Supreme Court of India

S.N. Mukherjee vs Union Of India on 28 August, 1990

Equivalent citations: 1990 AIR 1984, 1990 SCR Supl. (1) 44

Author: S Agrawal

Bench: Mukharji, Sabyasachi (Cj), Kania, M.H., Shetty, K.J. (J), Saikia, K.N. (J), Agrawal, S.C. (J)

PETITIONER:

S.N. MUKHERJEE

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT28/08/1990

BENCH:

AGRAWAL, S.C. (J)

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AGRAWAL, S.C. (J)

MUKHARJI, SABYASACHI (CJ)

KANIA, M.H.

SHETTY, K.J. (J)

SAIKIA, K.N. (J)

CITATION:

1990 AIR 1984 1990 SCR Supl. (1) 44

1990 SCC (4) 594 JT 1990 (3) 630

1990 SCALE (2)383

CITATOR INFO :

RF 1991 SC 564 (6)

R 1992 SC1256 (7,9,11,14)

ACT:

Army Act 1950: Section 164--Court-Martial--Post confirmation petition--Central Government--Whether bound to give reasons.

HEADNOTE:

The Appellant was officiating as a Major though he held a substantive rank of Captain as a permanent Commissioned Officer of the army when on December 27, 1974 he took over as the Officer Commanding 38 Coy. A.S.C. (Sup) Type 'A' attached to the Military Hospital, Jhansi. In August, 1975 the Appellant went to attend a training course and returned in the first week of November. 1975. In his absence Captain G.C. Chhabra was commanding the unit of the appellant and he submitted a Contingent Bill dated September 25, 1975 for Rs.16,280 for winter liveries of the depot civilian chowkidars and sweepers. The said Bill was returned by the Controller of Defence Accounts (CDA) with certain objections. Thereupon the appellant submitted a fresh contingent Bill dated December 25, 1975 for a sum of Rs.7,029.57. In view of the wide difference in the two Contingent Bills, the CDA reported the matter to the Headquarters for investigation and a Court Enquiry blamed the appellant for certain lapses.

After considering the said report of the Court of Enquiry the General Officer Commanding, M.P., Bihar and Orissa recommended that 'severe displeasure' (to be recorded) of the General Officer Commanding-in-Chief of the Central Command be awarded to the appellant. The General Officer Commanding-in-Chief Central Command, however. did not agree with the said opinion and by order dated August 26, 1977 directed that disciplinary action be taken against the appellant for the lapses.

Pursuant to the said order a charge sheet dated July 20, 1978 containing three charges was served on the appellant and it was directed that he be tried by General Court Martial. The first charge was, doing of a thing with intent to defraud under section 52(f) of the Act. The second charge was alternative to the first charge i.e. commit-
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ting an act prejudicial to good order and military discipline under section 63 of the Act and the third charge was also in respect of offence under section 63 of the Act.

'the appellant pleaded not guilty to the charges. The General Court Martial on November 29, 1978 found him guilty of first and third charge and awarded the sentence of dismissal from service. Thereupon the appellant submitted petition dated December 18, 1978 to the Chief of Army Staff praying that the findings of the General Court Martial be not confirmed. The Chief of the Army Staff by his order dated May 11, 1979 confirmed the findings and sentence of the General Court Martial. The appellant thereafter submitted a post-confirmation petition under section 164(2) of the Act. This was rejected by the Central Government by order dated May 6, 1980. Thereupon the appellant filed a writ petition in the High Court of Delhi which was dismissed in limine. Hence this appeal by special leave directed to be heard by the Constitution Bench for the reason that it involves the question as to whether it was incumbent for the Chief of the Army Staff, while confirming the findings and sentence of the General Court Martial and for the Central Government while rejecting the post-confirmation petition of the appellant to record their reasons for the orders passed by them.

Dismissing the appeal, this Court,

HELD: The requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact wheth-

er the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. [62H; 63A-B]

The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge. [63B]

Except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record' the reasons for its decision. [65B]

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The provisions contained in the Army Act, 1950 and the Army Rules, 1954 negative a requirement to give reasons for its findings and sentence by a Court Martial and reasons are not required to be recorded in cases where the Court Martial makes a recommendation to mercy. Similarly, reasons are not required to be recorded for an order passed by the confirming authority confirming the findings and sentence recorded by the Court Martial as well as for the order passed by the Central Government dismissing the post-confirmation petition. [70E-F]

Sub-section (1) of section 164 of the Army Act enables a person aggrieved by an order passed by a Court Martial to present a petition against the same. The expression "order" under sub-section (1) does not include a finding or sentence of the Court Martial and in so far as the finding and sen-

tence of the Court Martial is concerned the only remedy that is available to a person aggrieved by the same is under sub-section (2) of section 164 of the Army Act and the said remedy can be invoked only after the finding or sentence has been confirmed by the confirming authority and not before the confirmation of the same. [72B; D-E]

Though a person aggrieved by the finding or sentence of a Court Martial has no right to make a representation before the confirmation of the same by the confirming authority, but in case such a representation is made by a person aggrieved by the finding or sentence of a Court Martial it is expected that the confirming authority shall give due consideration to the same while confirming the finding and sentence of the Court Martial. [72H; 73A]

Som Datt Datta v. Union of India & Ors., [1969] 2 S.C.R. 177; Bhagat Raja v. The Union of India & Ors., [1967] 3 S.C.R. 302; Mahabir Prasad Santosh Kumar v. State of U.P. & Ors., [1971] 1 S.C.R. 201; Woolcombers of India Ltd. v. Woolcombers Workers Union & Ant., [1974] I S.C.R. 503; Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India & Anr., [1976] Suppl.S.C.R. 489; Phelps Dodge Corporation v. National Labour Relations Board, [1940] 85 Law Edn. 1271 at p. 1284; Securities and Exchange Commission v. Chenery Corporation, [1942] 87 Law Ed. 626 at p. 636; John T. Dunlop v. Waiter Bachewski, [1975] 44 Law Ed. 2 377; Regina v. Gaming Board for Great Britain, Exparte Benaim & Khaida, [1970] 2 Q.B. 417 at p. 431; Mc Innes v. Onslow-Fane & Anr., [1978] 1 W.I..R. 1520 at p. 1531; Breen v. Amalgamated Engineering Union & Ors., [1971] 2 Q.B. 175; Alexander Machinery (Dudley) Ltd. v. Crabtree, [1974] I.C.R. 120; Regina v. Immigration Appeal Tribunal Ex Parte Khan (Mahmud), [1983] Q.B. 790; Pure Spring Co. Ltd. v. Minister of National Revenue,

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[1947] 1 D.L.R. 501 at p. 539; Re R.D.R. Construction Ltd. &

Rent Review Commission, [1983] 139 D.L.R. 3d. 168; Re Yarmouth Housing Ltd. & Rent Review Commission, [1983] 139 D.L.R. (3d). 544; Osmond v. Public Service Board of New South Wales, [1985] 3 NSWLR 447; Public Service Board of New South Wales v. Osmond, [1986] 63 A.L.R. 559; M/s. Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala & Ors., [1962] 2 S.C.R. 339; Madhya Pradesh Industries Ltd. v. Union of India & Ors., [1966] 1 S.C.R. 466; Tranvancore Rayon Ltd. v. Union of India, [1970] 3 S.C.R. 40; Tarachand Khatri v. Municipal Corporation of Delhi & Ors., [1977] 2 S.C.R. 198; Raipur Development Authority & Ors. v. M/s. Chokhamal Contractors & Ors., [1989] 2 S.C.C. 721; A.K. Kraipak & Ors. v. Union of India & Ors., [1970] 1 S.C.R. 457; R. v. Deputy Industrial Injuries Commissioner ex P. Moore, [1965] 1 Q.B. 456 and Mahon v. Air New Zealand Ltd., [1984] A.C. 648, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 417 of 1984.

