(2013) 08 GAU CK 0041

Gauhati High Court

Case No: WP (C) 4074 of 2012

The Union of India, The Secretary, Ministry of Road Transport and Highways, The Secretary, Boarder Roads Development Board and The Director General		APPELLANT
	Vs	
Mohammed Ansari		RESPONDENT

Date of Decision: Aug. 2, 2013

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 2(a), 14, 19
- Armed Forces Tribunals Act, 2007 - Section 2, 2(1)(i), 14, 15, 50
- Army Act, 1950 - Section 4, 4(1), 4(1)(4), 21, 71, 71(a), 71(b), 71(c), 71(d), 71(e), 71(f), 71(g), 71(h), 71(i), 71(j), 71(k), 71(l)
- Constitution Of India, 1950 - Article 136, 141, 20, 226, 227

Citation: (2014) 1 GLD 108 : (2013) LabIC 3517

Hon'ble Judges: Iqbal Ahmed Ansari, J; Indira Shah, J

Bench: Division Bench

Advocate: R. Sharma, Assistant Solicitor General of India, for the Appellant; S. Bhattacharjee, Advocate and Mr. U.K. Nair, Amicus Curiae, for the Respondent

Final Decision: Allowed

Judgement

Iqbal Ahmed Ansari, J.

Whether members of General Reserve Engineer Force, commonly known as GREF and which is involved in construction, making and maintenance of roads, in the boarder areas, can be regarded as members of Armed Forces? Can the members of GREF be regarded as persons subject to the Army Act, 1950? Whether a member of the GREF can seek a relief, which a person is, otherwise, entitled to receive from the Central Administrative Tribunal constituted under the Administrative Tribunals Act,

1985? Do the members of GREF fall, for all intents and purposes, within the ambit of Armed Forces Tribunal Act, 2007? Can a person, as a member of GREF, invoke extra-ordinary jurisdiction of the High Court under Article 226 and/or Article 227 of the Constitution of India on a subject, which is, otherwise, covered by Armed Forces Tribunal Act, 2007? These are some of the prominent questions, which the present writ petition has raised.

The material facts, leading to the present writ petition, made under Article 226 of the Constitution of India, may be set out as under:

(i) The respondent herein made an application, in the Central Administrative Tribunal, Guwahati Bench, his case being, in brief, thus:

(a) The respondent herein was appointed, in Boarder Roads Engineering Services (in short, BRES), as an Assistant Executive Engineer (Electrical & Mechanical) in the year 1985 by order, dated 03.06.1985, by the Government of India, Ministry of Shipping and Transport. The respondent herein was promoted, on 30.05.1997, to the post of Executive Engineer (Electrical & Mechanical) by the letter, dated 12.07.2005, issued by Boarder Roads Development Board (in short, BRDB).

(b) The respondent herein has already put in 26 years 8 months of service as an officer of the Organised Group A Services and, as a Superintending Engineer, he has already put in more than 6 years 7 months of service and that having so put in uninterrupted service for such a long period of time, he has become entitled to get the benefit of non-functional upgradation, meant for officers of Organised Group A Services in Pay Band 4 and Pay Band 3, but he has been arbitrarily denied his due financial upgradation solely on the ground that he has not done the stipulated command posting of two years in terms of Para (c) of the BRDB''s Note, dated 10.01.2011. In this regard, the authorities concerned are oblivious of the fact that in the hierarchical structure of the GREF, there is just one command appointment for 14 aspirants and if the stipulated period of two years of command post is required to be ensured for each of the 14 aspirants, such as, the respondent herein, who are, otherwise, eligible for such command appointment, then, an applicant, to become eligible for financial upgradation, would take a period of 30 years; whereas a person, such as, the respondent herein, would have, otherwise, been entitled to receive financial upgradation if the requirement of command appointment had not been insisted upon. The respondent herein accordingly sought for appropriate reliefs. The application, so made by the respondent, gave rise to Original Application (in short, OA) No. 102/2012.

