* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 04.03.2025
Pronounced on: 30.05.2025

\+ W.P.(C) 7564/2021 & CM APPL. 23679/2021, 31825/2021

SAMUEL KAMALESAN .....Petitioner

Through: Mr.Gopal Sankaranarayanan, Sr. Adv. with Mr.Abhishek Jebaraj, Ms.A. Reyna Shruti, Mr.Shourya Desgupta, Ms.Shivani Sagar Kalra, Advs.

versus

UNION OF INDIA .....Respondent

Through: Mr.Chetan Sharma, ASG with Mr.Ripudaman Bhardwaj, CGSC, Ms.Avshreya Pratap Singh Rudy, Mr. Amit Gupta, Mr.Kushagra Kumar, Mr.Abhinav Bharadwaj, Mr.Saurabh Tripathi, Advs. along with Major Anish Muralidhar, Army

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

NAVIN CHAWLA, J.

1. This petition has been filed by the petitioner, challenging the Order dated 03.03.2021 issued by the respondent, dismissing the petitioner from the Indian Army without pension and gratuity. The petitioner also seeks reinstatement in service.

Case of the petitioner

2. As a brief background of the facts in which the present petition arises, the petitioner was commissioned in the Indian Army on

11.03.2017 in the rank of a Lieutenant in the 3rd Cavalry Regiment, which comprises of 3 squadrons of Sikh, Jat, and Rajput personnel. The Petitioner was made the Troop Leader of Squadron 'B', which comprises of Sikh Personnel.

3. It is the case of the petitioner, that the petitioner's Regiment maintains only a Mandir and a Gurudwara for its religious needs and parades, and not a '*Sarv Dharm Sthal*', which would serve persons of all faiths. The petitioner, who is of Christian faith, claims that there is no church in the premises. He claims that even the written orders calling the Regiment to the weekly religious parades, referred to such parades as the "Mandir Gurudwara parade", and even in common parlance, the term '*Sarv Dharm Sthal*', was not used in the Regiment.

4. It is the case of the petitioner, that he accompanied his troops to the Mandir/Gurudwara for the weekly religious parades and also attended the religious festivals of his troops, such as Diwali, Navratri, Lohri, Gurpurab, Holi and similar celebrations. He claims that he only sought exemption from entering the innermost part/sanctorum of the temple when the puja/havan/aarti, etc., were taking place, not only as a sign of respect to his monotheistic Christian faith, but also as a sign of respect towards the sentiments of his troops so that his non-participation while in the inner shrine would not desecrate and offend their religious sentiments. He claims that he would nonetheless remain present with his fellow troops in the temple courtyard, after duly taking off his shoes and belt, with clean hands, with a turban on when necessary, etc., from where he could view the rituals in the inner shrine as an integral member of the religious parade.

5. The petitioner claims that his troops took no offence to this, and it did not affect his strong bond with them. He claims that he forged a bond with them based on mutual respect, allegiance to the same Flag and Nation, and on the basis of their Indianness, shared meals, exercises, sleeping quarters, and assignments. He claims that the creation of fraternity is not restricted to religious parades and activities.

6. The petitioner claims that around June 2017, the then Commandant of the Regiment (hereinafter referred to as, 'Commandant-1') called upon him during one of the religious parades to enter the inner shrine and participate in the puja. The petitioner claims to have respectfully explained to Commandant-1 that his monotheistic Christian faith did not permit him to do so, but that he would always show solidarity with his troops by being present at the temple, and requested to be allowed to stay with his troops within the temple courtyard but outside of the inner shrine. The petitioner claims that Commandant-1, however, refused this request and began taking extreme disciplinary action against him.

7. The petitioner claims that due to the above incident, he was subjected to open harassment and harsh disciplinary measures under the pretext of Regimental Grooming, such as being subjected to the '*patti parade*', regular Guard Checks on the night guards without sufficient rest in between causing sleep deprivation, and continued verbal abuse and threats by certain superior officers at the mess table that his career would be over, and belittling and ridiculing his faith in front of his peers.

8. The petitioner further claims that in January 2018, he was eligible to undertake his Young Officers Course, which he would have completed by June 2018, however, without any advance intimation, it was cancelled just a day before he was to leave, and the only explanation offered to him was that he was required for operational issues. The petitioner claims that without taking this most basic course, he became ineligible to undertake any other professional training course to build his skills and was also denied an opportunity to serve in an international UN Mission with his Regiment's contingent in Lebanon. The petitioner claims that even in July 2018, January 2019, July 2019, and January 2020, though he was eligible for the next cycle of the Young Officers Course, he was not nominated for the same without any explanation. He claims that again in July 2020, after being detailed for the Young Officers Course, his nomination was cancelled a few days before he was to leave for the course. Upon his inquiry, he was informed that orders had been issued by the Regimental headquarters restricting him from any further inquiries.

9. It is the case of the petitioner that in or around May 2018, he was sent for an interview with the General Officer Commanding of the 7th Infantry Division, who advised him that soldiering was the most important aspect in his career and henceforth, no one would take cognizance of the issue of him respectfully requesting an exemption from entering the Mandir/Gurudwara.

10. He further claims that in August 2018, the Regiment moved to a new location and the petitioner, due to his strong bond with the troops,

was sent as the Second-in-Command of the Advance party that went ahead of the Regiment to prepare the new location.

11. The petitioner claims that his Annual Confidential Report ('ACR') for the year 2017 initiated by Commandant-1 contained adverse remarks over his religious beliefs.

12. He further claims that in November 2018, Commandant-1 initiated the second ACR for the petitioner's second year of service, which was also made adverse due to the petitioner's religious beliefs, rating him 5/9. The petitioner claims that he was informed that apart from the fact that he did not wish to pray to the idols in the temple or take part in the religious ceremonies, his performance was exemplary.

13. The petitioner also claims that he was told by Commandant-1 that he was recommending him for promotion to the next rank and the same was also mentioned in the ACR during initiation, however, when the ACR was sent to the superiors, Commandant-1 had mentioned that the petitioner was not recommended for promotion to the next rank.

14. The petitioner further claims that post the change of the Commandant in June 2019, his ACR improved to a 7/9, under the new Commandant (hereinafter referred to as, 'Commandant-2'), which demonstrates that the adverse ratings in the former ACRs were a form of retaliation and punishment, and not a true indication of the petitioner's service record. He claims that the ACR for the year 2019 indicates that he performed well overall and was a good Officer and the 'pen picture' of the Commandant-2 shows the petitioner's good conduct, his strong bond with his troops, and that he always respected their religious sentiments.

15. The petitioner also claims that by October 2019, he ought to have been promoted to the rank of Captain. He claims that despite clearing the requisite exams, and even the exams that were a requisite for promotion from the rank of 'Major' to 'Lieutenant Colonel', he was not promoted.

16. He claims that by the year 2020/2021, he would have also completed his Instructor's Course, which would have enabled him to train other personnel, and that two junior officers also superseded him in promotion. The petitioner claims that he was given no explanation for the same other than references to his religious beliefs and his request for exemption from participation in the religious rituals.