From the Judgment and Order dated 12.8.1981 of the Delhi High Court in C.W.P. No. 1835 of 1981.

A.K. Ganguli, A. Sharan for the Appellant.

Kapil Sibal, Additional Solicitor General, Raju Rama- chandran, Rajiv Dhawan, C.V. Subba Rao and Mrs. Sushma Suri for the Respondents.

T. Prasad for the Secretary, Ministry of Defence. The Judgment of the Court was delivered by S.C. AGRAWAL, J. This appeal, by special leave, is directed against the order dated August 12, 1981, passed by the High Court of Delhi dismissing the writ petition filed by the appellant. In the writ petition the appellant had challenged the validity of the finding and the sentence recorded by the General Court Martial on

November 29, 1978, the order dated May 11, 1979, passed by the Chief of Army Staff confirming the findings and the sentence recorded by the General Court Martial and the order dated May 6, 1980, passed by the Central Government dismissing the petition filed by the appellant under Section 164(2) of the Army Act, 1950 (hereinafter referred to as 'the Act').

The appellant held a permanent commission, as an offi- cer, in the regular army and was holding the substantive rank of Captain. He was officiating as a Major. On December 27, 1974, the appellant took over as the Officer Commanding of 38 Coy. ASC (Sup) Type 'A' attached to the Military Hospital, Jhansi. In August 1975, the appellant had gone to attend a training course and he returned in the first week of November 1975. In his absence Captain G.C. Chhabra was the officer commanding the unit of the appellant. During this period Captain Chhabra submitted a Contingent Bill dated September 25, 1975 for Rs.16,280 for winter liveries of the depot civilian chowkidars and sweepers. The said Contingent Bill was returned by the Controller of Defence Accounts (CDA) Meerut with certain objections. Thereupon the appellant submitted a fresh Contingent Bill dated December 25, 1975 for a sum of Rs.7,029.57. In view of the difference in the amounts mentioned in the two Contingent Bills, the CDA reported the matter to the headquarters for investiga- tion and a Court of Enquiry blamed the appellant for certain lapses.

The said report of the Court of Enquiry was considered by the General Officer Commanding, M.P., Bihar and Orissa Area, who, on January 7, 1977 recommended that 'severe displeasure' (to be recorded) of the General Officer Com- manding-in-Chief of the Central Command be awarded to the appellant. The General Officer Commanding-in-Chief. Central Command did not agree with the said opinion and by order dated August 26, 1977, directed that disciplinary action be taken against the appellant for the lapses. In view of the aforesaid order passed by the General Officer Commanding-in-Chief, Central Command, a charge sheet dated July 20. 1978, containing three charges was served on the appellant and it was directed that he be tried by Gener- al Court Martial. The first charge was in respect of the offence under Section 52(f) of the Act, i.e. doing a thing with intent to defraud. the second charge was alternative to the first charge and was in respect of offence under Section 63 of the Act, i.e. committing an act prejudicial to good order and military discipline and the third charge was also in respect of offence under Section 63 of the Act. The appellant pleaded not guilty to the charges.

The prosecution examined 22 witnesses to prove the charges. The General Court Martial. on November 29, 1978, found the appellant not guilty of the second charge but found him guilty of the first and the third charge and awarded the sentence of dismissal from service. The appellant submit-

ted a petition dated December 18, 1978, to the Chief of Army Staff wherein he prayed that the findings and the sentence of the General Court Martial be not confirmed. The findings and sentence of the General Court Martial were confirmed by the Chief of the Army Staff by his order dated May 11, 1979. The appellant, thereafter, submitted a post-confirmation petition underSection 164(2) of the Act. The said petition of the appellant was rejected by the Central Government by order dated May 6, 1980. The appellant thereupon filed the writ petition in the High Court of Delhi. The said writ petition was dismissed, in limine, by the High Court by order dated August 12, 1981. The appellant approached this Court for grant of special leave to appeal against the said order of the Delhi High Court. By order dated January 24, 1984, special leave to appeal was granted by this Court. By the said order it was directed that the appeal be listed for final hearing before the Constitution Bench. The said order does not indicate the reason why the appeal was directed to be heard by the Constitution Bench. The learned counsel for the appellant has stated that this direction has been given by this Court for the reason that the appeal involves the question as to whether it was incumbent for the Chief of the Army Staff, while confirming the findings and the sentence of the General Court Martial, and for the Central Govern- ment, while rejecting the post-confirmation petition of the appellant, to record their reasons for the orders passed by them. We propose to deal with this question first. It may be mentioned that this question has been consid- ered by this Court in Som Datt Datta v. Union of India and Others, [1969] 2 S.C.R. 177. In that case it was contended before this Court that the order of the Chief of Army Staff confirming the proceedings of the Court Martial under Sec- tion 164 of the Act was illegal since no reason had been given in support of the order by the Chief of the Army Staff and that the Central Government had also not given any reason while dismissing the appeal of the petitioner in that case under Section 165 of the Act and that the order of the Central Government was also illegal. This contention was negatived. After referring to the provisions contained inSections 164, 165 and 162 of the Act this Court pointed that while Section 162 of the Act expressly provides that the Chief of the Army Staff may "for reasons based on the merits of the case" set aside the proceedings or reduce the sentence to any other sentence which the Court might have passed, there is

no express obligation imposed by Sections 164 and 165 of the Act on the confirming authority or upon the Central Government to give reasons in support of its decision to confirm the proceedings of the Court Martial. This Court observed that no other section of the Act or any of the rules made therein had been brought to its notice from which necessary implication can be drawn that such a duty is cast upon the Central Government or upon the confirming authority. This Court did not accept the contention that apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, there is a general principle or a rule of natural justice that a statutory tribunal should always and in every case give reasons m support of its decision.

