President is the figurehead and acts under the advice of the Ministers, the powers conferred under section 19 is to ensure the control of the Central Government also over the defence personnel. The court did not agree with the observations made by the Delhi High Court in S.K.Rao's case that section 19 of the Act is not independent of section 45 and does not give an independent power to the Central Government to dismiss or remove persons.

In Union of India v. S.K.Rao,²⁰ the Supreme Court set aside the decision of Delhi High Court in S.K.Rao's case.²¹

¹⁹. Id. at 398.
²¹. See supra note 16.
The apex court held that the power under section 19 of the Army Act is an independent power. Although section 19 uses the word "subject to the provisions of this Act" it speaks of removal of a person from the service. Section 45 provides that on conviction by court-martial an officer is liable to be cashiered or to suffer such less punishment as is mentioned in the Act. The removal from service under section 19 of the Act read with Rule 14 of the Army Rules, 1954 is not necessary. The two sections 19 and 45 are therefore, mutually exclusive the result is that Rule 14 of the Army Rules 1954 is not ultra vires the Army Act.

The doctrine of Presidential pleasure was discussed at a great length in Hazara Singh v. Union of India by the Delhi High Court. The petitioner, in the instant case, was granted commission in the Indian Air Force in the year 1949 and appointed in the rank of pilot. By earning his usual promotion, at the material time he was working as Wing Commander. By his communication of March 16, 1971, the Air Vice Marshal, A.O.A. Air Head Quarters, New Delhi, required the petitioner to explain certain allegations with regard to the alleged contact of the petitioner with a foreign mission in Delhi. The petitioner replying to the above allegations denied that he had any contract with any foreign missions or had accepted any invitation from any foreign diplomat. Subsequently, he was interrogated by an officer of Intelligence Bureau. The petitioner thus made a representation to the Minister of Defence on June 18, 1971. On 22. 1976 Lab. I.C. 528(Delhi).
September 21, 1971, the petitioner received a letter purporting to inform the petitioner that the President of India was pleased to dismiss the petitioner from service with immediate effect under Section 18 of the Act. He challenged the above order of dismissal. He contended that section 18 of the Act does not confer any power on the President to dismiss any officer from service and that it merely incorporates the doctrine of 'Presidential Pleasure' and that the President, therefore, had no power to dismiss the petitioner in exercise of power under section 18 of the Act. Rejecting the above contention, Justice H.L. Anand observed that it was no doubt true that section 18 provides that service in the Air Force is subject to the pleasure of the President and corresponds to the provisions of article 310 of the Constitution of India except that the provision of article 310 is subject to any express provisions of the Constitution to the contrary and, therefore, of the constraints that may be placed on the doctrine of 'Presidential Pleasure' under article 311 of the Constitution of India while the 'Presidential pleasure' referred to in Section 18 is wholly unqualified and untrammelled. This is so because by virtue of the provisions of Articles 310 and 311 of the Constitution of India, the doctrine of 'Crown Pleasure' as known in England is not applicable to India with all its rigour but is qualified by the rights and safeguards conferred by article 311 of the Constitution of India. 23

considering the application of doctrine of 'presidential

23. Id. at 531.
pleasure' in relation to the armed forces, the court added that such a doctrine in relation to armed forces is untrammelled and analogous to the pleasure of the sovereign as known in England because the safeguards provided in article 311 of the Constitution of India do not apply to the defence forces. Therefore, when section 18 incorporates the doctrine of absolute 'Presidential Pleasure' in the matter of tenure of an air force officer, it confers on the President untrammelled power to put an end to any tenure which is subject to the aforesaid Act. 24

The court further held that it could not be disputed that the power to put an end to the tenure is not restricted to any particular manner in which such a result may be brought about. If, there is power to put an end to a tenure it is implied that such a tenure may be put an end to by any of the modes known to law for the purposes. In the exercise of the 'Presidential pleasure' therefore, there is no distinction if the tenure is put an end to by termination or removal including dismissal. The power to remove by dismissal is, therefore, implicit in the aforesaid provision and is an essential constituent of the doctrine of 'Presidential pleasure' as indeed the pleasure of the sovereign as known to English law, the court added.

The next contention raised by the petitioner was that in any event, the Presidential pleasure under article 310, as indeed, under section 18 of the Act, must of necessity be

24. Ibid.
exercised by the President personally and that the power could not be exercised by any other person as it was incapable of being delegated and had in fact not been delegated.

In reply to the above contention, the court considered the decision of Supreme Court in Shamsher Singh, and observed that the Presidential pleasure in relation to services need not be exercised by the President personally and may be exercised like other executive powers of the Union by the Ministers in accordance with the Government of India (Allocation of Business) Rules, 1961 and it was not disputed that in the case before the Court, the order had been made by the Defence Minister, who was competent to do so in terms of the aforesaid Rules.

Against this judgement, the petitioner preferred letters patent appeal before the Division Bench of the same court. Upholding the impugned order and affirming the judgement of the Single Judge, the court held that where a member of the defence service was dismissed from service in exercise of the Presidential pleasure under section 18 of the Act, which is in pari materia with article 310 of the Constitution, he could not claim as a right that a proper enquiry should have been held and opportunity should have been given to him, as the President is empowered to dismiss a member of defence services without holding an enquiry and neither the Act nor the rules can put any restraint on the Presidential pleasure. The court further held that it cannot be said that even if article 311

is inapplicable to members of defence services still on principles of natural justice opportunity of hearing should be given before dismissing a defence personnel under section 18 or article 310. To read such a requirement would amount to curtailing the 'Presidential pleasure'.

The court further explained that section 18 of the Army Act gives the President overall powers to terminate the services of an employee. Therefore, whenever the power is exercised under section 18 in terms of article 310 of the Constitution, it would be advisable for the authority to avoid using the word dismissal which in common parlance does amount to punishment and amounts to casting a stigma on an employer.

The court turned down the argument that because section 19 of the Army Act and the Air Force Act provide for an enquiry before an officer can be dismissed, resort can not be had to section 18 of the Act. The court held that this argument suffers from the fallacy of not appreciating that the Presidential pleasure under article 310 cannot be controlled by Statute or Rules. Connected with this argument another point was raised that section 18 lays down a harsh rule whereas section 19 a beneficial rule the applicability of them would lead to a discriminatory situation and, therefore, violative of article 14 of the Constitution. The court held that there was no discrimination because the Presidential

27. Id. at 212.
28. Id. at 214.
29. Id. at 213.
pleasure under article 310 and reproduced in section 18 of the Act is an exercise of different facet of power than the exercise of power under section 19 of the Act which is merely statutory. 30

In Dharam Pal Kukrety v. Chief of the Army Staff, 31 the petitioner was a permanent commissioned officer in the Army. He was tried by a general court-martial for certain reasons and was acquitted. The confirming authority did not confirm the verdict of the court-martial and directed the petitioner to be tried by the general court-martial again. The same general court-martial assembled again and after hearing the parties reaffirmed its verdict of not-guilty. The confirming authority refused to confirm the verdict of the court-martial and the petitioner was so informed. The confirming authority forwarded the proceedings along with his recommendations to the Chief of the Army Staff for suitable action. The Chief of the Army Staff issued show cause notice to the petitioner under Rule 14 of the Army Rules to show cause why he be not removed from service. The show cause notice recited that the petitioner had been tried by a general court-martial and that the Chief of the Army Staff was of the view that a fresh court-martial for the trial of the offences was inexpedient and that Chief of the Army Staff was also of the opinion that the misconduct of the petitioner disclosed in the proceedings rendered his further retention into service undesirable.