17. The petitioner claims that from time to time, he was told by Senior Officers that if he acquiesced to undertake the religious rituals in the Mandir/Gurdwara, even if it meant prostrating halfway before the idols, all restrictions and sanctions against him would be lifted and opportunities for promotions/courses/postings would be extended to him. He claims that he was constantly asked by these few Senior Officers and Commandant-1 to choose between his faith and serving the Army.

18. It is the case of the petitioner that since he failed to undertake the said religious rituals, the respondent issued to him a Show Cause Notice dated 31.01.2019, which he received on 05.03.2019. The Show Cause Notice is reproduced hereinunder:

> *"1. WHEREAS, you were commissioned in 3 CAVALRY on 11 March 2017 and reported to the Regiment on 17 April 2017 and was made Troop Leader in 'B' Squadron which comprises of Sikh troops. 3 CAVALRY is a*

Regt with troops of pure clans i.e. 'A' Squadron comprising of Rajputs, 'B' Squadron comprising of Sikhs and 'C' Squadron comprising of Jats.

2. AND WHEREAS, you have refused to enter the Regiment Sarv Dharm Sthal which comprises of Mandir, Church and Gurudwara and you have not attended any religious functions in the Regiment. On explaining the ethos of the Indian Army and its secular approach and the necessity to bond with men, you have been indifferent and resolute on your stand.

3. AND WHEREAS, the Other Officers of the Regiment, other Christian Officers in the Station, Religious Teachers of the Regiment and Pastor of the local Church have made earnest endeavours to explain the rationale, for attending and participating in religious functions, alongwith the importance of such religious parades in the Indian Army. However, you have remained obstinate and refused to change your decision.

4. AND WHEREAS, you were counselled on numerous occasions by your superior officers to show improvement in your religious prejudices and overall discipline but you are unwilling to relent.

5. AND WHEREAS you have also failed to exhibit the desired level of motivation to learn and adopt the facets of Unit Tartib, regimental ethos and professional aspects leading to a total disconnect with your men. Such behaviour does not bode well and will be detrimental in combat situations where rapport with men can be the deciding factor between success and failure.

6. AND WHEREAS, the case is very sensitive in nature owing to the involvement of religious beliefs, your trial by a Court Martial for your aforesaid misconduct is inexpedient and impracticable.

7. AND WHEREAS, the above facts were placed before the Chief of the Army Staff who is of the opinion that your further retention in

service has become undesirable on account of the aforesaid acts of misconduct on your part. Accordingly, your services are liable to be terminated by way of dismissal in terms of provisions contained in Army Act Section 19 read with Army Rule 14.

8. NOW THEREFORE, in accordance with the directions of the Chief of the Army Staff, you are hereby informed on his behalf and called upon to submit in your defence, if any, in writing as to why your services should not be terminated by way of dismissal under the provisions of Army Act, 1950 read with Rule 14 of the Army Rules, 1954.

9. Your reply to this Show Cause Notice must be submitted within a period of 30 days of receipt of this notice, failing which it shall be assumed that you have nothing to urge in your defence, and an ex-parte decision will be taken in the matter."

19. The petitioner replied to the Show Cause Notice in March 2019.

20. The petitioner claims that the respondent made a rejoinder to his reply, reiterating therein the contents of the Show Cause Notice and calling for the petitioner's termination from service on the ground that he has abstained from puja for the reason that it violated his conscience and religious faith. The petitioner claims that he was neither served with an official copy of the same nor given an opportunity to respond.

21. It is the case of the petitioner that meanwhile, in or around February 2019, a discipline and vigilance ban type 'T' was imposed upon him, but he was not intimated about the same until January 2020, when he was verbally informed. The petitioner claims that this indicated that the procedure for his termination had been initiated, and that he could not be detailed for any Courses, postings, or promotions.

22. On 29.12.2020, the petitioner filed a Statutory Complaint as per Section 27 of the Army Act, 1950.

23. On 06.02.2021, the petitioner was shown a reply from the Brigade Headquarters stating that he should issue two separate complaints - one against the alleged tampering with the ACR, and the other dealing with issues pertaining to the discrimination. The petitioner claims that Commandant-2 also repeatedly asked him to file two separate complaints, eventually issuing a formal letter to him on 27.02.2021.

24. On 20.02.2021, the petitioner sent a response to the letter dated 06.02.2021 of the Brigade Headquarters, making it clear that his grievance was not with respect to the rating in his ACR, but rather the fact that it was tampered with, that is, what he was shown was not what was sent to his superiors, and that the same was linked to the issue of the retaliatory disciplinary measures that he was facing over exercising his religious beliefs and, therefore, there was no requirement for two separate complaints.

25. The petitioner was, thereafter, served with the Impugned Order of termination on 03.03.2021.

26. Aggrieved thereof, the petitioner has filed the present petition.

Case of the respondent

27. On the other hand, it is the case of the respondent that since joining the Regiment, the petitioner failed to attend the Regimental Parades despite multiple attempts by the Commandant and other officers to explain the importance of regimentation. The respondent claims that troops derive motivation, pride, and generate their war-cry

from devotional practices to a deity, and when an officer distances himself from these practices, it adversely affects the morale of the troops, undermining regimentation, cohesion, and unity during combat. The respondent maintains that this is an essential professional responsibility and military duty of the petitioner and not a religious obligation.

28. It is the case of the respondent that in this regard, the Commandant gave a written counseling dated 28.06.2017 to the petitioner to bring about change in his conduct. The petitioner, however, continued with his defiance, and on 29.07.2017, submitted an application for change of Regiment, wherein he accepted that he has refused to enter the '*Sarv Dharm Sthal*' due to his Christian faith, and admitted to being advised by the officers of the Regiment and being counselled by the Commandant, but that he was unwilling to change his decision.

29. The respondent claims that efforts were also made through other Christian officers in the Army, and by taking the petitioner to the Pastor of the local Church, the Church of North India, Diocese of Chandigarh, by whom he was told that entering the '*Sarv Dharm Sthal*' as part of his duties would not impinge, in any manner, on his Christian faith, however the petitioner remained undeterred.

30. The Commandant, on 21.06.2018, issued a second counselling to the petitioner to conform his conduct in accordance with the Regimental Tarteeb.

31. The respondent claims that when the petitioner persisted with his conduct, which was highly detrimental to the maintenance of

military discipline, the Commandant initiated the case for administrative termination of the service of the petitioner under Section 19 of the Army Act, 1950 read with Rule 14 of the Army Rules, 1954.

32. The recommendations were processed through the chain of command and at the Brigade and Division level. Efforts were again made by the Commander and General Officer Commanding to explain to the petitioner the importance of the Religious Institution and the significant role it plays in Regimental cohesion, morale and success in operations, however, these attempts also failed.

33. Having exhausted all possible options to make the petitioner understand and conform his conduct to military discipline and Regimental Tarteeb, the Chief of Army Staff examined the complete records and was satisfied that the further retention of the petitioner in service has become undesirable on account of his misconduct. Further, the Chief of Army Staff was also satisfied that the trial of the petitioner by Court Martial was both inexpedient and impracticable, therefore, a Show Cause Notice dated 31.01.2019 was issued to the petitioner under Rule 14(2) of the Army Rules, calling upon him to state reasons as to why his services should not be terminated.