Shri A.K. Ganguli has urged that the decision of this Court in Som Datt Datta's case (supra) to the extent it holds that there is no general principle or rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision needs reconsid- eration inasmuch as it is not in consonance with the other decisions of this Court. In support of this submission Shri Ganguli has placed reliance on the decisions of this Court in Bhagat Raja v. The Union of India and Others, [1967] 3 SCR 302; Mahabir Prasad Santosh Kumar v. State of U.P. and Others, [1971] 1 SCR 201; Woolcombers of India Ltd. v. Woolcombers Workers Union and Another, [1974] 1 S.C.R. 503 and Siemens Engineering & Manufacturing Co. of India Limited v. Union of India and Another, [1976] Suppl. S.C.R. 489. The learned Additional Solicitor General has refuted the said submission of Shri Ganguli and has submitted that there is no requirement in law that reasons be given by the con- firming authority while confirming the finding or sentence of the Court-Martial or by the Central Government while dealing with the post-confirmation petition submitted under Section 164 of the Act and that the decision of this Court in Som Datt Datta's case (supra) in this regard does not call for reconsideration.

The question under consideration can be divided into two parts:

(i) Is there any general principle of law which requires an administrative authority to record the reasons for its decision; and

(ii) If so, does the said principle apply to an order con- firming the findings and sentence of a Court-Martial and post-confirmation proceedings under the Act?

On the first part of the question there is divergence of opinion in the common law countries. The legal position in the United States is different from that in other common law countries.

In the United States the courts have insisted upon recording of reasons for its decision by an administrative authority on the premise that the authority should give clear indication that it has exercised the discretion with which it has been empowered because "administrative process will best be vindicated by clarity in its exercise" Phelps Dodge Corporation v. National Labour Relations Board, [1940] 85 Law Edn. 1271 at P. 1284. The said requirement of record- ing of reasons has also been justified on the basis that such a decision is subject to judicial review and "the Courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review" and that "the orderly functioning of the process of review requires that the grounds upon which the administra- tive agency acted be clearly disclosed and adequately sustained." Securities and Exchange Commission v. Chenery Corporation, [1942] 87 Law Ed. 626 at P. 636. In John T. Dunlop v. Waiter Bachowski, [1975] 44 Law Ed. 2 377) it has been observed that a statement of reasons serves purposes other than judicial review inasmuch as the reasons promotes thought by the authority and compels it to cover the rele- vant points and eschew irrelevancies and assures careful administrative consideration. The Federal Administrative Procedure Act, 1946 which prescribed the basic procedural principles which are to govern formal administrative proce- dures contained an express provision (Section g(b)) to the effect that all decisions shall indicate a statement of findings and conclusions as well as reasons or basis the, for upon all the material issues of fact, law or discretion presented on the record. The said provision is now contained in Section 557(c) of Title 5 of the United States Code (1982 edition). Similar provision is contained in the state stat- utes.

In England the position at Common law is that there is no requirement that reasons should be given for its decision by the administrative authority (See: Regina v. Gaming Board for Great Britain Ex Party Benaim and Khaida, [1970] 2 Q.B. 417 at p. 431 and McInnes v. Onslow-Fane and Another, [1978] 1 W.L.R. 1520 at p. 1531). There are, however, observa- tions in some judgments wherein the importance of reasons has been emphasised. In his dissenting judgment in Breen v. Amalgamated Engineering Union and Others, [1971] 2 Q.B. 175 Lord Denning M.R., has observed that:

"the giving of reasons is one of the fundamental of good administration." (P. 191) In Alexander Machinery (Dudley) Ltd. v. Crabtree, [1974] ICR 120 Sir John Donaldson, as President of the National Industrial Relations Court, has observed that:

"failure to give reasons amounts to a denial of justice."

In Regina v. Immigration Appeal Tribunal Ex parte Khan (Mahmud), [1983] QB 790 Lord Lane, CJ., while expressing his reservation on the proposition that any failure to give reasons means a denial of justice, has observed: "A party appearing before a tribunal is entitled to know either expressly stated by the tribunal or inferentially stated, what it is to which the tribunal is addressing its mind." (P. 794) The Committee on Ministers' Powers (Donoughmore Commit- tee) in its report submitted in 1932, recommended that "any party affected by a decision should be informed of the reasons on which the decision is based" and that "such a decision should be in the form of a reasoned document avail- able to the parties affected." (P. 100) The Committee on Administrative Tribunals and Enquiries (Franks Committee) in its report submitted in 1957, recommended that "decisions of tribunals should be reasoned and as full as possible." The said Committee has observed:

"Almost all witnesses have advocated the giving of reasoned decisions by tribunals. We are convinced that if tribunal proceedings are to be fair to the citizen reasons should be given to the fullest practicable extent. A decision is apt to be better if the reasons for it have to be set out in writing because the reasons are then more likely to have been properly thought out. Further, a reasoned decision is essential in order that, where there is a right of appeal, the applicant can assess whether he has good grounds of appeal and know the case he will have to meet if he decides to appeal." (Para 98) The recommendations of the Donoughmore Committee and the Franks Committee led to the enactment of the Tribunals and Enquiries Act, 1958 in United Kingdom. Section 12 of that Act prescribed that it shall be the duty of the Tribunal or Minister to furnish a statement, either written or oral, of the reasons for the decision if requested, on or before the giving of notification of the decision to support the deci- sion. The said Act has been replaced by the Tribunals and Enquiries Act, 1971 which contains a similar provision in Section 12. This requirement is. however, confined. in its applications to tribunals and statu-

tory authorities specified in Schedule I to the said enact- ment. In respect of the tribunals and authorities which are not covered by the aforesaid enactment, the position, as prevails at common law, applies. The Committee of JUSTICE in its Report, Administration Under Law, submitted in 1971, has expressed the view:

"No single factor has inhibited the development of English administrative law as seriously as the absence of any gener- al obligation upon public authorities to give reasons for their decisions."

The law in Canada appears to be the same as in England. In Pure Spring Co. Ltd. v. Minister of National Revenue, [1947] 1 DLR 501 at P. 539 it was held that when a Minister makes a determination in his discretion he is not required by law to give any reasons for such a determination. In some recent decisions, however, the Courts have recognised that in certain situations there would be an implied duty to state the reasons or grounds for a decision (See: Re R D.R. Construction Ltd. And Rent Review Commission, [1983] 139 DLR (3d) 168) and Re Yarmouth Housing Ltd. And Rent Review Commission, [1983] 139 DLR (3d) 544. In the Province of Ontario the Statutory Powers Procedure Act, 1971 was enacted which provided that "a tribunal shall give its final deci- sion, if any, in any proceedings in writing and shall give reasons in writing therefore if requested by a party." (Section 17). The said Act has now been replaced by the Statutory Powers and Procedure Act, 1980, which contains a similar provision.

