WHETHER A COURT MARTIAL IS BOON OR SNAG - DISCUSSED FROM INCEPTION TO CONCLUSION

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ABSTRACT:

Efficiency and discipline being the paramount factors for guiding the Armed Forces coupled with its primary role to defend the Nation in time of war as well as maintaining internal harmony in natural and other calamities, Military Law has evolved to attain the same by enforcing a particular degree of behavior among its members.

It has also been enacted with an aim to regulate certain aspects of administration, mainly those which effect individual rights. The following paper is dedicated to the analysis of court martial proceedings in India. The paper is aimed not only at discussing the proceedings themselves in the light of constitutional rights of the accused, but also highlighting all the advantages and the disadvantages of establishing court martial and also a brief comparing court-martial process with the one, existing in civilian courts.

KEYWORDS: court martial, conventional history, types, various component.

INTRODUCTION

Trial by a Court-martial is one such facet of a soldier’s life that none should wish to face it. When the Mutiny Bill 1749 was debated in the British Parliament, the Earl of Westmoreland, in a powerful speech, denounced the institution of trial of a soldier by a Court-martial in the following words:

“What makes the people of this country more happy and secure than they are in any other, is that valuable privilege of being tried by their peers and by judges who understand the laws of their country, who are bound to be of counsel with the prisoner at the bar and who are as independent as it is possible for men to be made, consistent with the nature of mankind and the support of the Government; but by this bill, and indeed every former bill of the same kind, the Officers and soldiers of our army are entirely deprived of this valuable privilege. If any of them be accused of a military crime, they are to be tried by a law which admits of no jury, nor of any challenge, and by judges who understand nothing of the laws of their country and I should choose to die by the order and bowstring of a bashed rather than by the sentence of a Court-martial, from whom I should expect neither justice nor mercy.¹

These views were expressed more than two centuries ago, when there was nothing like Human Rights movement, when slavery was still in existence and soldiers were nothing, but slaves or fugitives released from jail on their volunteering to fight for the King. With Human Rights awareness growing by the day and for a country like India, which boasts of (in the Preamble of its Constitution itself) ensuring Justice & Equality to all, provisions for trial of a soldier by a Court-martial engrafted in all the statutes governing the Armed Forces of the Union are nothing short of means of making them suffer injustice and inequality at the hands of their superior. The

¹ 14 William Cobbett, Cobbett’s Parliament History of England: From Norman Conquest in 1066 to the Year 1803 426, (Printed by T.C. Hansard, Peterborough Court, Fleet Street, 1813).
basic tenets of fair trial are missing, which, to any person would seem that the whole trial is one with deep implication of arbitrariness.

**CONVENTIONAL HISTORY AND DEFINITION OF COURT MARTIAL**

The essential subjects of military history study are the causes of war, the social and cultural foundations, military doctrine on each side, the logistics, leadership, technology, strategy, and tactics used, and how these changed over time. On the other hand, Just War Theory explores the moral dimensions of warfare, and to better limit the destructive reality caused by war, seeks to establish a doctrine of military ethics.

**HISTORY:**

The court-martial — essentially a military trial — is the oldest system of justice in the United States, predating even the Constitution and Declaration of Independence. The roots of military law stretch back to ancient Rome, where it was adopted to enforce discipline within the ranks, especially among mercenaries. In 1775, the Continental Congress met at the outbreak of the Revolutionary War and adopted the Articles of War based on Britain's military code. The system was not heavily used in World War I, but in World War II some 2 million people were court-martialed for varying offenses, resulting in 80,000 felony convictions. Among the best known was that of Private Eddie Slovik, a Michigan native who abandoned his unit while in France. Following a military trial in 1944, Slovik was shot dead at 24 years old by a firing squad, the only U.S. service member to be executed for desertion since the Civil War.

Military law has traditionally been stricter and more sweeping than civilian law — the Bill of Rights did not automatically apply to soldiers — but since World War II, military trials have come to more closely resemble civilian trials. Different branches of the armed forces used varying military codes until 1950, when Congress enacted the Uniform Code of Military Justice, now the basis of the military-justice system. Under the code, defendants share many of the same rights as civilians, including the right against self-incrimination and guaranteed access to counsel. But important differences still remain: jury members are chosen by the officer convening the court-martial, and many military convictions cannot be appealed to the Supreme Court, as is the case for civilian defendants. However, capital convictions can be appealed to the high court, and military executions require the specific authorization of the President.