34. The respondent claims that the petitioner has falsely stated in his reply to the Show Cause Notice that he regularly attends the required parades, including being present at religious functions, but only abstained from participating so as to not violate his conscience.

35. The said reply of the petitioner was processed through the chain of command for the orders of the competent authority, and the

Integrated Headquarters of Ministry of Defence (Army) felt that one more opportunity be given to the petitioner to conform his conduct in accordance with service customs, military discipline and Regimental Tarteeb, based whereon the Commandant again advised the petitioner, however, he remained adamant.

36. The case was yet again processed in the chain of command and the General Officer Commanding, 2 Corps, personally interviewed the petitioner on 02.06.2020 for about 45 minutes, however, the petitioner expressed his firm determination not to attend the parades conducted at Regimental *Sarv Dharm Sthal* and to continue standing outside the premises.

37. Thereafter, the case was processed to the competent authority with fresh recommendation for termination of service.

38. Having exhausted all avenues, on 03.03.2021, the respondent issued orders dismissing the petitioner from the service, which were implemented on 25.03.2021.

39. The respondent, therefore, prays for the dismissal of the present petition.

Submissions of the learned senior counsel for the petitioner

40. The learned senior counsel for the petitioner submits that there was no '*Sarv Dharm Sthal*' in the Regiment of the petitioner and instead, there was only a Mandir and a Gurudwara where religious parades, rituals, and ceremonies were performed. He further submits that the petitioner used to attend all religious parades, however, he sought permission to abstain from participating in the sacred rituals and ceremonies being conducted inside the sanctum sanctorum of the

Mandir and the Gurudwara during such parades, and he used to stand outside with fellow troops. This was justified not only due to the own religious beliefs of the petitioner, but also to prevent offending others by not participating in the sacred rituals that may be expected of persons present inside the religious structures during such ceremonies. He submits that the above acts of the petitioner do not, in any manner, violate the secular structure of the Indian Army or the military duties.

41. In this regard, he draws our attention to Paragraph 332 of the Regulations for the Army (Revised Edition) 1987 (in short, 'Regulations'), to submit that his acts were not intended to wound the religious feelings of a person or to violate the sanctity of any place held sacred. He submits that the respondent has also failed to produce any evidence to the contrary in the form of any written or oral complaint by any of the troops.

42. He submits that the petitioner was discriminated against in various forms, like denial of courses and promotion, and being sent for counseling to Christian priest/officers under the false impression that the petitioner was refusing to even attend the weekly religious parades.

43. He submits that Article 33 of the Constitution of India would also not be attracted in the present case, as there is no law promulgated by the Parliament which forces the Armed Forces personnel to attend the religious ceremonies contrary to their religious beliefs and, for refusal to attend the same, discharge them from service.

44. He submits that the petitioner has, in fact, been terminated from service solely on the religious grounds and not on account of any dereliction of his duties. He submits that this would be violative of Article 25 of the Constitution of India.

45. In support, he places reliance on the judgments of the Supreme Court in ***R. Viswan & Ors. v. Union of India & Ors.***, (1983) 3 SCC 401 and ***Union of India v. L.D. Balam Singh***, (2002) 9 SCC 73; and of this Court in ***S. Mohinder Singh Randhawa v. Union of India & Ors.***, 2000 (53) DRJ 718.

46. He further places reliance on ***S.R. Bommai v. Union of India***, 1994 SCC (3) 1, to submit that as far as the State is concerned, the religion, faith, or belief of a person is immaterial. While respecting other religious beliefs/sentiments is a lawful duty in the Army, it cannot be a professional duty of the petitioner to adopt the religious belief of his troops or to perform their religious rituals. He submits that the customary religious parade has no nexus to any specific professional duty/combat situation.

47. He submits that the petitioner herein professes the Protestant Christian faith, which is monotheistic and believes exclusively in one god; worship of idols is prohibited, because of which the petitioner could not have entered the inner shrine of the Mandir for participating in a religious ritual. He submits that Article 25 of the Constitution of India protects such practice. In support, he places reliance on the Judgment of the Supreme Court in ***Bijoe Emmanuel & Ors. v. State of Kerala & Ors.***, (1986) 3 SCC 615.

48. He submits that limitation of a constitutional right is permissible only to a proportionate level and having nexus to the fulfillment of a purpose bearing public importance. He submits that the least restrictive measure is to be followed by the State. In support, he places reliance on the Judgments of the Supreme Court in ***Modern Dental College & Research Centre v. State of M.P.***, 2016 7 SCC 353 and ***Anuradha Bhasin v. Union of India***, 2020 3 SCC 637.

49. He submits that in the present case, Rule 14(2) of the Army Rules has been invoked by the respondent without any material justifying the same. Merely stating that the Rule is being invoked as the case is sensitive, without any material on record or adequate reasons for the same would make the impugned order illegal. In support, he places reliance on the Judgment of this Court in ***Jagga Singh v. Union of India & Anr.***, 61 (1996) DLT 24.

50. He further submits that the petitioner has been summarily dismissed from service without holding a Court Martial, which would not be in terms of Rule 14(2) of the Army Rules. He further submits that the Commandant-2, in fact, upgraded the petitioner's ACR and even gave a good pen picture of the petitioner as being extremely dedicated, hardworking, and very mature for his age, and had further stated that the men find him amiable and enjoy being in his company. He submits that despite the same, the respondent has proceeded to terminate the services of the petitioner, by holding that his acts would demoralize the troops, which would be totally contrary to the record. He submits that in such matters, the respondent should have held a

Court Martial and granted an opportunity to the petitioner to defend himself.

51. He further submits that the respondent is wrongly alleging that the petitioner refused to join the weekly religious parades. He reiterates that the petitioner used to join the weekly religious parades, however, he only denied entering the sanctum sanctorum of the Mandir or the Gurudwara and to perform religious ceremonies inside these structures. He further submits that the petitioner never objected to the War-Cry based on religion and, therefore, it cannot be said that the petitioner has kept his religion above his service.

Submissions of the learned ASG on behalf of the respondent

52. On the other hand, the learned ASG, appearing for the respondent, submits that the 3rd Cavalry Regiment, where the petitioner was posted, is a pure combat regiment of the Armoured Corps. Historically, it has a fixed class composition with troops recruited from the Rajput, Sikh, and Jat communities. He submits that the religious functions of any Regiment of the Indian Army are called regimental parade, attendance whereof is a military duty cast upon each of its personnel irrespective of his/her personal faiths and beliefs. He submits that Article 33 of the Constitution of India also provides that the Parliament may, by law, determine as to what extent any of the Fundamental Rights conferred by Part III of the Constitution shall apply to the members of the Armed Forces.

53. Placing reliance on the judgment of the Supreme Court in ***Mohammed Zubair Corporal No. 781467-G v. Union of India and Others***, (2017) 2 SCC 115, he submits that the Armed Force personnel

cannot keep their religion above their service and the unity of the Force. He submits that refusal of the petitioner to attend the regimental parades only on the ground of his religious beliefs, has an adverse effect on the morale and motivation of the troops he commands. He submits that recognizing this, repeated counseling sessions have been held with the petitioner not only by the Commandant, but also by the Pastor of the local church and at the Regiment, Brigade, and Division levels by the Commander and the General Officer Commanding.