The position at common law is no different in Australia. The Court of Appeal of the Supreme Court of New South Wales in Osmond v. Public service Board of New South Wales, [1985] 3 NSWLR 447) had held that the common law requires those entrusted by Statute with the discretionary power to make decisions which will affect other persons to act fairly in the performance of their statutory functions and normally this will require an obligation to state the reasons for their decisions. The said decision was overruled by the High Court of Australia in Public Service Board of New South Wales v. Osmond, [1986] 63 ALR 559 and it has been held that there is no general rule of the common law, or principle of natural justice, that requires reasons to be given for administrative decisions, even decisions which have been made in the exercise of a statutory discretion and which may adversely affect the interests or defeat the legitimate or reasonable expectations, of other persons. Gibbs CJ., in his leading judgment, has expressed the view that "the 'rules of natural justice are designed to ensure fairness in the making of a decision and it is difficult to see how the fairness of an administrative decision can be

affected by what is done after the decision has been made." The learned Chief Justice has. however. observed that "even assuming that in special circumstances natural justice may require reasons to be given, the present case is not such a case." (P. 568). Deane J., gave a concur- ring judgment, wherein after stating that "the exercise of a decision making power in a way which adversely affects others is less likely to be. or appear to be, arbitrary if the decision-maker formulates and provides reasons for his decision", the learned Judge has proceeded to hold that "the stage has not been reached in this country where it is a general prima facie requirement of the common law rules of natural justice or procedural fair play that the administra- tive decision-maker. having extended to persons who might be adversely affected by a decision an adequate opportunity of being heard. is bound to furnish reasons for the exercise of a statutory decision-making power." (P. 572). The learned Judge has further observed that the common law rules of natural justice or procedural fair play are neither stand- ardized nor immutable and that their content may vary with changes in contemporary practice and standards. In view of the statutory developments that have taken place in other countries to which reference was made by the Court of Ap- peal, Deane, J. has observed that the said developments "are conducive to an environment within which the courts should be less reluctant than they would have been in times past to discern in statutory provisions a legislative intent that the particular decision-maker should be under a duty to give reasons." (P. 573).

This position at common law has been altered by the Commonwealth Administrative Decisions (Judicial Review) Act. 1977. Section 13 of the said Act enables a person who is entitled to apply for review the decision before the Federal Court to request the decision-maker to furnish him with a statement in writing setting out the findings on material questions of fact, referring to the evidence or other mate- rial on which those findings were based and giving the reasons for the decision and on such a request being made the decision-maker has to prepare the statement and furnish it to the persons who made the request as soon as practica- ble and in any event within 28 days. The provisions of this Act are not applicable to the classes of decisions mentioned in Schedule I to the Act. A similar duty to give reasons has also been imposed by Sections 28 and 37of the commonwealth Administrative Appeals Tribunal Act. 1975. In India the matter was considered by the Law Commission in the 14th Report relating to reform in Judicial Administra- tion. The Law Commission recommended:

"In the case of administrative decisions provision should be made that they should be accompanied by reasons. The reasons will make it possible to test the validity of these deci- sions by the machinery of appropriate writs." (Vol. II P.

694).

No laws has, however, been enacted in pursuance of these recommendations, imposing a general duty to record the reasons for its decision by an administrative authority though the requirement to give reasons is found in some statutes.

The question as to whether an administrative authority should record the reasons for its decision has come up for consideration before this Court in a number of cases. In M/s. Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala and Others, [1962] 2 SCR 339, a Constitution Bench of this Court. while dealing with an order passed by the Central Government in exercise of its appellate powers under Section 111(3) of the Companies Act, 1956 in the matter of refusal by a company to register the transfer of shares, has held that there was no proper trial of the appeals before the Central Government since no reasons had been given in support of the order passed by the Deputy Secretary who heard the appeals. In that case it has been observed:

"If the Central Government acts as a tribunal exercising judicial powers and the exercise of that power is subject to the jurisdiction of this Court under Article 136 of the Constitution we fail to see how the power of this Court can be effectively exercised if reasons are not given by the Central Government in support of its order." (P. 357) In Madhya Pradesh Industries Ltd. v. Union of India and Others, [1966] 1 S.C.R. 466 the order passed by the Central Government dismissing the revision petition under Rule 55 of the Mineral Concession Roles, 1960, was challenged before this Court on the ground that it did not contain reasons. Bachawat, J., speaking for himself and Mudholkar, J., re- jected this contention on the view that the reason for rejecting the revision application appeared on the face of the order because the Central Government had agreed with the reasons given by the State Government in its order. The learned Judges did not agree with the submission that omission to give reasons for the decision is of itself a sufficient ground for quash- ing it and held that for the purpose of an appeal under Article 136 orders of courts and tribunals stand on the same footing. The learned Judges pointed out that an order of court dismissing a revision application often gives no reasons but this is not a sufficient ground for quashing it and likewise an order of an

administrative tribunal reject- ing a revision application cannot be pronounced to be invalid on the sole ground that it does not give reasons for the rejection. The decision in Hari Nagar Sugar Mills case (supra) was distinguished on the ground that in that case the Central Government had reversed the decision appealed against without giving any reasons and the record did not disclose any apparent ground for the reversal. According to the learned Judges there is a vital difference between an order of reversal and an order of affirmance. Subba Rao, J., as he then was, did to concur with this view and found that the order of the Central Government was vitiated as it did not disclose any reasons for rejecting the revision applica- tion. The learned Judge has observed:

"In the context of a welfare State, administrative tribunals have come to stay. Indeed, they are the necessary concomi- tants of a Welfare State. But arbitrariness in their functioning destroys the concept of a welfare State itself. Self-discipline and supervision exclude or at any rate minimize arbitrariness. The least a tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness; it gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory court to keep the tribunals within bounds, A reasoned order is a desirable condition of judicial disposal." (P. 472). "If tribunals can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officer may turn out to be a potent weapon for abuse of power. But, if reasons for an order are given, it will be an effective restraint on such abuse, as the order, if its discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard." (P. 472).

"There is an essential distinction between a court and an administrative tribunal. A Judge is trained to look at things objectively, uninfluenced by considerations of policy or expediency; but an executive officer generally looks at things from the standpoint of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties; and the least they should do is to give reasons for their orders. Even in the case of appel- late courts invariably reasons are given, except when they dismiss an appeal or revision in limine and that is because the appellate or revisional

court agrees with the reasoned judgment of the subordinate court or there are no legally permissible grounds to interfere with it. But the same reasoning cannot apply to an appellate tribunal, for as often as not the order of the first tribunal is laconic and does not give any reasons." (P. 472-73).

With reference to an order of affirmance the learned Judge observed that where the original tribunal gives rea- sons, the appellate tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons and that what is essential is that reasons shall be given by an appellate or revisional tribunal expressly or by refer- ence to those given by the original tribunal. This matter was considered by a Constitution Bench of this Court in Bhagat Raja case (supra) where also the order under challenge had been passed by the Central Government in exercise of its revisional powers under Section 30 of the Mines and Minerals (Regulation and Development) Act, 1957 read with rules 54 and 55 of the Mineral Concession Rules, 1960. Dealing with the question as to whether it was incum- bent on the Central Government to give any reasons for its decision on review this Court has observed: "The decisions of tribunals in India are subject to the supervisory powers of the High Courts under Art. 227 of the Constitution and of appellate powers of this Court under Art. 136. It goes without saying that both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the single word "rejected", or "dismissed". In such a case, this Court can probably only exercise its appeallate jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This will certainly be a very unsatisfactory method of dealing with the appeal." (P. 309).