**DEFINITION**

A court-martial or court martial is a military court or a trial conducted in such a court. A court-martial is empowered to determine the guilt of members of the armed force subject to military law, and, if the defendant is found guilty, to decide upon punishment. In addition, courts-martial may be used to try prisoners of war for war crimes. The Geneva Convention requires that POWs who are on trial for war crimes be subject to the same procedures as would be the holding military’s own forces. Finally, courts martial can be convened for other purposes, such as dealing

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2 http://content.time.com/time/nation/article/0,8599,1940201,00.html.
with violation of martial law, and can involve civilian defendants.\(^3\) Most Navies have a standard court martial which convenes whenever a ship is lost, this does not presume that the circumstances surrounding the loss of the ship be made part of the official record. Most military forces maintain a judicial system that tries defendants for breaches of military discipline. Some countries like France have no courts martial in times of peace and use civilian courts instead.\(^4\) In simple word we can say courts martial is a legal proceeding for military members that is similar to a civilian court trial. It is usually reserved for serious criminal offenses like felonies. For less serious criminal offenses or breaches of military decorum and regulations, a Non-Judicial Punishment (NJP) is usually held. NJP is known by different terms among the services, such as "Article 15," "Office Hours," or "Captain's Mast."

\section*{AUTHORITIES EMPOWERED TO ORDER A COURT MARTIAL}

The following are empowered to order a court-martial:
\begin{enumerate}
  \item The President;
  \item The Chief of Naval Staff; or
  \item Any officer empowered on this behalf by commission from the Chief of Naval Staff.
\end{enumerate}

\section*{TYPES OF A COURT MARTIAL}

The Uniform Code of Military Justice (UCMJ) provides for four different types of courts-martial: \(^5\)

1. General Courts- martial.
2. District Courts – martial.
3. Summary General Courts – martial; and
4. Summary Court – martial.

\subsection*{GENERAL COURTS- MARTIAL}

A general court-martial consists of a panel of not less than five members and a military judge, or an accused may be tried by military judge alone on their request. Enlisted members may request that the panel be made up of at least one-third enlisted personnel. A general court-martial is often characterized as a felony court, and may try all persons subject to the UCMJ, including enlisted members, officers, and midshipmen.

The accused has a right to be represented by a free military attorney or may hire their own civilian lawyer. A general court-martial may deliver any punishment not prohibited by the UCMJ, including death when specifically, authorized.

A general court- martial may be convened by the Central Government or 1[the Chief of the Army Staff] or by any officer empowered in this behalf by warrant of 1[the Chief of the Army Staff].\(^6\)

\subsection*{DISTRICT COURTS – MARTIAL}

A DCM can be differentiated by a GCM (General Court - martial) only on the grounds of its composition and the extent of punishment which can be awarded. This form of Court- martial is not often resorted to. For convening and confirming a DCM under the AA, B-1 Warrant\(^7\) is issued in favors of an Officer not below the rank of a Field Officer.

\setcounter{footnote}{5}
\footnote{Robinson O. Everett. “Persons Who Can Be Tried by Court Martial”. Duke University School of Law.}
\footnote{Note about the military justice, French Senet.}
\footnote{Sec. 108 of The Army Act 1950.}

\section*{REFERENCES}

\begin{enumerate}
  \item Sec. 109 Power to convene a general court – martial. Of the Army Act 1950.
  \item Manual of Military Law (hereinafter MML), vol III, 753.
\end{enumerate}
who has the power to convene a GCM, or any Officer empowered in this behalf by the said Warrant, issued generally to Sub – Area/Brigade and equivalent Commanders, prescribed by the Central Government under Section 8 of the Army Act. In GCM, for confirming the findings and for sentencing, separate Warrants are issued.

The DCM shall be composed of not less than three Officers, for ensuring clear verdict, each of whom has held a commission for not less than two whole years. There is thus, no statutory requirement as to the rank of a Member of a DCM. However, certain administrative restrictions have been imposed through Regulations for the Army to ensure adequate maturity of the Court. Disqualification of the Members is same as in GCM.