2. Resisting, at the very threshold, the OA, so filed by the respondent herein as applicant, the present petitioners, as respondents in the OA, contended that the Central Administrative Tribunal had no jurisdiction to deal with grievances of the applicant-respondent herein inasmuch as all members of the GREF, for reasons of discipline, fall under the Ministry of Defence by virtue of notifications, issued in this

regard by the Central Government by taking recourse to Section 4 of the Army Act, 1950, and the Army Rules, 1954, for the purpose of discipline of the members of the GREF, and they become, thus, members of the Armed Forces and, as a member of the Armed Forces, a member of the GREF cannot invoke the learned Central Administrative Tribunal''s jurisdiction inasmuch as the learned Tribunal''s jurisdiction stands barred by the provisions of Section 2(a) of the Administrative Tribunals Act, 1985.

3. Notwithstanding the preliminary objection, so raised, the learned Tribunal passed an order, on 18.06.2012, holding that it had the jurisdiction to entertain an OA filed by the members of the GREF.

4. Aggrieved by the decision, so reached, on the question of maintainability of the OA, the respondents, in the OA, have filed, as petitioners, this writ petition seeking to invoke this Court''s jurisdiction under Article 226 and get the order, dated 18.06.2012, passed by the learned Tribunal, set aside and quashed.

5. We have heard Mr. R. Sharma, learned Assistant Solicitor General of India, for the petitioners, and Mr. S. Bhattacharjee, learned counsel, appearing for the respondent. We have also heard Mr. U.K. Nair, learned counsel, who has appeared as amicus curiae.

6. While considering the present writ petition, it needs to be noted that there is no dispute before us that in terms of the provisions of Section 2(a) of the Administrative Tribunals Act, 1985, Central Administrative Tribunal is not empowered to deal with matters relating to any member of the Naval, Military or Air Forces or of any other Armed Forces of the Union. Logically extended, this makes it clear that if the members of the GREF are members of the Armed Forces, then, the Central Administrative Tribunal would have, in the light of the provisions of the Administrative Tribunals Act, 1985, no jurisdiction to deal with their cases.

7. The question, therefore, would be whether a member of the GREF can be regarded as a member of Armed Forces, for, such a member, if regarded, in law, as a member of the Armed Forces, then, would the provisions, embodied in the Administrative Tribunals Act, 1985, not be available to such a member?

8. The first question, therefore, which falls for consideration, is: whether a member of the GREF is a member of Armed Forces? This question is no longer res integra inasmuch as a Constitution Bench of the Supreme Court, in R. Viswan and Others Vs. Union of India (UOI) and Others, , had the occasion to deal with the question of applicability of the Army Act, 1950, to the members of the GREF.

9. In R. Viswan''s case (supra), wherein the application of some of the provisions of the Army Act, 1950, and the Rules, framed thereunder, to the member of the GREF, by issuance of notifications by the Government of India, was the main subject of challenge, it was contended by R. Viswan, a member of the GREF, that in the light of

the provisions of Article 33 of the Constitution of India, the GREF is neither an Armed Force nor a Force charged with the maintenance of public order and, hence, the notifications, issued for applying certain provisions of the Army Act, 1950, and Chapter IV of the Army Rules, 1954, to the GREF, were ultra vires.

10. Having analysed the provisions of the Constitution, the provisions of the Army Act and the conditions of service of a member of the GREF, the Court, in R. Viswan''s case (supra), concluded, at para 14, that the member of the GREF are members of the Armed Forces within the meaning of Article 33 of the Constitution of India. The relevant observations, made, in this regard, in R. Viswan''s case (supra), read thus:

We may make it clear that it is only in regard to the members of GREF that we have taken the view that they are members of the Armed Forces within the meaning of Article 33. So far as casual labour employed by GREF is concerned, we do not wish to express any opinion on this question whether they too are members of the Armed Forces or not, since that it is not a question which arises for consideration before us. The writ petitions are accordingly dismissed with no order as to costs. The special leave petitions will also stand rejected.