30. Ibid.
31. 1978 Lab.I.C.9(All.).
The question which arose before court was that whether it was open to the Chief of the Army Staff to issue the impugned show cause notice to the petitioner under rule 14 of the Army Rules.

The court considered the relevant provisions of the Army Act and Army Rules and observed that the Central Government or the Chief of the Army Staff has an option initially either to have the officer concerned tried by a court-martial or to take action under Army Rule 14. Having decided to try the officer concerned by a court-martial, neither the Central Government nor the Chief of the Army Staff was competent to take action against the officer, after he was acquitted, to take recourse to the provisions of Army Rule 14. The fact that after the non-guilty verdict of the second court-martial, the Chief of the army Staff thought it inexpedient or impracticable to hold a third court-martial did not give him jurisdiction to issue the impugned notice to show cause against removal from service. The court held that the impugned notice issued to the petitioner under Army Rule 14, was, therefore, without jurisdiction. It may be added that even ordering third general court martial would not have been a valid proposition. After all, there has to be some end somewhere. It is not that the exercise is to continue till 'guilty' verdict is given.

Against the above order of the Allahabad High Court, the Union of India preferred an appeal in the Supreme Court. The Supreme Court did not agree with the decision of the High Court. D.P. Madan, J., held that though it is open to the Central Government or the Chief of the Army Staff to have the officer concerned tried by a court-martial or to take action under Army Rule 14, neither the Central Government nor the Chief of the Army Staff was competent to take action against the officer, after he was acquitted, to take recourse to the provisions of Army Rule 14. The fact that after the non-guilty verdict of the second court-martial, the Chief of the army Staff thought it inexpedient or impracticable to hold a third court-martial did not give him jurisdiction to issue the impugned notice to show cause against removal from service. The court held that the impugned notice issued to the petitioner under Army Rule 14, was, therefore, without jurisdiction. It may be added that even ordering third general court martial would not have been a valid proposition. After all, there has to be some end somewhere. It is not that the exercise is to continue till 'guilty' verdict is given.

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32. Id. at 13.
Government or the Chief of the Army Staff to have recourse to rule 14 of the Army Rules in first instance without directing trial by a court-martial of the concerned officer; there is no provision in the Army Act or in rule 14 or any of the other rules of the Army Rules which prohibits the Central Government or the Chief of the Army staff from resorting in such a case to Rule 14. Therefore, the action of the Chief of the Army Staff in issuing the impugned notice was neither without jurisdiction nor unwarranted in law.\textsuperscript{34}

In \textit{Virendra Kumar v. Union of India},\textsuperscript{35} the petitioner was an Emergency Commissioned Officer in the Army. While fighting in the frontline, he sustained a spinal injury. As a result, he was released by the Chief of the Army Staff on the ground of physical disability. He was released by virtue of Army Instruction 9/5/62 dated November 24, 1962. The issue which arose before the Supreme Court was that whether the procedure followed in his release was based on the conditions set out in Rules 15 and 15A of the Army Rules or not.

Krishna Iyer, J., while considering the relevant provisions under rule 15 and 15A of the Army Rules observed that rule 15 prescribes a certain procedure which must be followed. The Chief of the Army Staff must be satisfied that the officer is unfit to be retained in the service due to physical disability. He may, thereafter, inform the officer concerned about the ground for release from service. Once the Chief of the Army Staff holds that the officer's physical disability justi-

\textsuperscript{34} Id. at 709.
\textsuperscript{35} 1981 Lab.I.C.433(S.C.).
fies termination of service, there is another opportunity to be given under rule 15(2) for the affected officer to make an explanatory representation to the Central Government. The orders of the Central Government, after considering the reports and the explanations, and the recommendation of the Chief of the Army Staff, would be made under Rule 15(3) which finishes the exercise under rule 15. The court further observed that if rule 15A is to be invoked in the case of commissioned officer, the army Chief has to make up his mind; the procedure to be followed is set out therein. A Medical Board has to examine the officer. Other procedures in keeping with natural justice are also set out, the court added. But nothing had been brought to the notice of the court indicating that the fair procedure under Rule 15 and 15A had been fairly or at all followed.\footnote{Id. at 435.}

The court held that mere injury in action did not automatically end the officer's service. Consequently, the order of termination of service was invalid for failure to adhere to basic procedure.

Relying on the decision of the Supreme Court in S.K.Rao's case the Rajasthan High Court in Phillipose Samuel v. Union of India,\footnote{1981 Lab.I.C. NOC 147(Raj.); See Ram Singh v. Union of India 1986 Lab.I.C.935(Delhi).} held that where the Air Force authorities had inflicted the punishment of dismissal of employee under section 20(3) of the Air Force Act and rule 18 of the Air Force Rules. Without holding court-martial, such punishment would be legal and valid as there was no such provision which made it obligatory that court must be held for taking administrative action of dismissal
from service. The court in exercise of power under section 20(3) there is no restriction in the provisions of the Act or the Rules that a court-martial must be held and imposition of punishment of dismissal by court-martial is a condition precedent or a sine qua non for a disciplinary action of dismissal.

In Harbhajan Singh v. Ministry of Defence, the petitioner was a Major in the Army. A court of inquiry was ordered against him to investigate the allegation of the misuse of the official position. Relying on the report of the court of inquiry a show cause notice was served on the petitioner on the alleged misconduct and the satisfaction of the Chief of the Army Staff that court-martial was impracticable but that his further retention in service was undesirable.

The petitioner submitted his reply to the show cause notice. He denied the charge made in the show cause notice. He submitted that the court of inquiry proceedings were held in violation of rules 179 and 180 of the Army Rules in as much as he was not allowed to produce defence witnesses and no effort was made by the department to find the true nature of the transaction. He further submitted that the court of inquiry report could not be relied upon and the prima facie finding of the said court of inquiry was vitiated. He also submitted that he should have been tried by court-martial and that the authorities should not have dispensed with the holding of court-martial. The representation to the show cause notice was rejected and the petitioner was dismissed from service. Against the above order of his dismissal he filed a petition before the Delhi High Court and pleaded.
that the decision of the Chief of the Army Staff to dispense with court-martial under rule 14 was without any material and was illegal. It was also reiterated that he was ready to stand trial before court-martial.