3. SUMMARY GENERAL COURT MARTIAL
A Summary General Court Martial (hereinafter SGCM) is normally convened at remote stations or during the period of exigencies when sufficient number of officers to constitute a GCM are not available. According to the statutes such a Court is not normally convened during peace time, and for this reason only the Central Government or the COAS have been empowered to convene this Court. Where it is so convened, it will be advisable to direct recording of full evidence instead of an abbreviated form permitted by AR 160, to admit parity with GCM in all respects.

4. SUMMARY COURT MARTIAL
The Summary Court-martial (hereinafter SCM) is the proceeding most frequently used in the Indian Army. SCM as opposed to a GCM is not convened but held. Hence any Officer who is the CO of any Corps, department or detachment, by virtue of his appointment is competent to hold SCM of an offender serving under him. The proceedings of the SCM shall be attended throughout by two other persons who shall be officers or JCO or one of either but they shall not be sworn or affirmed. After commission of an offence, the Non-Commissioned Officer (hereinafter NCO) or the other rank could be attached to another unit for his trial by SCM. However, such attachment to another unit for trial by SCM should not be done to merely award him enhanced punishment. The deserters and the absentees from the units may be tried by SCM by the CO of the respective Centers/Schools/Group Headquarters.

VARIUS COMPONENTS OF THE COURTS MARTAL, WHICH INFLUENCED THE MODERATION OF PUNISHMENT.

If troops are punished before their loyalty is secured, they will be disobedient. If not obedient, it difficult to employ them... Thus, command them with civility.... And it may be said that victory is certain.

Sun Tzu

8 AA 1950, s. 114.
9 RA 1987, p 459 (c) and (d).
10 A A 1950, Sec 116.
11 Army Head Quarter Letter No 42231/ AC/DV-1 dt. 22 May 1985.
12 RA 1987, p 381.
13 Sun Tzu, The Art of War, tr. by Yuan Shibing (Hertfordshire, 1993), p.121.
The imperialists' perceived that over deployment of force would result in the disintegration of the fragile 'mask of command'. The British drive for the moderation of punishment was accelerated by a mechanism inbuilt in the army's disciplinary system. The Indian officers were occasionally members and even presidents of the general courts martial. This was probably done to prevent the notion gaining ground among the Indian soldiers that the punishment apparatus was purely a white men's organization. Then the British, by allowing the Indian officers to enjoy some power over the Indian privates, tried to drive a wedge between the brown privates and the brown officers. Nevertheless, while manning the court martial mechanism, the Indian officers were very sympathetic to their brethren. However, the British had two trump cards. First, in sensitive cases when the Indian officers’ sympathies were suspect, British officers were inducted in the courts martial. Secondly, the Commander-in-Chief could order the courts martial to revise their findings. However, the Commanders-in-Chief did not always pressurize courts martial for harsher punishments. They occasionally ordered the courts to award lenient punishments, as they themselves were concerned to prevent the slipping of the ever-slippery mask of leadership.

There was a case of combat refusal by private Gulab Singh in March 1867. Nevertheless, Subadar Mungul Singh who presided over the general court martial was very lenient with Gulab Singh. The latter was merely imprisoned for 3 months. As Mungul Singh and Gulab Singh were from different regiments, this indicates that the Indian officers’ sympathy for the brown privates cut across the regimental boundaries. General W.R. Mansfield, the Commander-in-Chief of the Indian Army (1870-75), asserted that if such guilty soldiers were not punished severely then combat refusal and decomposition of the command structure would become rampant. He continued by saying that Gulab Singh ought to have been awarded capital punishment for his crime. Mansfield did not reject the court martial sentence passed by an Indian officer, probably to avoid running roughshod over Indian opinion.

**HOW COURT – MARTIAL IS VARY FROM CIVILIAN COURTS**

Although the rules and procedures for military law generally track those of civilian law, the practical differences between civilian and military life have led to some variations.

In the civilian world, laws are designed to prevent undesirable behavior, ensure public safety and resolve disputes peacefully. In the military, the emphasis is more on discipline. As the founder of the Judge Advocate General’s Corps, General George Washington, wrote: “Discipline is the soul of an army. It makes small numbers formidable; procures success to the weak, and esteem to all.”

In practice, these are some of the major differences between the two legal systems:

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14 I have borrowed this concept from John Keegan’s *The Mask of Command* (1987, reprint, New York, 1988).