54. He submits that the petitioner, however, flatly refused to abide by the discipline of the Armed Forces, leaving no option with the respondent but to take the impugned action against the petitioner. He submits that, given the sensitivity of the issue, it was opined that a Court Martial in such circumstances would also not be expedient, practical and advisable. He submits that this Court cannot and should not, therefore, interfere with the impugned action taken against the petitioner.

Analysis and Findings

55. We have considered the submissions made by the learned counsels for the parties.

56. At the outset, we salute and acknowledge the dedication of those who guard our borders day and night in adverse conditions. The ethos of our Armed Forces places nation before self; and certainly, nation before religion. Our Armed Forces comprise of personnel of all religions, castes, creeds, regions, and faiths, whose sole motto is to safeguard the country from external aggressions, and, therefore, they

are united by their uniform rather than divided by their religion, caste, or region.

57. While Regiments in our Armed Forces may historically bear names associated with religion or region, this does not undermine the secular ethos of the institution, or of personnel who are posted in these regiments. There are also War Cries which, to an outsider, may sound religious in nature, however, they serve a purely motivational function, intended to foster solidarity and unity amongst the troops.

58. At the same time, the Armed Forces also give due respect to the religious beliefs of their personnel. This is also recognized in paragraph 332 of the Regulations, which states as under:

> *"332.* ***Observance of Religions Customs.-*** *Religious customs and prejudices will be respected. Officers will take special care that none of their acts, or of their subordinates, wounds the religious feelings of a person or violates the sanctity of any place held sacred."*

59. A higher and heightened responsibility is cast on Commanding Officers to ensure that troops under their command are provided with facilities, when required, to observe their respective religious practices. The Commanding Officers are to lead by example and not by division; and by placing the cohesion of the Unit above individual religious preferences, particularly when commanding troops who they will lead in combat situations and war.

60. Paragraph 1385 of the Regulations, which highlights the above, is reproduced hereinunder:-

> *"1385.* ***Religions Welfare.*** *- (a) (i) All commanding officers will ensure that troops under their command are provided with*

facilities, when required, to observe their respective religious rules and rites.

(ii) All officers in command will see that the conduct of the religious teachers is such as becomes their office. The commanding officers will tender them every assistance in carrying out their duties. The commanding officers will afford facilities for the attendance of officers, JCO, WOS, OR, NCs(E) and their families at public worship places. Should seditious or inflammatory language be made use of during the service in any place of worship not under military control, the senior officer, JCO, WO or NCO present will use his discretion in withdrawing the troops with as little interruption as possible, and taking them back to their quarters. The matter will be reported by him to the commanding officer, who if necessary, will report to the formation commander.

(b) Duties of Religious Teachers: -
(i) The duties performed by religious teachers include attending funerals, ministering to the sick in hospital, reading prayers with the convalescents, visiting soldiers under sentence in military prisons or detection barracks at least once a week and giving special religious instructions to the children and enlisted boys during one or two working hours in every week besides attending generally to the religious instructions and welfare of the officers and soldiers and of their families.

(ii) Wherever possible religious teachers will give talks on spiritual welfare, at least once a week, to their respective class of troops. These talks might be based on suitable extracts from their holy books which could be of common application to any class of soldier.

(c) Religious books. - Religious books will be purchased locally out of contingent grant/office allowance."

61. Recognizing the importance and uniqueness of the Armed Forces, Article 33 of the Constitution of India empowers the Parliament to determine the extent to which the Fundamental Rights stated in Part-III of the Constitution shall apply to the members of the Armed Forces.

62. The Supreme Court in ***Mohammed Zubair Corporal No. 781467-G*** (supra), highlighted the above aspect of the Indian Armed Forces, by observing as under:-

> *"**9.** The Air Force is a combat force, raised and maintained to secure the nation against hostile forces. The primary aim of maintaining an Air Force is to defend the nation from air operations of nations hostile to India and to advance air operations, should the security needs of the country so require. The Indian Air Force has over eleven thousand officers and one lakh and twenty thousand personnel below officers rank. For the effective and thorough functioning of a large combat force, the members of the Force must bond together by a sense of espirit de corps, without distinctions of caste, creed, colour or religion. There can be no gainsaying the fact that maintaining the unity of the Force is an important facet of instilling a sense of commitment, and dedication amongst the members of the Force. Every member of the Air Force while on duty is required to wear the uniform and not display any sign or object which distinguishes one from another. Uniformity of personal appearance is quintessential to a cohesive, disciplined and coordinated functioning of an Armed Force. Every Armed Force raised in a civilised nation has its own "Dress and Deportment" Policy.*

10. *India is a secular nation in which every religion must be treated with equality. In the context of the Armed Forces, which comprise of men and women following a multitude of faiths the needs of secular India are accommodated by recognising right of worship and by respecting religious beliefs. Yet in a constitutional sense it cannot be overlooked that the overarching necessity of a Force which has been raised to protect the nation is to maintain discipline. That is why the Constitution in the provisions of Article 33 stipulates that Parliament may by law determine to what extent the fundamental rights conferred by Part III shall stand restricted or abrogated in relation inter alia to the members of the Armed Forces so as to ensure the proper discharge of their duties and the maintenance of discipline among them. Article 33 provides as follows:*

> *"**33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc**.— Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to—*
>
> *(a) the members of the Armed Forces; or*
>
> *(b) the members of the Forces charged with the maintenance of public order; or*
>
> *(c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or*
>
> *(d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),*

> *be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."*
>
> ***11.*** *In the Indian Air Force, the norms governing the growth of hair and retention of facial hair is governed by Regulation 425. Policy documents have also been issued from time to time. On 28-4-1980, the Air Headquarters issued a letter responding to queries made in respect of Armed Force personnel professing Islam. The letter opined that personnel professing Islam are covered by the exception under Regulation 425(b) of the Regulations and that the beard should be "of such length when covered by a fist no hair shall be visible outside". Subsequently, on 10-8-1982, it was stipulated by a policy letter that no permission was required by Muslim Air Force personnel to keep a beard so long as the Airman sported a beard at the time of joining service. However, if an Airman who is a Muslim desired to sport a beard after joining service, he would be permitted to submit a formal application informing his Commanding Officer of this fact and to sport a beard from that date. The Airman would not be allowed to remove the beard except on medical grounds or on an application approved by the Commanding Officer."*

63. The Supreme Court, therefore, held that the overarching necessity of a Force, which has been raised to protect the nation, is to maintain discipline. Uniformity among personnel, not only in their appearance but also in showing their respect for the religion of all, is

quintessential to a cohesive, disciplined, and coordinated functioning of an Armed Force.