This Court has referred to the decision in Madhya pra- desh Industries case (supra) and the observations of Subba Rao, J., referred to above, in that decision have been quoted with approval. After taking note of the observations of Bachawat, J., in that case, the learned Judges have held: "After all a tribunal which exercises judicial or quasijudi- cial powers can certainly indicate its mind as to why it acts in a particular way and when important rights of par- ties of far-reaching consequences to them are adjudicated upon in a summary fashion, without giving a personal hearing when proposals and counter proposals are made and examined, the least that can be expected is that the tribunals shall tell the party why the decision is going against him in all cases where the law gives a further right of appeal." (P.315).

Reference has already been made to Som Datt Datta's case (supra) wherein a Constitution Bench of this Court has held that the confirming authority, while confirming the findings and sentence of a Court-Martial, and the Central Government, while dealing with an appeal under Section 165of the Act, are not required to record the reasons for their decision and it has been observed that apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, it could not be said that there is any general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision. In that case the Court was primarily concerned with the interpretation of the provisions of Act and the Army Rules, 1954. There is no reference to the earlier decisions in Harinagar Sugar Mills case (supra) and Bhagat Raja case (supra) wherein the duty to record reasons was imposed in view of the appellate jurisdiction of this Court and the supervisory jurisdiction of the High Court under Articles 136 and 227 of the Constitution of India respectively.

In Travancore Rayon Ltd. v. Union of India, [1970] 3 SCR 4(1 this Court has observed:

"The Court insists upon disclosure of reasons in support of the order on two grounds; one, that the party aggrieved in a proceedings before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deter- rent against possible arbitrary action by the executive authority invested with the judicial power." (P. 46) In Mahabir Prasad Santosh Kumar v. State of U.P. and Others (supra) the District Magistrate had cancelled the licence granted under the' U.P Sugar Dealers' Licensing Order, 1962 without giving any reason and the State Govern- ment had dismissed the appeal against the said order of the District Magistrate without recording the reasons. This Court has held:

"The practice of the executive authority dismissing statuto- ry appeal against orders which prima facie seriously preju- dice the rights of the aggrieved party without giving rea- sons is a negation of the rule of law." (P. 204) "Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the deci- sion is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate

authority has no material on which it may deter- mine whether the facts were properly ascertained, the rele- vant law was correctly applied and the decision was just." (P. 205) In Woolcombers of India Ltd. case (supra) this Court was dealing with an award of an Industrial Tribunal. It was found that the award stated only the conclusions and it did not give the supporting reasons. This Court has observed: "The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrari-

ness in reaching the conclusions. The very search for rea- sons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well-known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclu- sions, on the other hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decision of judicial and quasi- judicial authorities to this Court by special leave granted under Article 136. A judgment which does not disclose the reasons, will be of little assistance to the Court." (P.

507) In Siemens Engineering & Manufacturing Co. of India Limited case (supra) this Court was dealing with an appeal against the order of the Central Government on a revision applica- tion under the Sea Customs Act, 1878. This Court has laid down:

"It is now settled law that where an authority makes an order in exercise of a quasi-judicial function it must record its reasons in support of the order it makes. Every quasijudicial order must be supported by reasons." (P 495) "If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then along administrative au- thorities and tribunals, exercising quasi-judicial function will be able to justify their existence and carry credibili- ty with the people by inspiring confidence in the adjudica-tory process. The rule requiring reasons to be given in support of an order is, like the

principle of audi alteram partera, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law." (496) Tarachand Khatri v. Municipal Corporation of Delhi & Others, [1977] 2 SCR 198 was a case where an inquiry was conducted into charges of misconduct and the disciplinary authority, agreeing with the findings of the Inquiry Offi- cer, had imposed the penalty of dismissal. The said order of dismissal was challenged on the ground that the disciplinary authority had not given its reasons for passing the order. The said contention was negatived by this Court and distinc- tion was drawn between an order of affirmance and an order of reversal. It was observed:

" ..... while it may be necessary for a disciplinary or administrative authority exercising quasi-judicial functions to state the reasons in support of its order if it differs from the conclusions arrived at and the recommendations made by the Inquiry Officer in view of the scheme of a particular enactment or the rules made thereunder, it would be laying down the proposition too broadly to say that even an ordi- nary concurrence must be supported by reasons." (P. 208) In Raipur Development Authority and Others v. Mls. Chokhamal Contractors and Others, [1989] 2 S.C.C. 721 a Constitution Bench of this Court was considering the ques- tion whether it is obligatory for an arbitrator under the Arbitration Act, 194(1 to give reasons for the award. It was argued that the requirement of giving reasons for the deci- sion is a part of the rules of natural justice which are also applicable to the award of an arbitrator and reliance was placed on the decisions in Bhagat Raja case (Supra) and Siemens Engineering Co. case (Supra). The said contention was rejected by this Court. After referring to the decisions in Bhagat Raja case (Supra); Som Datt Datta case (Supra) and Siemens Engineering Co. case (Supra) this Court has ob- served:

"It is no doubt true that in the decisions pertaining to Administrative Law, this court in some cases has observed that the giving of reasons in an administrative decision is a rule of natural justice by an extension of the prevailing rules. It would be in the interest of the world of commerce that the said rule is confined to the area of Administrative Law ..... But at the same time it has to be borne in mind that what applies generally to settlement of disputes byauthorities governed by public law need not be extended to all cases arising under private law such as those arising under the law of arbitration which is intended for settle- ment of private disputes." (P. 751-52) The decisions of this Court

referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American Courts. An important consideration which has weighed with the Court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (i) guarantee consid- eration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decisionmaking. In this regard a distinction has been drawn between ordinary Courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by con- siderations of policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial func- tions, would no doubt facilitate the exercise of its juris- diction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the re- cording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrari- ness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to deci- sions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an admin- istrative authority exercising quasijudicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elabo- rate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or

revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional author- ity agrees with the reasons contained in the order under challenge.

Having considered the rationale for the requirement to record the reasons for the decision of an administrative authority exercising quasi-judicial functions we may now examine the legal basis for imposing this obligation. While considering this aspect the Donough more Committee observed that it may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it judicial or quasi-judi- cial. The committee expressed the opinion that "there are some cases where the refusal to give grounds for a decision may be plainly unfair; and this may be so, even when the decision is final and no further proceedings are open to the disappointed party by way of appeal or otherwise" and that "where further proceedings are open to a disappointed party, it is contrary to natural justice that the silence of the Minister or the Ministerial Tribunal should deprive them of the opportunity." (P 80) Prof. H.W.R. Wade has also ex- pressed the view that "natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice." (See Wade, Administra- tive Law, 6th Edn. P. 548). In Siemens Engineering Co. case (Supra) this Court has taken the same view when it observed that "the rule requiring reasons to be given in support of an order is, like the principles of audi alteram parlem, a basic principle of natural justice which must inform every quasi-judicial process." This decision proceeds on the basis that the two well-known principles of natural justice, namely (i) that no man should be a Judge in his own cause and (ii) that no person should be judged without a hearing, are not exhaustive and that in addition to these two princi- ples there may be rules which seek to ensure fairness in the process of decision-making and can be regarded as part of the principles of natural justice. This view is in conso- nance with the law laid down by this Court in A.K. Kraipak and Others v. Union of India and Others, [1970] 1 SCR 457, wherein it has been held:

"The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (i) no one shall be a Judge in his own cause (nemo dabet esse judex propria causa) and (ii) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries

must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice." (P. 468-69) A similar trend is discernible m the decisions of Eng- lish Courts wherein it has been held that natural justice demands that the decision should be based on some evidence of probative value. (See: R. v. Deputy Industrial Injuries Commissioner ex P. Moore, [1965] 1 Q.B. 456; Mahon v. Air New Zealand Ltd., [1984] A.C. 648.