(Emphasis is added)

11. From what have been observed and held above, in R. Viswan (supra), there can be no escape from the conclusion that the members of the GREF are also the members of Armed Forces within the meaning of Article 33. In this regard, the Supreme Court, in R. Viswan (supra), also held that GREF is an integral part of the Armed Forces and the members of GREF can legally be said to be members of the Armed Forces within the meaning of Article 33. The relevant observations, appearing in R. Viswan (supra), read as under:

10. It is undoubtedly true that as stated by the Minister of Defence, GREF is a civilian construction force and the members of GREF are civilian employees under the administrative control of the Border Roads Development Board and that the engineer officers amongst them constitute what may be designed as "Central Civil Services, within GREF, but that does not mean that they cannot be at the same time form an integral part of the Armed Forces. The fact that they are described as civilian employees and they have their own special rules of recruitment and are governed by the Central Civil Service (Classification, Control and Appeal) Rules, 1965 is not determinative of the question whether they are members of the Armed Forces. The question whether the members of GREF can be said to be members of the Armed Forces for the purpose of attracting the applicability of Article 33 must depend essentially on the character of GREF, its organisational set up, its functions, the role it is called upon to play in relation to the Armed Forces and the depth and intimacy of its connection and the extent of its integration with the Armed Forces and if judged by this criterion, they are found to be members of the Armed Forces, the mere fact that they are non-combatant civilians governed by the Central Civil

Services (Classification Control and Appeal) Rules 1965, cannot make any difference. (R. Viswan and Others Vs. Union of India (UOI) and Others,). Applying the aforesaid criteria in determining the status of members of GREF, the Court held:

It is abundantly clear from those facts and circumstances that GREF is an integral part of the Armed Forces and the members of GREF can legitimately be said to be members of the Armed Forces within the meaning of Article 33.

(Emphasis is added)

12. From the above observations, made in R. Viswan (supra), it becomes clear that GREF is a civilian construction force and the members of the GREF are civil employees under the administrative control of the Border Roads Development Board. At the same time, however, GREF is an integral part of the Armed Forces and the members of GREF can legally be said to be members of the Armed Forces within the meaning of Article 33 and, hence, the provisions of the Army Act, 1950, are, for the purpose of discipline, extended, though to a limited extent, to the members of the GREF. The fact that the members of the GREF are described as civil employees and they have their own special rules of recruitment and are governed by the Central Civil Service (Classification, Control and Appeal) Rules, 1965, is not determinative of the question whether they are members of the Armed Forces or not. The answer to the question, whether the members of the GREF can, for the purpose of attracting applicability of Article 33, be said to be members of the Armed Forces, must depend essentially on the character of the GREF, its organisational set up, its functions and the role it is called upon to play in relation to the Armed Forces and the depth and intimacy of its connection and the extent of its integration with the Armed Forces. The mere fact that the members of GREF are non-combatant civilians and they are governed by the Central Civil Services (Classification Control and Appeal) Rules 1965, cannot make any difference.
13. What emerges from the above discussion is that notwithstanding the fact that the provisions of the Central Civil Services (Classification, Control and Appeals) Rules, 1965, are applicable to a member of GREF, a member of GREF is nonetheless a member of the Armed Forces by virtue of the notifications, which have been issued by the Central Government by taking recourse to its powers u/s 4 of the Army Act, 1950, and since a member of the GREF is a member of the Armed Forces within the meaning of Article 33 of the Constitution of India, Section 2(a) of the Administrative Tribunals Act, 1985, would make the provisions, embodied in the Administrative Tribunals Act, 1985, inapplicable to the members of the GREF inasmuch as Section 2(a) of the Administrative Tribunals Act, 1985, clearly lays down that the provisions of this Act shall not apply to, amongst others, any member of the Naval, Military or Air Force or of any other Armed Forces of the Union. A member of the GREF, therefore, cannot invoke the provisions of Section 14 and/or Section 19 of the Administrative Tribunals Act, 1985.

14. The above inference gets strengthened from the order, dated 09.01.1998, passed, in SLP (Civil) No. 8096/1995 (Union of India Vs. Smt. Vidyawati).