Considering the relevant provisions of the Army Act and Army Rules, S.B. Wad, J., held that the opportunity to give an explanation or defence under rule 14 is merely a written representation. As against this, court-martial is a regular quasi-judicial trial with full right of cross-examination, production of defence witnesses, opportunity of representation through next friend or lawyer etc. Considering the provisions of rule 14 and the provisions of the Rules laying down the procedure for court-martial, the court was of the view that the petitioner was not given full opportunity to prove his innocence as even before court of inquiry he was not allowed to lead his evidence and other procedural requirements of full opportunity of being heard were denied to him. 39

Further, going through the procedure of court of inquiry conducted against the petitioner, the court had come to the conclusion that the findings of the court of inquiry were vitiated and since they formed the basis of show cause notice, the show cause notice also stood vitiated.

In V.Y. Thomas v. Commandant, A.D.C. Centre, Secunderabad, 40 it has been observed by the Andhra Pradesh High Court that in the case of members of defence forces and holders of posts

39. Id. at 789.
connected with defence, it is not obligatory to follow the Act or the Rules which prescribe the procedure, by following which a particular authority can dismiss such member from service. The service of such a member can be terminated by an order of termination simpliciter, by the President or his delegate, on whom the power to terminate at pleasure, without following any particular procedure is conferred. In such a case, even if the termination is for certain alleged misconduct, the delinquent cannot contend that the authorities were bound to follow the Rules, the procedure or Act, as the case may be, before dismissing him. But, if the authorities choose to follow a particular set of Rules, they are bound to observe and conform to them; and if they do not, their action can be declared as invalid and illegal, which obviously, means granting of appropriate relief to the person concerned.41

In Rajinder Nath Kumrah v. Union of India,42 the petitioner was holding the rank of captain in the Territorial Army. At the same time, he also held a civil post under the Union of India, namely he was working in the office of the Director, Audit and Accounts, Post and Telegraphs, Delhi. He was served with a show-cause notice under rule 15 of the Army Rules read with Territorial Army Rule 14(c) for removal from service in view of short-comings pointed out in his record of service. In reply to the show cause notice, the petitioner asked for clarification on certain points but he did not hear from the respondents in that regard. Infact, he received a letter in which it was mentioned that "the President, in exercise of powers conferred

41. Id. at 643.
42. 1982(1) S.L.R.555(Delhi).
by Army Act section 19 read with rule 15, was pleased to
order that the petitioner should be called upon to resign
and on his refusal to do so he should be removed from the
service". And finally he was removed from the Territorial
Army. Challenging this order of his removal before the Delhi
High Court, the petitioner contended that the provisions of
Rule 15 which are mandatory, had not been complied with by
the respondents.

After considering the facts of the case, the court held
that provisions of rule 15 of the Army Rules had not been
complied with. There had been no particulars provided with
regard to the allegations enclosed in the show cause notice.
Under rule 15(1)(b) it is mandatory that the officer should
be supplied with the particulars of matters which are adverse
to him. 43

In case of K.D. Gupta v. Union of India, the reversion of
the petition from the rank of Acting Lieutenant Colonel to
that of Major, was challenged by him in the Supreme Court.

In support of their contention, the respondents gave
three reasons for the said reversion of the petitioner, first
that the reduction in rank had to follow as a matter of course
on placement of the petitioner in a lower medical category;
secondly, that after the latest medical examination in 1978,
he was not eligible to be considered for promotion for one
year and his earlier reduction in rank was justified; thirdly,
that he performed no duty for six months from March 22, 1976

43. Id. at 558.
when he was admitted in the hospital and under the rules, he stood automatically reduced in rank.

The court straightway rejected the first two reasons. While dealing with the third reason, the court referred to the submission made by the petitioner that under the Act or Rules or Army Instructions there was no provision for downgrading the promotionary selection grade or reverting an officer on medical grounds. Except that reversion may only occur in case where an officer holding an acting rank, due to sickness does not rejoin duty beyond a period of six months or is posted before the expiry of the said period of six months to an appointment carrying a lower rank as provided in the Special Army Instruction No.1, dated 9th January, 1974.\footnote{Id. at 1123-24.}

Finally, after examining the applicability of the said Army Instructions in the case of petitioner and rejecting the particulars of the counter-affidavit filed on behalf of the respondents, the court held that the reversion or reduction in rank of the petitioner could not be justified and accordingly quashed it.

In the case of R.K. Pathik v. M.S. Pawar,\footnote{1986 Lab.I.C.692(All).} the petitioner, who was a commissioned in the Indian Army, contracted a second marriage during the subsistence of the first marriage. An action was taken against him for violating Para 333 of the Defence Service Regulations 1962. An order was passed by the Central Government for removal of the petitioner from service under Rule 14 read with Section 19 of the Act. The petitioner
contended that the action would be deemed to have been taken under Section 18 of the Act and not as provided under section 19 of the Act. It was thus urged that the manner in which the petitioner had been removed from service would have fallen within the scope of section 18 of the Act.

Giving its view, the Allahabad High Court held that the provision related only to the pleasure of the President which is his own individual privilege as distinct from the powers given to the Central Government under section 19 of the Act. A bare perusal of section 18 would distinctly reveal that the powers under section 18 are quite distinct from the powers of the Central Government under section 19 of the Act. Any action taken by the Central Government as contemplated under section 19 of the Act though in the name of the President would not mean that the action has been taken under section 18 of the Act. The original records clearly revealed that the Central Government had taken the action which was translated into the order by an officer of the Central Government. Therefore, the order neither suffered from any jurisdictional error nor was otherwise bad in law. 47

In Rachpal Singh v. Union of India, 48 the appellant was an emergency commissioned officer in the Army. He was given medical category 'BEE-2' permanent. He was released from the Army under the phased programme for release of Emergency Commissioned Officers. The contention raised by the appellant was that his release from service must have been on medical grounds after complying with the procedure laid down in rule 15-A of

47. Id. at 701.
the Army Rules. He further contended that the order of release based on the alleged phased programme was bad because the procedure laid down in the said rule had not been followed.

Considering the facts of the case and the relevant provisions under the Army Rules, the Supreme Court held that since the appellant was released from the service under the phased programme for release of Emergency Commissioned Officers which was approved by the government the provisions of rule 15-A of the Army Rules were not applicable to him.

The above is the narration of the cases which have come before different High Courts and Supreme Courts in connection with the exercise of the rule of pleasure and certain other allied matters. The analysis of these cases does not present a very clean picture about the exact legal position in this regard. Therefore, it would be appropriate to attempt summing up of the constitutional and legal position.