64. In ***R. Viswan*** (supra) the Supreme Court has again observed that Article 33 of the Constitution of India carves out an exception insofar as the applicability of Fundamental Rights to members of the Armed Forces is concerned. Highlighting that discipline and efficiency in the Armed Forces is absolutely essential for the Armed Forces of the country, it was held that the Parliament, by enacting the Army Act, has exercised its powers under Article 33 of the Constitution of India. While upholding the constitutional validity of Section 21 of the Army Act, the Supreme Court held as under:

> *"7. ... Article 33 carves out an exception insofar as the applicability of Fundamental Rights to members of the Armed Forces and the Forces charged with the maintenance of public order is concerned. It is elementary that a highly disciplined and efficient Armed Force is absolutely essential for the defence of the country. Defence preparedness is in fact the only sure guarantee against aggression. Every effort has therefore to be made to build up a strong and powerful army capable of guarding the frontiers of the country and protecting it from aggression. Now obviously no army can continuously maintain its state of preparedness to meet any eventuality and successfully withstand aggression and protect the sovereignty and integrity of the country unless it is at all times possessed of high morale and strict discipline. Morale and discipline are indeed the very soul of an army and no other consideration, howsoever important, can outweigh the need to strengthen the morale of the Armed Forces and to maintain discipline amongst them. Any relaxation in the matter of morale and discipline may prove disastrous and ultimately*

lead to chaos and ruination affecting the well being and imperilling the human rights of the entire people of the country. The constitution-makers therefore placed the need for discipline above the fundamental rights so far as the members of the Armed Forces and the Forces charged with the maintenance of public order are concerned and provided in Article 33 that Parliament may by law determine the extent to which any of the Fundamental Rights in their application to members of the Armed Forces and the Forces charged with the maintenance of public order, may be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them. Article 33 on a plain grammatical construction of its language does not require that Parliament itself must by law restrict or abrogate any of the Fundamental Rights in order to attract the applicability of that Article. What it says is only this and no more, namely, that Parliament may by law determine the permissible extent to which any of the Fundamental Rights may be restricted or abrogated in their application to the members of the Armed Forces and the Forces charged with the maintenance of public order. Parliament itself can, of course, by enacting a law restrict or abrogate any of the Fundamental Rights in their application to the members of the Armed Forces and the Forces charged with the maintenance of public order as, in fact, it has done by enacting the Army Act, 1950, the provisions of which, according to the decision of a Constitution Bench of this court in Ram Sarup v. Union of India [AIR 1965 SC 247 : (1964) 5 SCR 931 : (1964) 2 SCJ 619 : (1965) 1 Cri LJ 236] are protected by Article 33 even if found to affect one or more of the Fundamental Rights. But having regard to varying requirement of army discipline and the need for flexibility in this sensitive area, it would be inexpedient to insist that Parliament itself should determine what particular restrictions should be imposed and

on which Fundamental Rights in the interest of proper discharge of duties by the members of the Armed Forces and the Forces charged with the maintenance of public order and maintenance of discipline among them. The extent of restrictions necessary to be imposed on any of the Fundamental Rights in their application to the members of the Armed Forces and the Forces charged with the maintenance of public order for the purpose of ensuring proper discharge of their duties and maintenance of discipline among them would necessarily depend upon the prevailing situation at a given point of time and it would be inadvisable to encase it in a rigid statutory formula. The constitution-makers were obviously anxious that no more restrictions should be placed on the Fundamental Rights of the members of the Armed Forces and the Forces charged with the maintenance of public order than are absolutely necessary for ensuring proper discharge of their duties and the maintenance of discipline among them, and therefore they decided to introduce a certain amount of flexibility in the imposition of such restrictions and by Article 33, empowered Parliament to determine the permissible extent to which any of the Fundamental Rights in their application to the members of the Armed Forces and the Forces charged with the maintenance of public order may be restricted or abrogated, so that within such permissible extent determined by Parliament, any appropriate authority authorised by Parliament may restrict or abrogate any such Fundamental Rights. Parliament was therefore within its power under Article 33 to enact Section 21 laying down to what extent the Central Government may restrict the Fundamental Rights under clauses (a), (b) and (c) of Article 19 (1), of any person subject to the Army Act, 1950, every such person being clearly a member of the Armed Forces. The extent to which restrictions may be imposed on the Fundamental Rights

under clauses (a), (b) and (c) of Article 19 (1) is clearly indicated in clauses (a), (b) and (c) of Section 21 and the Central government is authorised to impose restrictions on these Fundamental Rights only to the extent of the Rights set out in clauses (a), (b) and (c) of Section 21 and no more. the permissible extent of the restrictions which may be imposed on the Fundamental Rights under clauses (a), (b) and (c) of Article 19 (1) having been laid down in clauses (a), (b) and (c) of Section 21, the Central Government is empowered to impose restrictions within such permissible limit, "to such extent and in such manner as may be necessary". The guideline for determining as to which restrictions should be considered necessary by the Central Government within the permissible extent determined by Parliament is provided in Article 33 itself, namely, that the restrictions should be such as are necessary for ensuring the proper discharge of their duties by the members of the Armed Forces and the maintenance of discipline among them. The Central Government has to keep this guideline before it in exercising the power of imposing restrictions under Section 21 though, it may be pointed out that once the Central Government has imposed restrictions in exercise of this power, the court will not ordinarily interfere with the decision of the Central Government that such restrictions are necessary because that is a matter left by Parliament exclusively to the Central Government which is best in a position to know what the situation demands. Section 21 must, in the circumstances, be held to be constitutionally valid as being within the power conferred under Article 33."

65. In ***L.D. Balam Singh*** (supra), the Supreme Court again reiterated that the extent of restrictions necessary to be imposed on any of the Fundamental Rights in their application to the Armed

Forces and the Forces charged with the maintenance of public order should be guided by ensuring proper discharge of duties and the maintenance of discipline amongst the Armed Force personnel. We quote from the Judgment as under:

> *"2. A plain reading thus would reveal that the extent of restrictions necessary to be imposed on any of the fundamental rights in their application to the armed forces and the forces charged with the maintenance of public order for the purpose of ensuring proper discharge of their duties and maintenance of discipline among them would necessarily depend upon the prevailing situation at a given point of time and it would be inadvisable to encase it in a rigid statutory formula. The Constitution-makers were obviously anxious that no more restrictions should be placed than are absolutely necessary for ensuring proper discharge of duties and the maintenance of discipline amongst the armed force personnel and therefore Article 33 empowered Parliament to restrict or abridge within permissible extent, the rights conferred under Part III of the Constitution insofar as the armed force personnel are concerned. In this context reference may be made to the decision of the Supreme Court in the case of R. Viswan v. Union of India [(1983) 3 SCC 401 : 1983 SCC (L&S) 405 : AIR 1983 SC 658] as also a judgment of the Calcutta High Court in the case of Lt. Col. Amal Sankar Bhaduri v. Union of India [1987 Cal LT 1] of which one of us (U.C. Banerjee, J.) was a party.*
>
> *3. This Court in the case of Lt. Col. Prithi Pal Singh Bedi v. Union of India [(1982) 3 SCC 140 : 1982 SCC (Cri) 642 : AIR 1982 SC 1413] observed : (SCC pp. 177-78, para 44)*
>
> > *"It is one of the cardinal features of our Constitution that a person by enlisting*

> *in or entering armed forces does not cease to be a citizen so as to wholly deprive him of his rights under the Constitution. More so when this Court held in Sunil Batra v. Delhi Admn. [(1978) 4 SCC 494: 1979 SCC (Cri) 155: (1979) 1 SCR 392 : AIR 1978 SC 1675] (SCR at p. 495 : AIR at p. 1727) that even prisoners deprived of personal liberty are not wholly denuded of their fundamental rights. In the larger interest of national security and military discipline Parliament in its wisdom may restrict or abrogate such rights in their application to the armed forces but this process should not be carried so far as to create a class of citizens not entitled to the benefits of the liberal spirit of the Constitution. Persons subject to Army Act are citizens of this ancient land having a feeling of belonging to the civilized community governed by the liberty-oriented Constitution.""*

66. Keeping in view the above, in the present case, while there can be no denial of the fact that the petitioner has the right to practice his religious beliefs, however, at the same time, being the Commanding Officer of his troops, he carries additional responsibilities as he has to not only lead them in war but also has to foster bonds, motivate personnel, and cultivate a sense of belonging in the troops.