15. In Vidyawati''s case (supra), husband of the petitioner, Vidyawati, was appointed, on temporary basis, in GREF and was, subsequently, awarded quasi permanent status and, later on, promoted to the post of Cook. Vidyawati''s husband, Murarilal, suffered from heart ailment in the month of December, 1980, and remained under treatment for heart ailments until he was discharged on being declared physically unfit for service. Less than nine months after his discharge from GREF, Vidyawati''s husband, Murarilal, died. Vidyawati, then, applied to the authorities concerned seeking to obtain retiral benefits arising out of the death of her husband. As the same were not made available to her, she applied to the Central Administrative Tribunal, Allahabad Bench. This application gave rise to Original Application No. 1195/1993. The present petitioners, as respondents in the OA No. 1195/1993, resisted the maintainability of the proceeding on the ground that the GREF is an integral part of the Armed Forces in terms of the Government of India''s letter, dated 14.08.1985, and SRO No. 329, dated 23.09.1969, and, hence, the Central Administrative Tribunal had no jurisdiction. Having taken into account the fact that service of Vidyawati''s husband was governed by the Central Civil Services (Temporary Service) Rules, 1965, the learned Tribunal concluded, in its order, dated 27.07.1994, that it had the jurisdiction in the matter and, accordingly, directed the Union of India to work out the gratuity payable to the husband of the applicant, Vidyawati. Aggrieved by the order, so made, the Union of India filed a Special Leave Petition, which gave rise to SLP (Civil) No. 8096/1995.

16. The Supreme Court passed an order, on 09.01.1988, in Vidyawati''s case (supra), taking the view that members of GREF cannot, in the light of the decision, in R. Viswan (supra), move Central Administrative Tribunal and, hence, the impugned decision of the learned Tribunal that it had jurisdiction to deal with the matter was not sustainable. The Supreme Court accordingly set aside the order, dated 27.07.1994, passed by the learned Tribunal with liberty, however, given to the applicant, Vidyawati, to move the High Court for appropriate reliefs, if she is so desired.

17. We may pause, at this stage, to point out that at the time, when the order, dated 09.01.1988, was made, the decision, in L. Chandra Kumar Vs. Union of India and others, , had not been rendered and while ousting the jurisdiction of the High Court, under Articles 226 and 227 of the Constitution of India, the Administrative Tribunal''s Act, 1985, preserved and saved the Supreme Court''s powers under Article 136 and, hence, a person, aggrieved by an order of a Central Administrative Tribunal, could have challenged the same by invoking Article 136.

18. Coupled with the above, we may also point out that though the order, dated 09.01.1988, was passed, in Vidyawati''s case (supra), by the Supreme Court in a Special Leave Petition, it needs to be borne in mind that the Supreme Court''s

observations, while making the order, dated 09.01.1988, would amount to declaration of law under Article 141 of the Constitution of India and shall be binding on all courts and tribunals within the territory of India. A reference, in this regard, may be made to the case of Kunhayammed and Others Vs. State of Kerala and Another, , more particularly, para 27 and para 44(v), wherein the Supreme Court has clearly laid down that if provision for appeal is made against an order passed by a court and an appeal is preferred, then, the decision of the lower court/forum gets merged into the decision of the appellate court and it is the decision of the appellate court, which subsists, remains operative and is apt for enforcement in the eye of law, but the position of the Special Leave Applications, made under Article 36, is, somewhat, different in the sense that the jurisdiction, conferred by Article 136 of the Constitution, is divisible into two stages inasmuch as the first stage is up to the disposal of the prayer for special leave to file an appeal and the second stage commences if and when the leave to appeal is granted and the SLP is converted into an appeal. In no uncertain words, laid down the Supreme Court, in Kunhayammed''s case (supra), that the doctrine of merger is not a doctrine of universal or unlimited application; rather, it depends on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid shall be determinative of the applicability of the doctrine of merger and that the superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. It is further observed, in Kunhayammed''s case (supra), that under Article 136 of the Constitution, the Supreme Court may reverse, modify or affirm the judgment/decree/order appealed against only when it exercises appellate jurisdiction (i.e., after the leave to appeal is granted) and not while it exercises the discretionary jurisdiction on the question as to whether the petition for special leave to appeal shall be granted or not and, thus, the doctrine or merger, in such cases, comes into play if the special leave to appeal is granted and not when the question as to whether the leave would be granted or not is considered and decided. It has been pointed out, in Kunhayammed''s case (supra), by the Supreme Court that an order, refusing special leave to appeal, may be a non-speaking order or a speaking one and, in either case, it does not attract the doctrine of merger inasmuch as an order, refusing special leave to appeal, does not stand substituted in place of the order under challenge and that what such an order implies is that the Supreme Court was not inclined to exercise its discretion so as to allow the appeal being filed.