MILITARY – SPECIFIC OFFENCES
The movie A Few Good Men (“You can’t handle the truth!”) demonstrated the difference in the nature of some offenses. The Marines on trial were charged with “conduct unbecoming a marine,” a distinctly military, if misquoted, offense under the Uniform Code of Military Justice. The actual offense is “conduct unbecoming an officer and gentleman” with “gentleman” covering both male and female commissioned officers, cadets, and midshipmen.

This offense and others, including failure to obey a lawful order or regulation, desertion, malingering, and mutiny – to name a few – are distinctly military offenses designed to maintain good order and discipline in the armed forces by making specific conduct criminally punishable.

RIGHTS ADVISEMENTS
Perhaps no legal term is more widely known outside the legal community than “Miranda rights.” In the civilian system, rights advisements must be given to a person who is being questioned about a suspected offense after they are in custody. Rights advisements are more proactive and protective in the military. Article 31 of the Uniform Code requires that military members be advised of their “Article 31 rights” when questioned by any other military member acting in an official capacity and when a reasonable person would consider the questioner to be acting in an official or law enforcement capacity.

Notably, the member does not have to be in custody to trigger the rights advisement. The reason for this is to protect military members, who are taught to obey the military chain of command, from law enforcement taking advantage of their obedience in order to extract incriminating statements.

GUILTY PLEAS
Military members may plead guilty only if they truly believe themselves to be guilty. The military does not allow members to enter solo contender pleas or Alford pleas. In order for a member to plead guilty, and be found guilty, a military judge must conduct a detailed “providence” or “Care” inquiry. The term “Care” comes from United States v. Care, 40 C.M.R. 247, which requires a judge to instruct the accused on the applicable law and question the accuser’s guilty plea on the record to establish “a clear basis for the determination of guilt.”

SPLIT VERDICTS
One of the biggest differences between the military and civilian justice systems is that there are no mistrials. That is because the military is one of the few jurisdictions that allows for split verdicts in criminal trials.

The federal system and almost all states (Oregon and Louisiana accepted) require unanimous verdicts for criminal trials. General courts-martial – the forum reserved for the most serious offenses – require a concurrence of three-fourths, or six, out of the eight-member panel to convict. Special courts-martial, in which the maximum punishment is limited to one year in jail, also require a concurrence of three-fourths, but the panel is composed of only four members. The military does require a unanimous verdict of 12 members in all capital cases.

FEDERAL RULES OF EVIDENCE VS. MILITARY RULES OF EVIDENCE
Military law historically tracked civilian law from the time the first Manual for Courts-
Martial was published in 1895. According to Professor Fredric I. Lederer in his article “The Military Rules of Evidence: Origins and Judicial Implementation,” after the Federal Rules of Evidence came into existence in 1975, there was resistance to the military adapting the “civilian” Federal Rules due to the challenge of adapting them to the “peculiarities of the military system” 130 Mil L. Rev. 5 (1990).

A Working Group was established in 1978 to evaluate and adapt the Federal Rules for use in military courts-martial. The Working Group’s philosophy was to adopt each Federal Rule verbatim, making only minor wording changes to incorporate military terms and procedure or in cases where military necessity required deviating from the Federal Rules.

India’s court-martial system fails on all counts: competence, independence, impartiality.

The recent debate over the process of appointing High Court and Supreme Court judges has raised several important questions about judicial independence. Unfortunately, the Indian military justice system has escaped similar scrutiny. Worse, any prospects of reform seem dim at present.

For a court to be able to hold a fair trial, it must have at least three attributes – competence: judges must possess appropriate legal training and qualifications; independence: judges’ appointments, promotions and security of tenure should not be open to the executive’s influence; impartiality: judges should be and appear to be free of personal and institutional bias.

On all these counts, the Indian military justice system is deficient. It discounts legal training and qualifications, lacks independence from the military chain of command, and ignores conflicts of interest. The military justice system, as set out in the Army Act, the Air Force Act and the Navy Act, is based largely on the British Indian Army Act of 1911. The court-martial procedure is broadly similar across these laws, with some key differences in the Navy Act. Paramilitary forces have their own specific laws based on the Army Act.

- The flawed processes

A court-martial is a temporary body assembled by a "convening authority" – a senior military officer – after looking into the charges against an accused soldier. The convening officer also appoints the members of the court-martial, the prosecutor and the defense counsel, who are all officers drawn from the military.