The doctrine of pleasure has been made applicable under article 310. The relevant part of this article is: "... every person who is a member of defence service.... holds office during the pleasure of the President." This doctrine of pleasure has also been incorporated in section 18 of the Army Act which reads: "Every person subject to this Act shall hold office during the pleasure of the President." Article 311 which operates as a limitation on article 310 and provides protections to the civil servants against the abuse of doctrine of pleasure is silent so far as defence services are concerned.
In the process of framing the Indian Constitution, both these articles had been considered. Articles 310 and 311 were articles 282-A and 282-AA in the draft Constitution. It would be relevant to reproduce the extract from D.O. letter of the Joint Secretary to the Government of India, Ministry of Defence to the Joint Secretary, Constituent Assembly.

"We have examined whether any reference should be made to members of the Defence Services in either of these articles (new articles 282-A and 282-AA proposed above). We agree with the Drafting Committee that all provisions with regard to recruitment and conditions of service should be left to be regulated separately by Acts of the Legislature. The Naval Discipline Act, the Indian Army Act and the Indian Air Force Act are under revision and they will make the required provisions. We consider that the Defence Services cannot and should not be brought within the scope of article 282-AA, the main provision of which is that no one should be dismissed or removed from service by an authority subordinate to the officer by whom he has been appointed. For disciplinary reasons it is essential in the Armed Forces to delegate powers to subordinate authorities to dismiss individuals even though they may have been appointed by higher authorities. For example, the junior commissioned officer at present hold commissions from the Governor-General and will presumably hold commissions from the President under the new Constitution; but under the Army Act, they can be dismissed by subordinate officers for specified offences. Unlike the Civil Services, the Armed Forces have a complete disciplinary code which safeguards their rights and
privileges consistent with military discipline and it would, we feel, be inadvisable to make provision on any of these matters in the Constitution Act itself. While in the case of Civil Services it is of the utmost importance to provide for a safeguard for Government servants against wrongful dismissal etc., in the military forces the paramount need is to ensure military discipline. The draft of article 282-AA proposed by the Hon'ble Dr. Ambedkar, therefore, correctly covers only the Civil Services.

We are somewhat doubtful whether it is necessary to include any reference to the Defence Services even in article 282-A though there to no doubt that, like the Civil Services, also will hold office during the pleasure of the President. Presumably this would not stand in the way of any legislation providing for termination of service by a subordinate authority without the formal approval of the President. If so, we have no objection to the draft as it is; but, if there is any doubt on this point, we feel that the reference to the Defence Services might be omitted. It might also be considered whether it would look appropriate to refer to the Defence Services in article 282-A when they are specifically excluded from the next article, i.e., article 282-AA. The reason for this apparent disparity may not be clear: 49

It is clear from this letter that both the drafting committee and also the ministry of defence wanted that all the provisions with regard to recruitment and conditions of

49. Supra note 1 at 579-80.
service regarding defence personnel should be left to be regulated separately by the Acts of the Legislature. Even a doubt was expressed as to whether it was necessary to include any reference to the defence services in article 282-A (article 310 under the Constitution). In fact, it was also suggested that since no reference was being made to the Defence services in article 282-AA (article 311 under the Constitution), there was no need to make a reference under article 282-A (article 310).

If one were to refer to article 310 and section 18 of the army Act only, the obvious conclusion would be that every member of the defence service shall hold office only during the Pleasure of the President. But the Parliament while enacting the Army Act 50 did not envisage such an absolute position. This would be clear if reference is made to section 19 and 20 as also rules 14 and 15 framed under the Army Act. The ministry of defence had amply made it clear that all persons with regard to recruitment and conditions of service should be left to be regulated separately by the Act of the legislature. This is what precisely has been done by the Parliament.

The courts have interpreted that the President can terminate the services of any member of the Defence service at any time under section 18 of the Army Act. But if the action is not taken under section 18, then Central Government acting under section 19 would be required to follow the procedure

50. As also the Air Force Act, 1950.
laid down in Rule 14 before dismissing or removing any member of the defence services. In other words, the courts have taken the view that there is an option available to act either under section 18 wherein no procedure is required to be followed or act under section 19 where it would be necessary to specifically observe the requirements of Rule 14.

This position does not seem to be correct. Either the strict rule of pleasure should have been followed or the rule of pleasure to be applied with certain limitations. To allow simultaneously absolute and restricted application of the rule of pleasure can lead to discriminatory and harsh situations. To say that the President enjoys the absolute right to terminate the services whereas the Central Government is to act in a restricted manner is not to understand and appreciate the constitutional position of the President. The President under the Indian Constitution does not act in his individual or personal capacity. He in fact acts in accordance with the aid and advice given to him by his council of ministers. To expect the President to act in his individual capacity while exercising the power under article 310 read with section 18 of the Army Act is to think of the impossible. This is so because the President does not have any direct link with each and every member of the Defence Service. Unless and until he has the direct access to each person in the Defence Service, it would not be justified to empower him to exercise the pleasure doctrine in his personal capacity. Therefore, he has no choice but to act upon the advice given

51. Article 74, Constitution of India.
by the Central Government through the council of ministers. Once if the President is to act on the advice of the Central Government, in that event the action can not be limited only to section 18 of the Army Act. Section 19 of the Act would automatically came into play. This would entail the application of Rule 14 framed under the Act.

It is submitted that the correct interpretation of the constitutional provision as also the provisions of the Army Act would be that the members of the defence services would not be entitled to the protection contemplated under article 311 of the Constitution. But they would be entitled to the procedure provided under rule 14 before any one of them is dismissed or removed. The doctrine of pleasure vis-a-vis the defence services has been restricted only in a limited manner, and certainly not like it has been restricted in the case of civil servants. Rule 14 envisages a show cause notice to be given to the officer concerned seeking his explanation in writing so that he is able to submit his defence in writing. It does not provide for a regular enquiry to be conducted as in the case of civil servants. In fact, rule 14 opportunity is a very limited opportunity, where there is no such requirement of recording of evidence and cross-examining of the witnesses.

The above mentioned limited opportunity is the minimum which must be given before dismissing or removing a member of the defence services. In the present context, the absolute application of the rule of pleasure is not justified. The moment any authority is vested with the absolute power, the possibility
of its abuse or misuse can not be ruled out. The defence services can not be divorced from the rule of law. Their link with the principles of natural justice can not be completely cut off. We of course can not overlook the strong need of discipline in the defence forces but in the name of discipline, the defence services cannot be delinked from the basic elements of justice. It is suggested that there is need for making it clear by an amendment in the Constitution as also the Army Act that the members of the defence service shall hold office during the pleasure of the President but the exercise of this power shall be subject to the requirements of section 19 read with rule 14 of the Army Act. If this view is not accepted, there is every likelyhood that a large number of petitions would be filed both in the High Courts and as also the Supreme Court. Such a situation needs to be avoided not only because it would add to the number of cases but would also lead to frustration which would in turn germinate indiscipline in the defence services.