The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fairplay in action." As pointed out earlier the requirement about re- cording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keep- ing in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by adminis- trative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an adminis- trative authority including exercise of judicial or quasi- judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provi- sion to that affect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Deci- sions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the sub- ject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweight the salutary purpose served by the require- ment to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administra- tive authority exercising judicial or quasi-judicial func- tions is required to

record the reasons for its decision. We may now come to the second part of the question, namely, whether the confirming authority is required to record its reasons for confirming the finding and sentence of the court-martial and the Central Government or the competent authority entitled to deal with the post-confirma- tion petition is required to record its reasons for the order passed by it on such petition. For that purpose it will be necessary to determine whether the Act or the Army Rules, 1954 (hereinafter referred to as 'the Rules') ex- pressly or by necessary implication dispense with the re- quirement of recording reasons. We propose to consider this aspect in a broader perspective to include the findings and sentence of the court-martial and examine whether reasons are required to be recorded at the stage of (i) recording of findings and sentence by the court-martial; (ii) confirma- tion of the findings and sentence of the court-martial; and

(iii) consideration of post-confirmation petition. Before referring to the relevant provisions of the Act and the Rules it may be mentioned that the Constitution contains certain special provisions in regard to members of the Armed Forces. Article 33 empowers Parliament to make law determining the extent to which any of the rights conferred by Part Ill shall, in their application to the members of the Armed Forces be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline amongst them. By clause (2) of Article 136 the appellate jurisdiction of this Court under Article 136 of the Constitution has been excluded in relation to any judg- ment, determination, sentence or order passed or made by any Court or tribunal constituted by or under any law relating to the Armed Forces. Similarly clause (4) ofArticle 227 denies to the High Courts the power of superintendence over any Court or tribunal constituted by or under any law relat- ing to the Armed Forces. This Court under Article 32 and the High Courts under Article 226 have, however, the power of judicial review in respect ofproceedings of courts-martial and the proceedings subsequent thereto and can grant appropriate relief if the said pro- ceedings have resulted in denial of the fundamental rights guaranteed under Part III of the Constitution or if the said proceedings suffer from a jurisdictional error or any error of law apparent on the face of the record.

Reference may now be made to the provisions of the Act and the Rules which have a bearing on the requirement to record reasons for the findings and sentence of the court-martial. Section 108of the Act makes provision for four kinds of courts-martial, namely, (a) general courts-martial;

(b) district courts-martial; (c) summary general courtsmar- tial and (d) summary courts-martial. The procedure of court- martial is prescribed in Chapter XI (Sections 128 to 152) of the Act.Section 129 prescribes that every general court- martial shall, and every district or summary general court- martial, may be attended by a judge-advocate, who shall be either an officer belonging to the department of the Judge- Advocate General, or if no such officer is available, an officer approved of by the Judge-Advocate General or any of his deputies. In sub-section (1) ofSection 131 it is pro- vided that subject to the provisions of sub-sections (2) and (3) every decision of a courtmartial shall be passed by an absolute majority of votes, and where there is an equality of votes on either the finding or the sentence, the decision shall be in favour of the accused. In sub-section (2) it is laid down that no sentence of death shall be passed by a general courtmartial without the concurrence of at least two-thirds of the members of the court and sub-section (3) provides that no sentence of death shall be passed by a summary general court-martial without the concurrence of all the members. With regard to the procedure at trial before the General and District courts-martial further provisions are made in Rules 37 to 105 of the Rules. In Rule 60 it is provided that the judge-advocate (if any) shall sum up in open court the evidence and advise the court upon the law relating to the case and that after the summing up of the judge-advocate no other address shall be allowed. Rule 61 prescribes that the Court shall deliberate on its findings in closed court in the presence of the judge-advocate and the opinion of each member of the court as to the finding shall be given by word of mouth on each charge separately. Rule 62 prescribes the form, record and announcement of finding and in sub-rule (1) it is provided that the finding on every charge upon which the accused is arraigned shall be recorded and, except as provided in these rules, shall be recorded simply as a finding of "Guilty" or of "Not guilty". Sub-rule (10) of Rule 62 lays down that the finding on charge shall be announced forthwith in open court as subject to confirmation. Rule 64 lays down that in cases where the finding on any charge is guilty, the court, before deliberating on its sentence, shall, whenever possible take evidence in the matters specified in sub-rule (1) and thereafter the accused has a right to address the court thereon and in mitigation of punishment. Rule 65 makes provision for sentence and provides that the court shall award a single sentence in respect of all the offences of which the accused is found guilty, and such sentence shall be deemed to be awarded in respect of the offence in each charge and in respect of which it can be legally given, and not to be awarded in respect of any offence in a charge in respect of which it cannot be legally given. Rule 66 makes provisions for recommendation to mercy and sub-rule (1)

prescribes that if the court makes a recommendation to mercy, it shall give its reasons for its recommendation. Sub-rule (1) of Rule 67 lays down that the sentence together with any recommendation to mercy and the reasons for any such recommendation will be announced forthwith in open court. The powers and duties of judge-advocate are prescribed in Rule 105 which, among other things, lays down that at the conclusion of the case he shall sum up the evidence and give his opinion upon the legal bearing of the case before the court proceeds to deliberate upon its find- ing and the court, in following the opinion of the judge- advocate on a legal point may record that it has decided in consequences of that opinion. The said rule also prescribes that the judge-advocate has, equally with the presiding officer, the duty of taking care that the accused does not suffer any disadvantage in consequences of his position as such, or of his ignorance or incapacity to examine or cross-examine witnesses or otherwise, and may, for that purpose, with the permission of the court, call witnesses and put questions to witnesses, which appear to him neces- sary or desirable to elicit the truth. It is further laid down that in fulfilling his duties, the judgeadvocate must be careful to maintain an entirely impartial position. From the provisions referred to above it is evident that the judge-advocate plays an important role during the courts of trial at a general court-martial and he is enjoined to maintain an impartial position. The court-martial records its findings after the judge-advocate has summed up the evidence and has given his opinion upon the legal bearing of the case. The members of the court have to express their opinion as to the finding by word of mouth on each charge separately and the finding on each charge is to be recorded simply as a finding of "guilty" or of "not guilty". It is also required that the sentence should be announced forth- with in open court. Moreover Rule 66(1) requires reasons to be recorded for its recommendation in cases where the court makes a recommendation to mercy. There is no such require-

ment in other provisions relating to recording of findings and sentence. Rule 66(1) proceeds on the basis that there is no such requirement because if such a requirement was there it would not have been necessary to have a specific provi- sion for recording of reasons for the recommendation to mercy. The said provisions thus negative a requirement to give reasons for its finding and sentence by the court- martial and reasons are required to be recorded only in cases where the courtmartial makes a recommendation to mercy. In our opinion, therefore, at the stage of recording of findings and sentence the court-martial is not required to record its reasons and at that

stage reasons are only required for the recommendation to mercy if the court-mar- tial makes such a recommendation.