67. In the present case, the question is not of religious freedom at all; it is a question of following a lawful command of a superior. It is not disputed by the petitioner that his superiors have been calling upon him to attend the religious parades by even entering the sanctum sanctorum and perform the rituals if this would help in boosting the morale of the troops. Section 41 of the Army Act makes it an offence

to disobey the order of a superior officer. We quote Section 41 of the Army Act as under:

> *"41.* ***Disobedience to superior officer.-***
> *(1) Any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally, or in writing or by signal or otherwise shall on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.*
>
> *(2) Any person subject to this Act who disobeys any lawful command given by his superior officer shall, on conviction by court-martial,*
>
> *if he commits such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and*
>
> *if he commits such offence when not on active service, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned."*

68. In the present case, the petitioner has kept his religion above a lawful command from his superior. This clearly is an act of indiscipline.

69. The Commandant and the other officers in the Indian Army, including the Chief of Army Staff, have opined that the refusal of a Commanding Officer to participate in the religious functions and ceremonies and to refuse to even enter the sanctum sanctorum, based solely on personal religious beliefs, will undermine and act to the detriment of the above essential military ethos.

70. While, to a civilian, this may appear a bit harsh and may even sound far-fetched, however, the standard of discipline required for the Armed Forces is different. The motivation that is to be instilled in the troops may necessitate actions beyond ordinary civilian standards. Therefore, the ordinary person standard may not be truly applicable while judging the requirements of the Armed Forces. It is for the Armed Forces and the military leadership to determine what actions they feel are important for its Commanding Officers to take in order to effectively motivate the troops under their command, and what may act as a demotivating factor for the Forces or to the bond and unflinching command that the Commanding Officer must yield over the troops. The Courts cannot second-guess the same. Unless such orders are found to be manifestly arbitrary, and the compliance of the same cannot be sought, the Courts must refrain itself from judging the same applying the civilian standards.

71. In the present case, we find that the Chief of Army Staff, having considered the rank and position of the petitioner, the sensitivity of the issue, and the potential impact on the troops and the Regiment, arrived at the conclusion that the conduct of the petitioner was in violation of the essential military ethos.

72. The petitioner's refusal to fully participate in weekly Regimental religious parades, despite counseling at multiple levels of command and multiple opportunities being given to him for compliance, demonstrates an unwillingness to adapt to the requirements of military service and the Armed Forces. Furthermore, the consequences of such refusal were clearly communicated to the

petitioner through the proper channels before terminating him from service.

73. While we recognize the importance of religious freedom, the petitioner's position as a Commanding Officer required him to prioritize unit cohesion and the morale of his troops. His persistent refusal to fully participate in weekly regimental religious parades, despite extensive counseling and opportunities for compliance, justified the action taken by the respondent.

74. Now, we come to the petitioner's contention regarding the non-holding of a Court Martial. It is the case of the respondent that after examination of the complete record of the petitioner, the Chief of Army Staff was satisfied that the further retention of the petitioner in service has become undesirable on account of his misconduct and that the trial of the petitioner by Court Martial was both inexpedient and impracticable, therefore, a Show Cause Notice dated 31.01.2019 was issued to the petitioner under Rule 14(2) of the Army Rules, calling upon him to state reasons as to why his services should not be terminated. After processing the reply of the petitioner through the chain of command for the orders of the competent authority, and after giving one more opportunity to the petitioner, on 03.03.2021, the respondent issued the Impugned Order, dismissing the petitioner from the service, in exercise of the powers vested in it *vide* Section 19 of the Army Act, read with Rule 14 of the Army Rules.

75. Section 19 of the Army Act is reproduced hereunder:

"Section 19. – Termination of service by Central Government.

Subject to the provisions of this Act and the rules and regulations made thereunder the Central Government may dismiss, or remove from the service, any person subject to this Act."

76. Rule 14 of the Army Rules further states as under:

*"**Rule 14. Termination of service by the Central Government on account of misconduct.***

(1) When it is proposed to terminate the service of an officer under Section 19 on account of misconduct, he shall be given an opportunity to show cause in the manner specified in sub-rule (2) against such action :-

Provided that this sub-rule shall not apply:-

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

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

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

Provided that the Chief of the Army Staff may withhold from disclosure any such

report or portion thereof if, in his opinion, its disclosure is not in the interest of the security of the State.

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

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

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

(a) dismissed from the service; or

(b) removed from the service; or

(c) compulsorily retired from the service.

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

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

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

77. In ***Union of India & Ors. v. Harjeet Singh Sandhu***, (2001) 5 SCC 593, the Supreme Court while considering when the power under Section 19 of the Army Act read with Rule 14 of the Army Rules can be exercised, has held as under:

> ***"14.*** *Section 19 and Rule 14 so read together and analysed, the following legal situation emerges:*
>
> *(1) The Central Government may dismiss, or remove from the service, any person subject to the Army Act, 1950, on the ground of misconduct.*
>
> *(2) To initiate an action under Section 19, the Central Government or the Chief of the Army Staff after considering the reports on an officer's misconduct:*
>
> *(a) must be satisfied that the trial of the officer by a Court Martial is inexpedient or impracticable;*
>
> *(b) must be of the opinion that the further retention of the said officer in the service is undesirable.*
>
> *(3) Such satisfaction having been arrived at and such opinion having been formed, as abovesaid, the officer proceeded against shall be given an opportunity to show cause against the proposed action which opportunity shall include the officer being informed together with all reports adverse to him to submit in writing his explanation and defence. Any report on an officer's misconduct or portion thereof may be withheld from being disclosed to the officer concerned if the Chief of the Army Staff is of the opinion that such disclosure is not in the interest of the security of the State.*

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

(a) where the misconduct forming the ground for termination of service is one which has led to the officer's conviction by a criminal court;