Some court-martials are also attended by a "judge advocate" who is trained in law and provides legal advice to the court, prosecution and defense, but does not act either as a judge or as an advocate for any side.

Military courts can try military offences such as failure to obey orders and also civilian crimes. When a military court reaches a finding and awards a sentence, it must be "confirmed" by another senior officer (who is usually the convening officer). The confirming order the court to revise the findings or sentence. They can also mitigate, remit or commute the sentence, officer, if dissatisfied, can riddled with structural defects.

SO HOW IS THIS SYSTEM FLAWED?
Competence: Members of a court-martial typically don’t have any legal training or qualifications. Officers appointed to the armed forces for their military ability are in effect required to perform all the functions of a judge (a job that in civilian courts requires a law degree and years of experience). Soldiers are expected, with the advice of a judge advocate, to assess evidence, determine guilt, and award sentences.

Independence: The members of a court-martial, the judge advocate, the prosecutor and the defending officer are all subordinates in rank to the convening officer. The members of the court-martial are also under the convening officer’s chain of command. Several former soldiers have criticized this lack of independence. Wing Commander (Retd) U. C. Jha wrote that the convening officer “exercises command and control over his functionaries in all areas of their service career, including assessment in the annual appraisal reports, future promotions, leave, training courses, posting and appointment”.

Impartiality: The convening officer, who decides whether a case should be tried by a court-martial, has to first determine if the evidence supports the charges. When the same person is then given the authority to appoint a court-martial’s members and "confirm" findings and sentences, the right to a fair trial is, and appears to be, threatened. The risk that court members will be susceptible to command influence increases - an issue the Supreme Court has highlighted. The conflict of interest is exacerbated in cases of alleged human rights violations, where concerns about the army’s reputation and troop morale come into play.

Union Of India & Ors. Vs. P.S. Gill in Criminal Appeal No. 404 of 2013 decided on November 27, 2019

It was held clearly and convincingly that an order convening a General Court – martial (GCM) can be challenged before an Armed Forces Tribunal (AFT).

While differing with an order of the AFT, the Union of India had approached the top court claiming that an order by which the GCM was convened cannot be the subject matter of an appeal before the Tribunal. It was also contended that the jurisdiction of the Tribunal is only for adjudication of complaints and disputes regarding service matters and appeals arising out of the verdicts of the Court Martial. But it got no relief on this and the top court made the picture clear by holding clearly and convincingly what has been stated above. It merits no reiteration that this should now certainly put to rest all speculations on this important topic.

To start with, the ball is set rolling in Para 1 of this noteworthy judgment authored by Justice L. Nageswara Rao for himself and Justice Hemant Gupta wherein it is observed that, "The Union of India is in appeal against the judgment of the Armed Forces Tribunal, Principal Bench, New Delhi (hereinafter, 'the Tribunal') quashing the order dated 23.02.2010 by which General Court Martial was convened against the Respondent."

To recapitulate, it is then pointed out in Para 2 that, "In the year 2005, the Chief of the Army Staff directed an investigation by the Court of Inquiry into the allegations pertaining to irregularities in procurement of ration, as a result of which the quality of supplies for the troops was compromised. A Court of Inquiry was convened on
10.10.2005 by the General Officer Commanding-in-Chief (GOC-in-C) Western Command to identify the Army personnel responsible for the aforementioned irregularities. Twenty-three witnesses were examined by the Court of Inquiry. The Court of Inquiry identified Twelve Army personnel who were prima facie responsible for the said improprieties.

The Respondent who was working as the Chief Director of Purchase (CDP), Army Purchase Organization, and Ministry of Defense was one out of the twelve persons against whom a prima facie case was found. Disciplinary action was also initiated against the Respondent by the GOC-in-C Western Command on 14.06.2006 which was challenged by the Respondent by filing a Writ Petition in the High Court of Delhi. By an order dated 11.01.2007, the High Court quashed the Court of Inquiry on the ground that Rule 180 of the Army Rules, 1954 (hereinafter, 'the Army Rules') was violated. However, an option was given to the Appellants to either hold a fresh Court of Inquiry after complying with Rule 180 of the Army Rules or to proceed directly under Rule 22 by hearing the charge without relying on the Court of Inquiry. The Court of Inquiry was re-constituted pursuant to the option given by the High Court. Later, the Appellants sought a modification of the order dated 29.07.2008 and informed the High Court that proceedings would be initiated under Rule 22 of the Army Rules since most of the officers involved had already retired and that it would be difficult to re-constitute a Court of Inquiry. The High Court permitted the Appellants to proceed under Rule 22 with the condition that no reliance can be placed on the old Court of Inquiry. The order of the Chief of the Army Staff by which cognizance was taken of the offences and the attachment order issued on 26.09.2008 were the subject matter of another Writ Petition filed by the Respondent in the High Court of Delhi which was dismissed on 03.10.2008."