It is further suggested that there is also need for a change in rule 14 as well. In fact, sub-clause (2) of rule 14 envisages a trial of the officer by a court-martial before his services can be terminated on account of misconduct. But this requirement of the trial by the court-martial can be avoided if the Central Government or the Chief of the Army Staff is satisfied that such a trial is inexpedient or impracticable. All these cases which have so far come to the courts under rule 14 of the Army Rules, the action had been taken without the
trial by the court-martial as it had been recorded that the holding of the same is impracticable. As a result, this past experience is a clear indication of the approach which has so far been followed. The exception to the rule infact has assumed the character of the main provision. Only show cause notice is given and the trial has always been avoided. This certainly is not the intention of the rule. Therefore, it would be expedient to make it clear in the rule itself by a modification that general position would be to hold trial by the court-martial before the necessary action is taken and the exception would be not to hold the trial when it is really inexpedient or impracticable. Unfortunately, sometimes a wrong practice is started which becomes difficult to change in the later stages. This is exactly what has happened in this case. There is need for stopping this practice, and the rule to be applied in its letter and spirit.

(B) Natural Justice And Defence Personnel

The doctrine of natural justice as such enjoys no express constitutional status but has a recognised place in Indian Legal System. This principle is also known as *audi alteram partem* rule meaning both sides should be heard. The origin of this principle is alleged to be traceable to the dawn of time. Fortescue J., in *R v. Chancellor Cambridge*, in 1723 quotes a perhaps fanciful view which holds that the principle was invoked in the investigation of the first offence on record - that committed in the Garden of Eden. He

The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence. Adam (says God) where are thou? Hast thou not eaten of the tree, whereof I commanded thee that thou shouldest not eat? And the same question was put to Even also.

Therefore, this principle belongs to antiquity. It has been declared that rules of natural justice recognised in English law are followed in India. The minimum requirements of natural justice were stated by Earl of Selborne L.C. in Spackman v. Plumstead District Board of Works:

No doubt in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word, but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were any thing of that sort done contrary to the essence of justice.

Similarly, Lord Holdane of Local Government v. Arlidge held:

They must deal with the question referred to them without bias and they must give

54. (1885) 10 App. Cas. 229, 240.
55. In this particular case a superintending architect of the Metropolitan Board of Works was exercising judicial functions.
56. (1915) A.C. 120 at 133; Lord Holdane approved the statement (contd.).
to each of the parties the opportunity of adequately presenting the cases made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice.

In fact the principles of natural justice represent higher procedural principles developed by judges from case to case and which must be followed in taking any decision adversely affecting the rights of an individual. Natural justice in general meant many things to many lawyers, writers, judges, jurists and systems of law. It is one of the most dynamic, flexible, pragmatic and relative concept. It is not a rigid, ritualistic or sophisticated obstruction. It is not a bull in a china shop or a bee in one's bonnet. But this does not mean that at a given time no fixed principles of natural justice can be identified—indeed natural justice is a pervasive facet of secular law where a spiritual touch enlivens, administration and adjudication to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law or exigency of situation excludes it, applies uniformly when people are affected by acts of authority.

In this background of natural justice it is essential that a critical analysis is projected to show how judiciary in India in the post-constitutional period has interpreted the various provisions of the Army Act and Rules as also of the Constitution, vis-à-vis, members of armed forces.

58. Id. at 432. See also Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597.
In the case of Som Datt Dutta v. Union of India, the petitioner was an army officer. He was tried by a general court-martial on the charge of culpable homicide not amounting to murder and was sentenced to cashiering and 6 years' rigorous imprisonment. Against the decision of the court-martial, he filed a petition under section 164 of the Army Act which was dismissed by the confirming authority and the finding and the sentence of the court-martial were confirmed. The petitioner, thereafter, filed an appeal under section 165 of the Army Act to the Central Government but the same was dismissed. He filed a petition before the Supreme Court for quashing the proceedings before the general court-martial.

One of the contentions raised before the court was that the order of the Chief of the Army Staff confirming the proceedings of the court-martial under section 164 of the Army Staff was illegal since no reason had been in support of the order by the Chief of the Army Staff. It was also pointed out that the Central Government had also not given any reason while dismissing the appeal of petitioner under section 165 of the Act and that the order of the Central Government must, therefore, be held to be illegal and ultra vires.

After considering the relevant provisions of the Act, the court held that it is manifest that there is no express obligation imposed by section 164 or by section 165 of the Army

Act on the confirming authority or upon the Central Government to give reasons in support of its decision to confirm the proceedings of the court-martial. The court further held that it was unable to accept the contention of the petitioner that there is any general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision.

In *S.C. Patnaik v. Union of India*, the finding and sentence of a summary court-martial were sought to be set aside on the grounds of non-compliance with the principles of natural justice. The petitioner was a Sepoy in the army and was charged under section 39(b) of the Act with the offence of having overstayed the leave granted to him. He was tried by summary court-martial and was sentenced to rigorous imprisonment and dismissal from the service. He challenged the order of imprisonment and dismissal from the service on the ground that the proceedings of the summary court-martial were conducted in violation of the procedure laid down in the Army Act and the rules there-under; the charges which were in English were not explained to him in Oriya, the language that he understands and he had no opportunity to defend himself or adduce evidence in rebuttal. The court after examining the provisions of the Act observed:

> It is apparent from the scheme of the Army Act that a court-martial, as a court, is to follow the procedure adopted by Court of law at the trial before it, in giving findings and awarding sentences or persons charged with having committed offences under the Act as in a judicial proceeding;

this implies that rules of natural justice should also be observed.61

The court was, however, satisfied that the Summary court-martial duly followed the procedure under the Army Act and the Army Rules and the rules of natural justice and awarded the punishment after considering the entire evidence on record including the statement of the accused and the materials produced by him in support of his case. The contention of the accused that he was not given an opportunity to defend himself at the trial before summary court-martial was, therefore, rejected.

In Harish Uppal v. Union of India,62 the petitioner was an officer of the Indian Army who served in Bangla Desh. He was tried by a summary general court-martial on certain charges. The court sentenced the petitioner to be cashiered. The confirming authority directed the revision of the sentence. Thereafter, the petitioner was brought before the same court-martial, as had tried him earlier, and was asked whether he wanted to address the court. On receiving the reply in the negative, the court, after considering the observations of the confirming authority, revoked the earlier sentence which they had imposed on the petitioner and sentenced him to be cashiered and to suffer rigorous imprisonment for two years. The finding and sentence was confirmed by the Chief of the Army Staff. Against the above order, he filed a petition before the Supreme Court. The contentions raised by the petitioner were: first, that the confirming authority should have given a hearing to the affected party; secondly,

61. Id. at 170.
the officer who finally confirmed the sentence on the petitioner should also have heard the petitioner. He also referred to the cases of A.K. Kraipak 63 and Purtabpore Co.Ltd. v. Cane Commissioner of Bihar, 64 in which the Supreme Court had made observations regarding the rules of natural justice.