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

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

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

xxxxx

***24.** In Union of India v. Capt. S.K. Rao [(1972) 1 SCC 144 : AIR 1972 SC 1137 : (1972) 2 SCJ 645] the gross misconduct alleged against the delinquent officer was of having actively abetted in the attempt of a brother officer's daughter eloping with a sepoy. An enquiry into the grave misconduct*

was made by a Court of Enquiry. The Chief of the Army Staff considered the conduct of the officer unbecoming of an officer. He also formed an opinion that trial of the officer by a General Court Martial was inexpedient and, therefore, he ordered administrative action to be taken under Rule 14 by removing the officer from service. The order of removal was put in issue on the ground that the Army Act contained specific provision, viz. Section 45, for punishment for unbecoming conduct and as Section 19 itself suggests that power being "subject to the provisions of this Act", Section 19 would be subject to Section 45 and therefore the Central Government would have no power to remove a person from the service in derogation of the provision of Section 45. The plea was repelled by this Court holding that the power under Section 19 is an independent power. Though Section 45 provides that on conviction by Court Martial an officer is liable to be cashiered or to suffer such less punishment as mentioned in the Act, for removal from service under Section 19 read with Rule 14, a Court Martial is not necessary. The Court specifically held that the power under Section 19 is an independent power and "the two Sections 19 and 45 of the Act are, therefore, mutually exclusive".

xxxxx

***26.** ... [I]f the initial decision was to have the delinquent officer tried not by a criminal court but by a Court Martial, then under sub-rule (2) of Rule 14 it is for the Central Government or the Chief of the Army Staff to arrive at a satisfaction whether the trial of the officer by a Court Martial is expedient and practicable whereupon the Court Martial shall be convened. The Central Government or the Chief of the Army Staff may arrive at a satisfaction that it is inexpedient or impracticable to have the officer tried by a Court Martial then the Court Martial may not be convened and additionally, subject to*

> *formation of the opinion as to undesirability of the officer for further retention in the service, the power under Section 19 read with Rule 14 may be exercised. Such a decision to act under Section 19 read with Rule 14 may be taken either before convening the Court Martial or even after it has been convened and commenced, subject to satisfaction as to the trial by a Court Martial becoming inexpedient or impracticable at which stage the Central Government or the Chief of the Army Staff may revert back to Section 19 read with Rule 14. It is not that a decision as to inexpediency or impracticability of trial by a Court Martial can be taken only once and that too at the initial stage only and once taken cannot be changed in spite of a change in the fact situation and prevailing circumstances."*

78. Further, with respect to 'misconduct' being a ground for terminating the service by dismissal or removal, the Supreme Court in the abovementioned case, held as under:-

> *"**21.** "Misconduct" as a ground for terminating the service by way of dismissal or removal, is not to be found mentioned in Section 19 of the Act; it is to be read therein by virtue of Rule 14. Misconduct is not defined either in the Act or in the Rules. It is not necessary to make a search for the meaning, for it would suffice to refer to State of Punjab v. Ex-Constable Ram Singh [(1992) 4 SCC 54 : 1992 SCC (L&S) 793 : (1992) 21 ATC 435] wherein the term "misconduct" as used in the Punjab Police Manual came up for consideration of this Court. Having referred to the meaning of "misconduct" and of "misconduct in office" as defined in Black's Law Dictionary and Aiyar's Law Lexicon, this Court held: (SCC p. 58, para 6)*
>
> > *"[T]he word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context,*

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

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

the formation of requisite satisfaction and opinion within the meaning of sub-rule (2) of Rule 14."

79. Additionally, with regard to the terms "impracticable" and "inexpedient", in ***Harjeet Singh Sandhu*** (supra), the Supreme Court observed as under:

> ***"30.*** *In Major Radha Krishan case [(1996) 3 SCC 507 : 1996 SCC (L&S) 761] this Court has held: (SCC p. 511, para 8)*
>
> > *"When the trial itself was legally impossible and impermissible the question of its being impracticable, in our view cannot or does not arise. 'Impracticability' is a concept different from 'impossibility' for while the latter is absolute, the former introduces at all events some degree of reason and involves some regard for practice. According to Webster's Third New International Dictionary 'impracticable' means not practicable; incapable of being performed or accomplished by the means employed or at command. 'Impracticable' presupposes that the action is 'possible' but owing to certain practical difficulties or other reasons it is incapable of being performed. The same principle will equally apply to satisfy the test of 'inexpedient' as it means not expedient; disadvantageous in the circumstances, inadvisable, impolitic. It must therefore be held that so long as an officer can be legally tried by a Court Martial the authorities concerned may, on the ground that such a trial is not impracticable or inexpedient, invoke Rule 14(2). In other words, once the period of limitation of such a trial is over the authorities cannot take action under Rule 14(2)."*
>
> ***31.*** *The above passage shows that the learned Judges went by the dictionary meaning of the*

term "impracticable", placed the term by placing it in juxtaposition with "impossibility" and assigned it a narrow meaning. With respect to the learned Judges deciding Major Radha Krishan case [(1996) 3 SCC 507 : 1996 SCC (L&S) 761] we find ourselves not persuaded to assign such a narrow meaning to the term. "Impracticable" is not defined either in the Act or in the Rules. In such a situation, to quote from Principles of Statutory Interpretation(Chief Justice G.P. Singh, 7th Edn., 1999, pp. 258-59):

> *"When a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that 'the meanings of words and expressions used in an Act must take their colour from the context in which they appear'. Therefore, 'when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers'.*
>
> *As stated by Krishna Iyer, J.: 'Dictionaries are not dictators of statutory construction where the benignant mood of a law, and more emphatically, the definition clause furnish a different denotation.' In the words of Jeevan Reddy, J.: 'A statute cannot always be construed with the dictionary in one hand and the statute in the other. Regard must also be had to the scheme, context and to the legislative history.' Learned Judge Hand cautioned 'not to make a fortress out of the dictionary' but to pay more attention to 'the sympathetic and imaginative discovery' of the purpose or object of the statute as a guide to its meaning."*

32. *In Words and Phrases (Permanent Edn., Vol. 20, pp. 460-61) it is stated that the term "impossible" may sometimes be synonymous with "impracticable"; "impracticable" means "not practicable", incapable of being performed or accomplished by the means employed or at command; "impracticable" is defined as incapable of being effected from lack of adequate means, impossible of performance, not feasible; "impracticable" means impossible or unreasonably difficult of performance, and is a much stronger term than "expedient". In The Law Lexicon (P. Ramanatha Aiyar, 2nd Edn., p. 889) one of the meanings assigned to impracticable is " 'not possible' or 'not feasible'; at any rate it means something very much more than 'not reasonably practicable' ". In the New Oxford Dictionary of English (1998, at p. 918), impracticable (of a course of action) is defined to mean "impossible in practise to do or carry out". The same dictionary states the usage of the term in these words — "Although there is considerable overlap, impracticable and impractical are not used in exactly the same way. Impracticable means 'impossible to carry out' and is normally used for a specific procedure or course of action,…. Impractical, on the other hand, tends to be used in more general senses, often to mean simply 'unrealistic' or 'not sensible'."*