19. It is extremely pertinent to note that in Kunhayammed''s case (supra), the Supreme Court has concluded that if an order refusing leave to appeal is a speaking order, i.e., when reasons are assigned for refusing the grant of leave, then, the order has two implications. Firstly, the statement of law, contained in such an order, is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order, are the findings recorded by the Supreme Court, which would bind the parties thereto and also the Court, tribunal or authority in any proceedings

subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. (See also State of Arunachal Pradesh and Others Vs. Nefa Udyog and Others, .

(Emphasis is added)

20. In the light of the decision, reached by the Supreme Court, in Vidyawati''s case (supra), one can have no escape from the conclusion, and we do conclude, that as far as Central Administrative Tribunal is concerned, a member of the GREF is not covered, in the light of the decision in R. Viswan (supra) read with the decision in Vidyawati''s case (supra), by the provisions of the Administrative Tribunals Act, 1985, and, hence, a member of the GREF would be disentitled from invoking the jurisdiction of the Central Administrative Tribunal.

21. The incidental question, which has arisen, in the present writ petition, is: whether a member of the GREF is covered by the provisions embodied in the Armed Forces Tribunal Act, 2007?

22. The answer to the question, posed above, brings us to Section 2 of the Armed Forces Tribunal Act, 2007, which reads as under:

Applicability of the Act:

(1) The provisions of this Act shall apply to all persons subject to the army Act, 1950, (46 of 1950) the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950)

(2) This Act shall also apply to retired personnel subject to the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950) including their dependants, heirs and successors, in so far as it relates to their service matters.

23. From a bare reading of the provisions of Section 2 of the Armed Forces Tribunal''s Act, 2007, what becomes transparent is that Armed Forces Tribunal Act, 2007, applies, inter alia, to a person, who is subject to the Army Act, 1950.

24. In the case of GREF, the provisions of the Army Act, 1950, have been applied, though to a limited extent, by virtue of notifications, which have been issued, in this regard, by the Central Government taking recourse to the powers u/s 4. For the purpose of clarity, Section 4 of the Army Act, 1950, being relevant, is reproduced below:

4. Application of Act to certain forces under Central Government.

(1) The Central Government may, by notification, apply, with or without modifications, all or any of the provisions of this Act to any force raised and maintained in India under the authority of that Government, 3[and suspend the operation of any other enactment for the time being applicable to the said force.

(2) The provisions of this Act so applied shall have effect in respect of persons belonging to the said force as they have effect in respect of persons subject to this Act holding in the regular Army the same or equivalent rank as the aforesaid persons hold for the time being in the said force.

(3) The provisions of this Act so applied shall also have effect in respect of persons who are employed by or are in the service of or are followers of or accompany any portion of the said force as they have effect in respect of persons subject to this Act under 1[clause (i) of sub-section (1) of section (2)].

(4) While any of the provisions of this Act apply to the said force, the Central Government may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of the said force.

25. A minute reading of the provisions of Section 4 of the Army Act, 1950, clearly reveals that when the provisions of the Army Act, 1950, are made applicable to a person or group of persons, then, such a person or group of persons would be treated as a person or persons subject to the Army Act, 1950. Viewed from this angle, when the Central Government has extended, by notifications, the provisions of the Army Act, 1950, to the members of the GREF, the members of the GREF would, ordinarily, be required to be treated as persons subject to the Army Act, 1950.

26. What is, however, inescapable to note is that the Army Act has not been applied, as a whole, to the members of the GREF. Far from this, limited numbers of provisions have been made applicable to the members of the GREF for the purpose of maintaining discipline. When the Army Act, 1950, has not been made applicable, as a whole, to a member of GREF, the effect is that a member of GREF would, ordinarily, be a person subject to the Army Act, 1950, particularly, when one notices that the Central Government is empowered, u/s 4(1) of the Army Act, 1950, to apply all or any of the provisions of the Army Act, 1950, to any force raised and maintained in India under the authority of the Central Government.