Replying to the above contentions, the court first of all observed that there was no analogy between the facts of the cases mentioned by the petitioner and his own case and after applying the ratio of A.K. Gopalan to the facts of petitioner's case, the court was not satisfied that any rule of natural justice had been violated.

Considering the facts of the case, the court observed that when the court-martial reassembled to revise its earlier order under the directions of the confirming authority, the petitioner was given the reasons of the confirming officer for requiring revision and asked whether he wanted to address the court, he replied in the negative. It was open to him to have pointed out to the court-martial how the observations of the confirming authority were wrong. Having failed to avail himself of the opportunity, the petitioner not could not complain that he was not given an opportunity by the confirming authority before he directed revision.

Rejecting the next contention of the petitioner that the confirming officer or the Chief of the Army Staff should have given a hearing before confirming the subsequent sentence by the court-martial, the court held that it is not a requirement

under the Act. The court added that to accept such a contention would mean that all the procedure laid down by the Code of Criminal Procedure should be adopted in respect of the court-martial, a contention which could not be accepted in the face of the very clear indications in the Constitution that the provisions which are applicable to all the civil cases are not applicable to cases of Armed Personnel. It is not a requirement of the principles of natural justice. Indeed, when he was informed that the subsequent sentence passed on him had been sent to the Chief of the Army Staff for confirmation, it was open to the petitioner to have availed himself of the remedy provided under section 164 of presenting a petition to the confirming officer, that is, the Chief of the Army Staff in that case, which he did not appear to have done. The court, therefore, dismissed his petition holding that there had been no violation of principles of natural justice.

In Ramesh Chander v. G.O.C. Northern Command, the petitioner was serving as a Major in the Indian Army. He was promoted to the Acting Rank of Lt. Colonel by an order passed by the Army authorities on 31.8.1974 and was posted to Willington with the pay of Lt. Colonel to fill up new appointment. However, the army authorities did not permit the petitioner to join his new post in the higher rank, despite of the representations made by him. Another order dated 16.12.1974 superseding and cancelling the order of promotion granted earlier was passed. While challenging the above order, in the Jammu and Kashmir

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65. 1977(2)S.L.R.864(J&K).
High Court, the petitioner contended that the impugned order was not a speaking order and as such liable to be quashed.

The court after examining the operative part of the impugned order observed that the order was indeed very cryptic and gave no reasons whatsoever. Recording of reasons for the passing of an order, in such a type of case, was not only desirable but also necessary as it imparted clarity and reduced the chances of arbitrariness in the passing of the order. The practice of passing cryptic orders causes lot of confusion and cannot but be deprecated.

Explaining the scope of a reasoned order, the court held that the disclosing of reasons in a order is supported on two grounds. First, that the party aggrieved has the opportunity to demonstrate before the proper forum that the reasons on which the order is based were erroneous, and secondly, that obligation to record reasons operates as a check against the possible arbitrary action by an executive authority vested with exercise of quasi-judicial powers.

The court was certainly of the view that the impugned order was not a speaking order and was liable to be quashed on that ground, but, since the respondents had given detailed reasons in the reply-affidavit, the court considered the same and proceeded further on that basis. However, the court reiterated that such an action of the court may not be understood to minimise the desirability of passing speaking order as

66. The operative part of the impugned order read as under:
emphasised earlier by the court. 67

In Sansar Chand v. Union of India, 68 the petitioner was a Major in the Army. He was tried by a general court-martial in which initially Major Ajwani was appointed as Judge-Advocate and then Major K.P. Singh who replaced Major Ajwani. After the conclusion of the trial, the petitioner was held guilty and was awarded a sentence of dismissal from the service. During the trial, the petitioner came across a letter written by Major Ajwani to Capt. Ved Vyas (respondent 11). A copy of this letter was brought to the notice of the court-martial. It was contended that Major Ajwani was biased and prejudiced against the petitioner, and that he had also influenced the present Judge-Advocate Major Singh. Major Singh objected to the letter being placed before the court-martial and the presiding officer of the court-martial accepted the advice and refused to consider the letter. The petitioner was, however, assured that it would be sent to the convening authority. The petitioner being not satisfied, sent a copy of the letter to the G.O.C.-in-Command, Western Command with a copy to the Chief of the Army Staff. Office of the Chief of the Army staff assured the petitioner that his petition had been sent to the Army Headquarters for consideration before confirmation of the proceedings, findings and sentence of the court-martial. The Chief of the Army Staff got the matter investigated but before the completion of investigations, the proceedings of the court-martial were confirmed by the Chief of the Army Staff. As a result of the investigation, the Judge-

67. Id. at 874-75.
68. 1980(3)S.L.R.124(H.P.).
Advocate Major Ajwani was given "severe displeasure" for his "unprofessional conduct" and for failing to uphold the High standard expected of the officer of Judge-Advocate General Department.

Challenging the very constitution of the court-martial the petitioner filed a petition before the Himachal Pradesh High Court and contended that Judge-Advocate Major Ajwani was not only biased against him and went to the extent of committing unprofessional conduct, he even influenced the successor Judge-Advocate Major Singh. As a result, the summing up by Major Singh was not fair which resulted in miscarriage of justice.

After considering all the facts and circumstances of the case, V.D. Misra, C.J., observed that, "the rules have ensured that the composition of the court-martial should be above board so that not only justice is done but justice is seemed to be done. It is for that purpose that 'interest in the case' has been laid down as a disqualification for a member of a General Court Martial. This disqualification results in the General Court-Martial being not properly constituted. Whenever, any member is disqualified then it can be rightly said that it is coram non judice. Thereafter, all the proceedings, however solemnly and impartially conducted, will be non est. Assuming that no injustice is done to a person arraigned before such a court-martial, the proceedings will not be saved. After all, a court must inspire confidence in the mind of a person standing trial. It is no use doing justice when the Tribunal does not inspire confidence and is not constituted according to the rule".
The court held that in the circumstances of the case, it had no hesitation to hold that Major Ajwani was interested in the case and so was disqualified from being appointed as a Judge-Advocate. Finally the court held the general court-martial was not properly constituted. Therefore, the proceedings and the consequential conviction and sentence of the petitioner was to be quashed and set aside on that ground.

Dealing with the circumstances in which there was a duty to act judicially in the sense of having to observed the principles of natural justice, V.R. Krishna Iyer, J., in Virendra Kumar v. Union of India, observed that while releasing an officer from service on account of physical disability or medical unfitness, without following the fair procedures under Rule 15 or 15A, the procedures which are set out in keeping with natural justice invalidated the order of such termination of service.