While elaborating further, it is then enumerated in Para 3 stating that, "A hearing of the charge under Rule 22 against the Respondent was convened on 08.12.2008 and recording of summary of evidence under Rule 23 of the Army Rules was ordered against the Respondent on 24.12.2008. The Commanding Officer of the Respondent i.e., General Officer Commanding (GOC), 15 Infantry Division found that no offence was prima facie made out against the Respondent. The said view was approved by the GOC, 15 Corps on 28.04.2009. In the meanwhile, the Respondent retired on attaining the age of superannuation on 31.05.2009. However, Section 123 of the Army Act, 1950 was invoked by the Appellants to continue the proceedings against the Respondent.

The GOC-in-C, Western Command examined the matter and the recommendations made by the GOC, 15 Infantry Division and GOC, 15 Corps and arrived at a conclusion that a prima facie case was made out against the Respondent. An attempt was made by the Respondent to challenge the findings of the GOC-in-C, Western Command, but in vain. The General Court Martial was convened by a letter dated 23.02.2010. The Respondent filed O.A. No. 147 of 2010, assailing the validity of the order convening the General Court Martial. He also sought for quashing the proceedings of the Court of Inquiry, summary of evidence and the conclusion of the GOC-in-C, Western Command holding him prima facie guilty. He further questioned the invocation of Section
123 of the Army Act against him to continue the proceedings even after his retirement. He also sought promotion to the rank of Major General along with his batchmates."

As it turned out, Para 4 then holds that, "The Tribunal held that a prima facie case to proceed against the Respondent by a General Court Martial was not made out. The Tribunal was of the opinion that even if the entirety of evidence of the prosecution is taken to be true, no offence was made out against the Respondent. The Appellants made an attempt to obtain leave to Appeal under Section 31 of the Armed Forces Tribunal Act, 2007 (hereinafter, the Act) to approach this Court, which was not entertained. Aggrieved by the judgment of the Tribunal, the above Appeal is filed."

Be it noted, Para 13 points out that, "At the outset, it is relevant to note that the O.A. was filed both under Sections 14 and 15 of the Act. Section 15 confers jurisdiction and power on the Tribunal to entertain appeal against any order, decision, finding or sentence passed by a Court Martial."

To put things in perspective, it is then made clear in Para 14 that, "Section 15 (2) of the Act provides for an appeal which can be filed by the person aggrieved by an order, decision, finding or sentence passed by a Court Martial. The order challenged in the OA in this case is a proceeding by which the General Court Martial was convened. As there was no order, decision, finding or sentence by the Court Martial, an appeal under Section 15 per se is not maintainable."

While explaining the purpose of Section 14, it is then made clear in Para 15 that, "Section 14 enables a person aggrieved to make an application to the Tribunal in any service matter. 'Service matters' are defined in Section 3 (o) to mean all matters relating to the conditions of their service, which shall include termination of service, inter alia. There are some matters which are excluded from the purview of the definition of 'service matters'. There is no dispute in this case that the said exclusions do not come into play."

Of course, it is then also made clear in Para 16 that, "Any matter relating to the conditions of service falls within the definition of 'service matters' under Section 3 (o) of the Act and can be the subject matter of an application filed before the Tribunal. 'Conditions of service' mean those conditions which regulate the holding of a post by any person right from the time of his appointment till his retirement and even after his retirement including pension etc. Therefore, conditions of service also include dismissal from service [State of Maharashtra v. Marwanjee Desai, (2002) 2 SCC 318]."

To put it succinctly, the foregoing discussion leads the Bench to hold in Para 18 that, "It is clear from the above that any proceeding which leads to an order of termination would fall within the expression 'relating to conditions of service'. In any event, the proceedings initiated against the Respondent cannot be said to be not related to his service. A final order to be passed by the General Court Martial, apart from the imposition of other penalties, might have led to the termination of the service of the Respondent."