33. *We may with advantage refer to certain observations made by the Constitution Bench (majority view) in Union of India v. Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672] . Article 311(2) proviso (b) contemplates a government servant being dismissed or removed or reduced in rank, dispensing with an enquiry, if it is not "reasonably practicable" to hold such enquiry. The Constitution Bench dealt with the meaning of the expression "reasonably practicable" and the scope of the provision vide paras 128 to 138 of its judgment. The Constitution Bench*

pertinently noted that the words used are "not reasonably practicable" and not "not practicable" nor "impracticable" [as is the term used in sub-rule (2) of Rule 14 of the Army Rules]. Thus, the decision in Tulsiram Patel case [(1985) 3 SCC 398 : 1985 SCC (L&S) 672] may not ipso facto throw light on the issue before us but some of the observations made by the Constitution Bench can usefully be referred to. A few illustrative cases mentioned by the Constitution Bench, wherein it may be "not reasonably practicable" to hold an enquiry, are: (SCC pp. 502-03, para 129)

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

34. *The Constitution Bench has further held that disciplinary enquiry is not expected to be dispensed with lightly or arbitrarily or out of ulterior motive or merely to avoid the holding of an enquiry or because the department's case against the government servant is weak and must fail. It is not necessary that a situation which makes the holding of an enquiry not reasonably practicable should exist before the disciplinary enquiry is initiated against the government servant; such a situation can also come into existence subsequently during the course of an enquiry. Reasonable practicability of holding an enquiry is a matter*

> *of assessment to be made by the disciplinary authority. The satisfaction of the authority is not immune from judicial review on well-settled parameters of judicial review of administrative decisions. However, if on the satisfaction reached by the authority two views are possible, the court will decline to interfere.*
>
> ***35.*** *As the term used in sub-rule (2) of Rule 14 is "impracticable" and not "not reasonably practicable", there is more an element of subjectivity sought to be introduced by this provision in the process of arriving at the satisfaction, obviously because the rule is dealing with the satisfaction arrived at by the Central Government or the Chief of the Army Staff, in the matter of disciplinary action on account of misconduct committed by an officer of the Army which decision would have been arrived at by taking into consideration the then prevailing fact situation warranting such decision after considering the reports on the officer's misconduct."*

80. The Supreme Court has, therefore, held that the terms "inexpedient" and "impracticable" must be understood in their proper context. It has clarified that "impracticable" is not synonymous with "impossible" but refers to something that is "not practicable" or "incapable of being performed or accomplished by the means employed or at command." The term "inexpedient" means "not expedient; disadvantageous in the circumstances, inadvisable, impolitic." Further, the Supreme Court held that the satisfaction regarding inexpediency or impracticability involves "more an element of subjectivity" when dealing with disciplinary action on account of misconduct by the Central Government or the Chief of Army Staff, particularly considering the then prevailing fact situation warranting

such decision after considering the reports on the officer's misconduct. In the present case, the prevailing facts establish that the petitioner had consistently refused to fully participate in weekly Regimental religious parades at the *'Sarv Dharm Sthal'* despite multiple opportunities and counselling sessions at various levels; his conduct had adversely affected the traditional camaraderie between officers and troops of the Regiment; the issue had persisted without any indication of the petitioner's willingness to comply with military discipline. As the religious sentiments and the morale of the troops were in question, the same made a formal Court Martial proceedings unsuitable for resolution. Therefore, in the specific context of military discipline and the unique circumstances of the present case involving religious beliefs and regimental cohesion, the Chief of Army Staff's satisfaction that conducting a Court Martial would be both inexpedient and impracticable, given the sensitive nature of the religious issue, appears well-founded.

81. Further, the Show Cause Notice dated 31.01.2019 clearly mentions this aspect, and the petitioner was duly informed of the same. In compliance with the procedure laid down in Rule 14 of the Army Rules, the petitioner was given an opportunity to submit his explanation and defence in writing, which he did in March 2019. The respondent has also processed the petitioner's reply through the chain of command and given him one more opportunity to conform his conduct before taking the final decision. The case was even processed to the General Officer Commanding, 2 Corps who personally interviewed the petitioner for about 45 minutes, however, the

petitioner remained adamant in his position. The Impugned Termination Order dated 03.03.2021 records that despite adequate time being given to the petitioner to reconcile on the issue and counselling by senior officers on several occasions, the petitioner remained strongly opinionated and obstinately continued to abstain from entering the Regimental '*Sarv Dharm Sthal*' for participating in the religious parades.

82. We find that in such circumstances, a Court Martial might have led to unnecessary controversies, which could be detrimental to the secular fabric of the Armed Forces. The decision to not hold a Court Martial, therefore, appears to be well thought out and within the powers conferred on the Central Government and the Chief of Army Staff under Rule 14(2) of the Army Rules. The satisfaction of the Central Government or the Chief of Army Staff regarding both the inexpedient and impracticable nature of conducting a Court Martial in this case is based on sound reasoning and is not arbitrary or capricious. As held in ***Harjeet Singh Sandhu*** (supra), the satisfaction regarding inexpediency or impracticability of Court Martial can be formed at any stage, and the power under Section 19 of the Army Act read with Rule 14 of the Army Rules is an independent power that can be exercised when the Central Government or the Chief of Army Staff is satisfied that further retention of the officer in service is undesirable. The Impugned Termination Order specifically notes that the petitioner's undisciplined behaviour was against all secular norms of the Indian Army and had adversely affected the traditional camaraderie between officers and troops of the Regiment, which

would be detrimental in combat situations where rapport with troops is the most important and decisive battle winning factor. It also records that the trial of the petitioner by a Court Martial for his misconduct is rendered inexpedient and impracticable in view of the sensitive nature of the case owing to the involvement of religious beliefs. This demonstrates that the decision was taken after careful consideration of the specific circumstances of the case and the potential consequences of different courses of action.

83. Regarding the petitioner's contention about tampering with his ACR, we note that while the petitioner claims that his ACR for 2017 and 2018 contained adverse remarks due to religious discrimination, and that there was tampering wherein what was shown to him differed from what was sent to superiors, these allegations remain unsubstantiated. The petitioner himself acknowledges that under Commandant-2, his ACR improved to 7/9 in 2019, which the respondent does not dispute. However, even assuming that there were irregularities in the earlier ACRs, the same would not negate the substantive issue of the petitioner's continued refusal to participate fully in regimental religious parades despite multiple counselling sessions and opportunities for compliance. The termination order makes it clear that the officer was resolute in his decision of not attending religious parades and stands outside the premises citing personal religious beliefs, which conduct was corroborated by his Commanding Officer. The termination was based on his conduct and its impact on military discipline and unit cohesion, rather than solely on the ACR ratings.

84. The termination process followed proper procedures under Section 19 of the Army Act read with Rule 14 of the Army Rules. The petitioner received adequate notice through the Show Cause Notice dated 31.01.2019, was given full opportunity to respond, and his reply was duly considered through the proper chain of command before the final decision was rendered. The procedural safeguards envisaged under Rule 14(2) of the Army Rules have been substantially complied with.

85. For these reasons, we find no grounds to interfere with the Impugned Order dated 03.03.2021. The petition is, accordingly, dismissed. All pending applications also stand disposed of as having been rendered infructuous.

86. There shall be no order as to costs.

NAVIN CHAWLA, J

SHALINDER KAUR, J

MAY 30, 2025/*rv*/SJ

Click here to check corrigendum, if any