As regards confirmation of the findings and sentence of the court-martial it may be mentioned that Section 153 of the Act lays down that no finding or sentence of a General, District or summary General, Court-Martial shall be valid except so far as it may be confirmed as provided by the Act. Section 158 lays down that the confirming authority may while confirming the sentence of a court-martial mitigate or remit the punishment thereby awarded, or commute that pun- ishment to any punishment lower in the scale laid down in Section 71. Section 160empowers the confirming authority to revise the finding or sentence of the court-martial and in sub-section (1) of Section 160 it is provided that on such revision, the court, if so directed by the confirming au- thority, may take additional evidence. The confirmation of the finding and sentence is not required in respect of summary court-martial and in Section 162 it is provided that the proceedings of every summary court-martial shall Without delay be forwarded to the officer commanding the division or brigade within which the trial was held or to the prescribed officer; and such officer or the Chief of the Army Staff or any officer empowered in this behalf may, for reasons based on the merits of the case, but not any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed. In Rule 69 it is provided that the proceedings of a general court-martial shall be submitted by the judge-advocate at the trial for review to the deputy or assistant judge-advocate general of the command who shall then forward it to the confirming officer and in case of district court- martial it is provided that the proceedings should be sent by the presiding officer, who must, in all cases. where the sentence is dismissal or above, seek advice of the deputy or assistant judge-advocate general of the command before confirmation. Rule 70 lays down that upon receiving the proceedings of a general or district Court-Martial, the confirming authority may confirm or refuse confirmation or reserve confirmation for superior authority, and the confirmation, non-confirmation, or reservation shall be entered in and form part of the proceedings. Rule 71 lays down that the charge, finding and sentence, and any recommendation to mercy shall, together with the confirmation or non-confirmation of the proceed- ings, be promulgated in such manner as the confirming au- thority may direct, and if no direction is given, according to custom of the service and until promulgation has been effected, confirmation is not complete and

the finding and sentence shall not be held to have been confirmed until they have been promulgated.

The provisions mentioned above show that confirmation of the findings and sentence of the court-martial is necessary before the said finding or sentence become operative. In other words the confirmation of the findings and sentence is an integral part of the proceedings of a court-martial and before the findings and sentence of a court-martial are confirmed the same are examined by the deputy or assistant judge-advocate general of the command which is intended as a check on the legality and propriety of the proceedings as well as the findings and sentence of the court-martial. Moreover we find that in Section 162 an express provision has been made for recording of reasons based on merits of the case in relation to the proceedings of the summary courtmartial in cases where the said proceedings are set aside or the sentence is reduced and no other requirement for recording of reasons is laid down either in the Act or in the Rules in respect of proceedings for confirmation. The only inference that can be drawn from Section 162 is that reasons have to be recorded only in cases where the proceedings of a summary court-martial are set aside or the sen- tence is reduced and not when the findings and sentence are confirmed.Section 162 thus negatives a requirement to give reasons on the part of the confirming authority while con- firming the findings and sentence of a court-martial and it must be held that the confirming authority is not required to record reasons while confirming the findings and sentence of the courtmartial.

With regard to post-confirmation proceedings we find that subsection (2) of Section 164 of the Act provides that any person subject to the Act who considers himself aggrieved by a finding or sentence of any court-martial which has been confirmed, may present a petition to the Central Government, the Chief of the Army Staff or any prescribed officer superior in command to the one who confirmed such finding or sentence and the Central Government, the Chief of the Army Staff or other officer, as the case may be, may pass such orders thereon as it or he thinks fit. In so far as the findings and sentence of a court-martial and the proceedings for confirmation of such findings and sentence are concerned it has been found that the scheme of the Act and the Rules is such that reasons are not required to be recorded for the same. Has the legislature made a departure from the said scheme in respect of post-confirmation proceedings? There is nothing in the language of sub-section (2) of Section 164 which may lend

support to such an intention. Nor is there anything in the nature of post confirmation proceedings which may require recording of reasons for an order passed on the post-confirmation petition even though reasons are not required to be recorded at the stage of recording of findings and sentence by a court-martial and at the stage of confirmation of the findings and sentence of the court- martial by the confirming authority. With regard to record- ing of reasons the considerations which apply at the stage of recording of findings and sentence by the court-martial and at the stage of confirmation of findings and sentence of the courtmartial by the confirming authority are equally applicable at the stage of consideration of the post-confir- mation petition. Since reasons are not required to be re- corded at the first two stages referred to above, the said requirement cannot, in our opinion, be insisted upon at the stage of consideration of post-confirmation petition under Section 164(2)of the Act.

For the reasons aforesaid it must be held that reasons are not required to be recorded for an order passed by the confirming authority confirming the findings and sentence recorded by the court-martial as well as for the order passed by the Central Government dismissing the post-confir- mation petition. Since we have arrived at the same conclusion as in Sorn Datt Datta case (Supra) the submission of Shri Ganguli that the said decision needs reconsideration cannot be accepted and is. therefore, rejected. But that is not the end of the matter because even though there is no requirement to record reasons by the confirming authority while passing the order confirming the findings and sentence of the CourtMartial or by the Central Government while passing its order on the post-confirmation petition, it is open to the person aggrieved by such an order to challenge the validity of the same before this Court under Article 32 of the Constitution or before the High Court under Article 226 of the Constitution and he can obtain appropriate relief in those proceedings. We will, therefore, examine the other contentions that have been urged by Shri Ganguli in support of the appeal. The first contention that has been urged by Shri Ganguli in this regard is that under sub-section (1) of Section 164 of the Act the appellant had a right to make a representa- tion to the confirming authority before the confirmation of the findings and sentence recorded by the court-martial and that the said right was denied inasmuch as the appellant was not supplied with the copies of the relevant record of the court-martial to enable him to make a complete representa- tion and further that the representation submitted by the appellant under sub-section (1) of Section 164 was not considered by the confirming authority before it passed the order dated May 11, 1979 confirming the findings and sen-

tence of the court-martial. The learned Additional Solicitor General, on the other hand, has urged that under sub-section (1) of Section 164 no right has been conferred on a person aggrieved by the findings or sentence of a court-martial to make a representation to the confirming authority before the confirmation of the said findings or sentence. The submis- sion of learned Additional Solicitor General is that while sub-section (1) of Section 164 refers to an order passed by a court-martial, sub-section (2) of Section 164 deals with the findings or sentence of a court-martial and that the only right that has been conferred on a person aggrieved by the finding or sentence of a court-martial is that under sub-section (2) of Section 164 and the said right is avail- able after the finding and sentence has been confirmed by the confirming authority. We find considerable force in the aforesaid submission of learned Additional Solicitor Gener- al.