The court further held:

Even the top brass must act according to law as lawlessness in the defence force is a grave risk, four star general or foot infantry jawan... We are sure that the defence personnel are dear to the country and to the defence department and so a considerable disposition will be brought to bear on dealing with the appellant Virendra Kumar. Human resources are the real wealth of a nation.

In the same year, in the case of Raghbir Singh Sangwan v. Union of India, also, the principles of natural justice

69. Id. at 132.
were invoked. The petitioner a delinquent employee, working in the intelligence corps of field security section was entrusted with investigation and interrogation of sepoys. The investigation was ordered in relation to a charge against a Lt. Colonel for employing the said Sepoys in his private agricultural fields. Punishment of 'severe displeasure' was awarded to the petitioner by the General Officer Commanding-in-Chief (GOC-in-C). Charge against the petitioner was that he extracted confession­al statements from the Sepoy by denial/delay in provisions of basic necessities like food and water and administering of certain unauthorised punishments under the guise of physical exercise. The petitioner was cleared of the charges by three courts of inquiry and was, thereafter awarded 'severe displeasure' by GOC-in-C.

The Delhi High Court held that the punishment awarded by the GOC-in-C was incompetent and without jurisdiction as under the Rule the officer commanding had no authority to record a finding of fact as regards character or military reputation of a person. If the officer commanding could disagree with the findings of the court of inquiry and find a person blameworthy. The discretion was completely whittled down where second court of inquiry was appointed. Further, when the first court of inquiry had accepted the statements of the Sepoys as voluntary and truthful and had relied on their statements regarding truth of the allegations against the Lt. Colonel who was found blameworthy on the evidence of the sepoys the story of ill-treated could be an afterthought.
The court further observed that the law does not contemplate that any number of courts of inquiry can be constituted and even thereafter the concurrent findings should be upset by the officer commanding. Furthermore, finding of guilt by the commanding officer particularly when three courts of inquiry had established innocence of the petitioner ought to state as to why the findings of the Court of inquiry are wrong. A speaking order in these circumstances was a *sine qua non* on fair play. The action against the employee was a punishment affecting his civil rights in matters for employment. The court added that where an order is of a grave consequence, an order has to be reasoned order with convicting justification for it in the public interest. Finally, the court held, and rightly so that the order of GOC-in-C was in breach of principles of natural justice and fair play and was liable to be set aside.72

Dealing with the issue of applicability of the principles of natural justice to the court-martial proceedings. Justice S.B. Wad, in *R.S.Bhagat v. Union of India*,73 observed:

> The court-martial proceedings being judicial proceedings, the duty to act judicially is inherent in such proceedings. Moreover, in a criminal trial, all requirements of justice supporting the innocence of the accused as are matters of common requirement flowing from the principles of criminal jurisprudence. The law of natural justice with *Maneka Gandhi*’s74 case has now been so enlarged that the duty to act fairly is cast even on the purely administrative bodies.

According to the court, the effective right of being heard had been denied to the petitioner which was in violation of principles of natural justice.

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72. Id. at 1125.  
Speaking on the scope of fair play and justice, the two important elements of the natural justice, the Supreme Court in *Prithi Pal Singh v. Union of India* observed that judicial approach by people well versed in objective analysis of evidence trained by experience to look at facts and law objectively, fair play and justice cannot always be sacrificed at the alter of military discipline. The court also observed:

[W]e would like to draw pointed attention of the Government to the glaring anomaly that courts martial do not even write a brief reasoned order in support of their conclusion, even in cases in which they impose the death sentence. This must be remedied in order to ensure that a disciplined and dedicated Indian Army may not nurse a grievance that the substance of justice and fairplay is denied to it.

In *A.K. Mallick v. Union of India*, the order of the confirming authority had been attacked by the petitioner, on the ground of being violative of the principles of natural justice, in as much as, the petitioner was not given an opportunity of hearing by the confirming authority before recording the order of non-confirmation and that it was not a speaking order. It was submitted by the petitioner that when the confirming authority refuses to confirm the finding or sentence of the court or passes an order of non-confirmation, the accused should be allowed to have an opportunity of hearing by the confirming authority before passing an order of non-confirmation. Denial of such an opportunity is violative of the principles of natural 

75. A.I.R.1982 S.C.1413.  76. Id. at 1437.
77. Id. at 1438.
78. 1983 Lab.I.R.1571(Raj.).
Upholding the above contentions of the petitioner, M.C. Jain, J. of Rajasthan High Court observed:

"Where a finding of 'not guilty' is not being confirmed, the accused should be given an opportunity of hearing. Denial of the opportunity of hearing would undoubtedly prejudicially affect the accused as he would be denied the opportunity to satisfy the Confirming Authority that the finding of 'not guilty' should be confirmed and that the confirmation should not be refused. I, therefore, hold that the order of the Confirming Authority in the present case is rendered invalid on account of violation of the principles of natural justice."

The court further observed:

"When it (confirming authority) differs from the findings of the court-martial, then in my opinion, the confirming authority is required to pass a reasoned order, after giving an opportunity of hearing to the accused."

The court, struck down the order of the confirming authority, and rightly so, on the ground that there was no speaking or reasoned order.

In Gh.Mohd.Dar v. Union of India, in reply to the contention raised by the petitioner that the order passed by the general court-martial under rule 62 of the Army Rules violated guarantee of personal liberty provided to him by article 21 of the Constitution, the Jammu and Kashmir High Court observed that the failure to pass a reasoned order does not constitute infraction of any of the fundamental rights guaranteed under Part III. It was added by the court that the procedure laid down in the rules fully takes care of the requirements of

79. Id. at 1582-83.
80. Id. at 1583.
natural justice, and is highly just, proper and reasonable.

This view of the court is not in consonance with the view which has been taken by the Supreme Court and different High Courts in number of cases pertaining to principles of natural justice. It is well settled position of law that the area of defence services is not precluded from the application of principles of natural justice. The holding of the court that rule 62 does not conflict with article 21 as the procedure envisaged is not unjust, unfair and unreasonable is not well based. The rule only requires the recording of finding on each charge 'guilty' or 'not guilty'. No reasons are required to be recorded. In the absence of reasons, such a rule can not be considered as reasonable and just. Even if the rule is read along with other rules, still there is lot of element of arbitra­tion involved in it. Just the finding, and not the reasons cer­tainly can not be a procedure free from arbitrariness. There­fore, it is suggested that this rule should be modified to the extent that the finding should be based upon reasons to be recorded in writing.