More importantly, the Bench then very rightly holds in Para 19 that, "We have no doubt in our mind that Section 14 of the Act which confers jurisdiction over service matters of the Army personnel should receive wide construction. This Court had held that
an interpretation which confers jurisdiction should be preferred over an interpretation which takes away jurisdiction. [Mantri Techozone v. Forward Foundation, 2019 SCC Online SC 322 (3JB)]."

Most importantly, it is then observed in Para 20 that, "We are also conscious that the object with which the Act was made is to provide adjudication of complaints and disputes regarding service matters and not only appeals against the verdicts of the Court Martial. It is trite law that statement of objects and reasons can be used as a tool for interpretation. [S.S. Bola v. B.D. Sharma (1997) 2 SCC 522, State of Maharashtra v. Marwanjee F. Desai, (2002) 2 SCC 318]. The sequitur of the above discussion is that the impugned judgment of the Tribunal does not suffer from lack of jurisdiction."

Going ahead, it is then held in Para 21 that, "Regarding the charges sought to be framed against the Respondent, we do not find any error in the approach of the Tribunal. The material on record was perused by the Tribunal to come to a conclusion that no prima facie case is made out against the Respondent. We do not see any reason to interfere with the said findings." Finally, it is then held in the last Para 22 that, "Accordingly, the Appeal is dismissed."

To summarize, we see that the Apex Court Bench in this latest, landmark and extremely laudable judgment very rightly upholds the AFT order. It has been very rightly held that an order convening a GCM can be challenged before an AFT. It was also rightly submitted by Mr. K. Ramesh that jurisdiction of the Tribunal cannot be curtailed on pedantic grounds and the order by which General Court Martial was convened was rightly set aside by the Tribunal. No wonder that the Apex Court Bench comprising of Justice L. Nageswara Rao and Justice Hemant Gupta very rightly upheld the bona fide submission of the learned counsel Mr. K Ramesh and emphatically ruled in his client's favor while rejecting the submissions made by Ms. Diksha Rai who was the learned counsel appearing for the Appellant who contended that the judgment of the Tribunal is vitiated due to a jurisdictional error! There can be no denying or disputing it!

CONCLUSION AND SUGGESTIONS
It is sad that in independent India, those who have pledged their lives for defending the honor of the nation have no protection against arbitrary action in the name of discipline. Phrases like the rule of law and "natural justice" have no role to play in their lives. In the event of being punished by a summary Court martial they run from pillar to post as there is no forum to fight for their just rights. It someone dares to think of going to the higher courts for justice. Articles 33, 136 (2) and 227 (4) of the constitution, the Army Act of 1950, the ignorance of advocates and high legal expenses blocks his path. This is sadly due to the in different attitude of bureaucrats and political who control military matters. Despite of 73 years of independence, military leadership in India is reluctant to release itself from the psychological subjection to the old British way of life. This is including continuation of the justice delivery system conceived by the British to keep Indian troops under strict check. Serviceman is disowned by their service laws in the name of discipline. If the Indian Air Force and the Indian Navy can function without the provisions of summary court martial, so should the Indian Army. This system of Court martial came into existence to serve the
needs of the mutiny days when certain rough and ready system of punishment had to be resorted to. There is hardly any justification to keep this system going in its present form under the constitution.

The Indian Army is still following the system of military justice it inherited from the British though the law in the UK has changed to keep pace with the modern practices of justice. The right of the individuals enshrined in the Indian Constitution is not reflected in the laws that govern the personnel of the armed forces.

Military law in India needs a new jurisprudence, fresh legal thinking and a new orientation towards the protection of human rights. What is of utmost importance to a common Indian soldier is the basic question of earning a livelihood. The protection of political and civil liberties and constitutional protection are remote ideas to him. In such a scenario it becomes the prime duty of the State to protect his right to a fair justice system.

We must realize that members of a highly disciplined and efficient force do need not to be subjected to an unfair justice system in the name of maintaining discipline. Tuscan only gives rise to discontent and may be even indiscipline. We must remember that for a democratize to succeed; a strong defense force is indispensable. And that such a strong deficient force is made of people - people who deserve to be treated with dignity and justice.

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