Section 164 of the Act provides as under:

"(1) Any person subject to this Act who considers himself aggrieved by any order passed by any court-martial may present a petition to the officer or authority empowered to confirm any tinging or sentence of such court-martial and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correct- ness. legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates. (2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any court-martial which has been confirmed, may present a petition to the Central Government, the Chief of the Army Staff or any prescribed officer superior in command to the one who confirmed such finding or sentence and the Central Govern- ment, the Chief of the Army Staff or other officer, as the case may be, may pass such orders thereon as it or he thinks fit."

In sub-section (1) reference is made to orders passed by a courtmartial and enables a person aggrieved by an order to present a petition against the same. The said petition has to be presented to the officer or the authority empowered to confirm any finding or sentence of such court-martial and the said authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order or as to the regularity of any proceedings to which the order relates. Sub-section (2), on the other hand, makes specific reference to finding or sentence of a court-martial. and confers a right on any person feeling aggrieved by a finding or sentence of any court-martial which has been confirmed, to present a peti- tion to the Central Government, Chief of the Army Staff or any prescribed officer. The use of the expression

"order" in sub-section (1) and the expression "finding or sentence" in sub-section (2) indicates that the scope of sub-section (1) and sub-section (2) is not the same and the expression "order" in sub-section (1) cannot be construed to include a "finding or sentence". In other words in so far as the finding and sentence of the court-martial is concerned the only remedy that is available to a person aggrieved by the same is under sub-section (2) and the said remedy can be invoked only after the finding or sentence has been con- firmed by the confirming authority and not before the con- firmation of the same. Rule 147 of the Rules also lends support to this view. In the said Rule it is laid down that every person tried by a court-martial shall be entitled on demand, at any time after the confirmation of the finding and sentence, when such confirmation is required, and before the proceedings are destroyed, to obtain from the officer or person having the custody of the proceeding a copy thereof including the proceedings upon revision, if any. This Rule envisages that the copies of proceedings of a court-martial are to be supplied only after confirmation of the finding and sentence and that there is no right to obtain the copies of the proceedings till the finding and sentence have been confirmed. This means that the appellant cannot make a grievance about non-supply of the copies of the proceedings of the court-martial and consequent denial of his right to make a representation to the confirming authority against the findings and sentence of the court-martial before the confirmation of the said finding and sentence. Though a person aggrieved by the finding or sentence of a courtmar- tial has no right to make a representation before the confi- ramtion Of the same by the confirming authority, but in case such a representation is made by a person aggrieved by the finding or sentence of a court-martial it is expected that the confirming authority shall give due consideration to the same while confirming the finding and sentence of the court-martial.

In the present case the representation dated December 18, 1978 submitted by the appellant to the confirming au- thority was not considered by the confirming authority when it passed the order of confirmation dated May 11, 1979. According to the counter affidavit filed on behalf of Union of India this was due to the reason that the said represen- tation had not been received by the confirming authority till the passing of the order of confirmation. It appears that due to some communication gap within the department the representation submitted by the appellant did not reach the confirming authority till the passing of the order of con- firmation. Since we have held that the appellant had no legal right to make a representation at that stage the non-

consideration of the same by the confirming authority before the passing of the order of confirmation would not vitiate the said order.

Shri Ganguli next contended that the first and the second charge levelled against the appellant are identical in nature and since the appellant was acquitted of the second charge by the court-martial his conviction for the first charge can not be sustained. It is no doubt true that the allegations contained in the first and the second charge are practically the same. But as mentioned earlier, the second charge was by way of alternative to the first charge. The appellant could be held guilty of either of these charges and he could not be held guilty of both the charges at the same time. Since the appellant had been found guilty of the first charge he was acquitted of the second charge. There is, therefore, no infirmity in the court-martial having found the appellant guilty of the first charge while holding him not guilty of the second charge. Shri Ganguli has also urged that the findings recorded by the court-martial on the first and third charges are perverse inasmuch as there is no evidence to establish these charges. We find no substance in this contention. The first charge was that the appellant on or about December 1975, having received 60.61 meters woollen serge from M/s Ram Chandra & Brothers, Sadar Bazar, Jhansi for stitching 19 coats and pants for Class IV civilian employees of his unit with intent to defraud got 19 altered ordnance pattern woollen pants issued to the said civilian employees instead of pants stitched out of the cloth received. To prove this charge the prosecution exam- ined Ram Chander P.W. 1 and Triloki Nath P.W. 2 of M/s Ram Chandra & Brothers, Sadar Bazar, Jhansi who have deposed that 60.61 meters of woollen serge cloth was delivered by them to the appellant in his office in December, 1975. The evidence of these witnesses is corroborated by B.D. Joshi, Chowkidar, P.W. 3, who has deposed that in the last week of December, 1975, the appellant had told him in his office that cloth for their liveries had been received and they should give their measurements. As regards the alteration of 19 ordnance pattern woollen pants which were issued to the civilian employees instead of the pants stitched out of the cloth that was received, there is the evidence of N/sub. P. Vishwambharam P.W. 19 who has deposed that he was called by the appellant to his office in the last week of December, 1975 or the first week of January, 1976 and that on reaching there he found ordnance pattern woolien pants lying by the side of the room wall next to the appellant's table and that the appellant had called Mohd. Sharif P.W. 15 to his office and had asked him to take out 19 woolien trousers out of the lot kept there in the office. After Mohd. Sharif had select- ed 19 woollen trousers the appellant told Mohd. Sharif to take

away these pants for alteration and refitting. The judge-advocate, in his summing up, before the court-martial, has referred to this evidence on the first charge and the court-martial, in holding the appellant guilty of the first charge, has acted upon it. It cannot, therefore, be said that there is no evidence to establish the first charge levelled against the appellant and the findings recorded by the court-martial in respect of the said charge is based on no evidence or is perverse.

The third charge, is that the appellant having come to know that Capt. Gian Chand Chhabra while officiating OC of his unit, improperly submitted wrong Contingent Bill No. 341/Q dated September 25, 1975 for Rs.16,280 omitted to initiate action against Capt. Chhabra.

In his summing up before the court-martial the judge- advocate referred to the CDA letter M/IV/191 dated November 20, 1975 (Exh. 'CC') raising cert in objection with regard to Contingent Bill No. 341/Q dated September 25, 1975 for Rs.16,280 and pointed out that the said letter was received in the unit on or about November 28, 1975 and bears the initials of the appellant with the aforesaid date and remark "Q Spk with details". This would show that the appellant had knowledge of the Contingent Bill on November 28, 1975. It is not the case of the appellant that he made any complaint against Captain Chhabra thereafter. It cannot, therefore, be said that the finding recorded by the court-martial on the third charge is based on no evidence and is perverse.

In the result we find no merit in this appeal and the same is accordingly dismissed. But in the circumstances there will be no order as to costs.

R.N.J. Appeal dismissed.