In Prith Pal Singh v. Union of India, 82 it has been rightly held by the Jammu and Kashmir High Court that any order which is made to the detriment of the accused must be made after due compliance with the procedure laid down in the Rules. If there is violation of the procedural safeguards that would be violative of article 14 of the Constitution. The court added that it is now settled that one of the attributes of the principles of natural justice is to ensure fairness during

82. 1984(3)S.L.R.675(J&K).
inquiries so that the decisions are arrived in such a manner which are free from arbitrariness and bias.\textsuperscript{83} Undoubtedly, procedural safeguards are essential requirements of natural justice. These safeguards also ensure that the authority does not act in an arbitrary manner.

In Vinayak Daulatrao Nalawade v. Corps Commander, Lt. Gen. G.O.C.H.Q. 15 Corps,\textsuperscript{84} it was manifestly held by the Jammu and Kashmir High Court that where the proceedings conducted by the court of inquiry are violative of rule 180 of the Army Rules,\textsuperscript{85} such proceedings of court of inquiry are violative of guarantees contained in article 14 of the Constitution and are liable to be struck down as opposed to the principles of natural justice.\textsuperscript{86}

In the recent past, in Ranjit Thakur v. Union of India,\textsuperscript{87} while referring to the effect of the alleged bias on the part of the army authorities, the Supreme Court observed:

> It is the essence of a judgment that it is made after due observance of the judicial process; that the court or Tribunal passing it observes, at least the minimal requirements of natural justice, is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial \textit{Corum nonjudice}.\textsuperscript{88}

\textsuperscript{83} Id. at 677; See also Uma Shankar Pathak v. Union of India, 1989(3) S.L.R.405(All).
\textsuperscript{84} 1987 Lab.I.C.860.
\textsuperscript{85} Rule 180 of the Army Rules lays down procedure when character of a person subject to the Act is involved and says, full opportunity must be afforded to such person of being present throughout the inquiry and of making a statement... giving any evidence... and of cross-examining any witness ... and producing any witnesses in his defence of his character or military reputation.
\textsuperscript{86} Supra note 84 at 870.
\textsuperscript{87} A.I.R.1987 S.C.2386.
\textsuperscript{88} Id. at 2390, court referred to the case of Vissiliades v. Vassiliades, A.I.R.1945 P.C.38.
In Ashwani Kumar Katoch v. Union of India, the petitioner was an officer in the Indian army. On March 23, 1978, he received a show cause notice under Rule 14 of the Army Rules. The main charge which the petitioner was required to answer in the show cause notice was that he had addressed an application pertaining to service matters to the Law Minister in violation of the provisions of para 557 of the Regulations for the Army 1962. In doing so, he had committed grave irregularity and misconduct unbecoming of the position, conduct and code of discipline expected of an army officer. The show cause notice also enumerated other incidents of irregularity/misconduct committed by the petitioner. Finally, it was added that, the Chief of the Army Staff, before whom the case was placed was of the opinion that repeated grave misconduct on the part of petitioner rendered his further retention in service undesirable. He was also of the opinion that the trial of the petitioner by court-martial in addressing his application directly to the Law Minister in violation of para 557 of the said Regulations was inexpedient. He, therefore, directed in terms of Army Rule 14 that the petitioner should be so informed and be called upon to submit in writing his explanation and defence.

After considering the relevant provisions of Army Act and Rules, the court observed that not only reasons were not recorded when the decision was taken but even during the course of the petition, no reasons were forthcoming as it was considered inexpedient to hold a trial. In the view of the court, the respondent had failed to show that the discretion

89. 1988(4) S.L.R. 208 (Delhi).
90. See, Id. at 211.
to dispense with holding of a trial "as inexpedient" was based on some objective grounds. In such a case, denial of trial had resulted in denial to the petitioner of full opportunity to prove his innocence. Moreover, on reading of the show-cause it could not be thought that the allegations were such that the trial would have been inexpedient or impracticable. 91

The court further observed that in the counter-affidavit filed by the respondent, it was stated that the denial of the petitioner having written the letter in question was suspect. Thus, it appeared that there was no concrete proof against the petitioner. Further, no reason had been given even in the counter-affidavit as to why the explanation given by the petitioner was found to be unsatisfactory. The court held that from the counter-affidavit it appeared that the explanation given by the petitioner was rejected only on suspicion and there can be doubt that no man can be punished for misconduct based on suspicion and that too without following the rules of natural justice. 92

The court finally set aside the show cause notice of the Central Government, holding that the respondent had failed to prove that dispensation of the trial as inexpedient was based on objective grounds.

The applicability of the principle of natural justice in the field of defence matters was considered by the Madhya Pradesh High Court in the case of A.K. Handa v. Union of India. 93

91. Id. at 215.
92. Ibid.
The court has held that the decision of Supreme Court in Maneka Gandhi,\(^9^4\) in regard to the principles of natural justice may not be fully applicable in case of members of armed forces. This view of the court in the first instance does not mean that the principles of natural justice are not applicable at all to the armed forces. Moreover, the Supreme Court in this regard has taken a balanced view of the matter in Prithi Pal Singh's\(^9^5\) case by holding that the substance of justice and fair play can not be denied to the members of the armed forces.

Withholding the permission to the petitioner to engage counsel to defend him before the general court-martial resulted in the failure of principles of natural justice.\(^9^6\)

Violation of provisions under rule 34(1) of the Army Rules, which says that "the interval between his (the accused) being so informed and his (accused's) arraignment shall not be less than ninety six hours" resulted in breach of the rules of natural justice because the requirement that ninety-six hours' notice should be given to the accused, is mandatory.\(^9^7\)

The perusal of the cases which have been analysed above indicates the judicial mind in as much as that the jurisprudence of natural justice has been extended to the area of military matters as well. This extension is a welcome extension. In fact, non-applicability of the fundamentals of natural justice would have rendered the military law unjust and unfair.

\(^9^7\) Uma Shankar Pathak v. Union of India, 1989(3)S.L.R.405(All.) at 412.
It is common knowledge that principles of natural justice have been made applicable to every sphere of state activity. Rules of natural justice are not merely restricted to judicial or quasi-judicial functions. They cover the entire gambit of administrative functions as well. In view of this, there would have no justification to exclude the areas of military jurisdiction. Natural justice is the basic component of justice jurisprudence. The flow of justice cannot be allowed to be cut off in regard to defence personnel.

In certain situations, the courts have felt that principles of natural justice cannot be fully extended keeping in view the needs and requirements of the defence services. The maintenance of discipline in the defence services is of utmost significance but this does not mean that the natural justice principles should be sacrificed. This would result in miscarriage of justice. Principles of natural justice are flexible principles; they have always been moulded in their application according to the requirement of the situation. Such a guideline should equally guide the field of defence service as well. Keeping in view the special needs of the defence service, the principles of natural justice should be applied and stretched. The courts should consider it paramount that a balanced approach is followed. Balanced approach would apply that the principles of natural justice to be applied in such a manner that the requirements of the defence services are not ignored. This approach would help us in ensuring justice to those who are ready even to sacrifice themselves for the defence of the country.