27. Thus, even though limited provisions of the Army Act, 1950, have been made applicable to the members of the GREF, Section 4 of the Army Act, 1950, when read as a whole, makes it abundantly clear that though limited provisions of the Army Act, 1950, have been made applicable to the members of the GREF, the members of the GREF would nevertheless be regarded as persons subject to the Army Act, 1950, to the extent that the provisions of the Army Act, 1950, in a given situation, cover their act and in respect of the provisions of the Army Act, 1950, which have been made available to the members of the GREF, a member of the GREF has to take recourse to the Armed Forces Tribunal Act, 2007. For instance, Armed Forces Tribunal has, by virtue of Section 15 of the Armed Forces Tribunal Act, 2007, appellate jurisdiction against any order, decision, finding or sentence, which may be

passed by a Court Martial.

28. Situated thus, it becomes abundantly clear that not only a member of the Armed Forces, but even a member of the GREF, who is tried by a Court Martial, has the right to prefer appeal by taking recourse to Section 15 of the Armed Forces Tribunal Act, 2007. However, all the provisions of the Army Act, 1950, having not been made applicable to the members of the GREF, neither all punishments, as embodied u/s 71 of the Army Act, 1950, can be imposed on a member of the GREF, nor can he, in all eventualities, invoke Section 15 of the Armed Forces Tribunal Act, 2007. In this regard, it is noteworthy that by virtue of SRO 329, dated 03.09.1960, issued by the Government of India, in exercise of its power conferred by sub-Section (1) of Section 4 of the Army Act, 1950, the provisions of the Army Act and the Rules, framed thereunder, have been applied to the members of the GREF. While so applying the provisions of the Army Act, 1950, to the members of the GREF, the application of the provisions of the Army Act and the Rules, framed thereunder, has been kept minimal for the purpose of maintaining discipline. Thus, while the provisions of Section 21 of the Army Act, 1950, has been made applicable to the members of the GREF, the provisions of Section 71 of the Army Act, 1950, have not been made applicable in toto inasmuch as the provisions, embodied in clauses (d), (e), (f), (g) and (k) of Section 71, which prescribes the penalties of cashiering, dismissal from the service, reduction in rank, forfeiture of seniority of rank and forfeiture of all arrears of pay and allowances, respectively, have not been made applicable. As a corollary thereto, the provisions of the Central Civil Services (Control, Classification and Appeals) Rules, 1965, would be applicable to those matters, which have been left exempted by the Government of India''s Notification aforementioned. Obviously, therefore, the GREF personnel, if aggrieved by the imposition of any of the penalties prescribed by clauses (a), (b), (c), (h), (i), (j) and (l) of Section 71 of the Army Act, 1950, would have the right to prefer appeal u/s 50 of the Armed Forces Tribunal Act, 2007. For remaining service related matters, a member of the GREF would be covered by the provisions of the Central Civil Services (Control, Classification and Appeals) Rules, 1965, of course, all the provisions of the Constitution of India.

29. The above inference, that a member of the GREF can be dealt with by taking recourse to the Central Civil Services (Control, Classification and Appeals) Rules, 1965, when he is tried by a court-martial and has not been imposed punishment(s), which SRO 329, dated 23.09.1960, exempts, gets strengthened from the decision, in Union of India and Others Vs. Sunil Kumar Sarkar, , wherein a General Court-Martial was initiated against a GREF personal and, on conclusion of his trial, he, having been found guilty of some of the charges framed against him, was sentenced to undergo rigorous imprisonment for one year, which was, later on, reduced to six months. Because of the exemption of clause (e) of Section 71 of the Army Act, 1950, which, otherwise, provides for dismissal from service, the respondent, Sunil Kumar Sarkar, could not be dismissed despite being sentenced to undergo rigorous imprisonment for six months. However, as the conviction of the respondent, Sunil Kumar Sarkar,

could not have automatically resulted into his dismissal from service, a proceeding under Rule 19 of the Central Civil Services (Control, Classification and Appeals) Rules, 1965, was initiated and this proceeding came to be challenged by the respondent. The Supreme Court, in Sunil Kumar Sarkar (supra) took the view that conviction and punishment of imprisonment by General Court Martial, under the Army Act, 1950, and punishment of dismissal by disciplinary authority, under the Central Civil Services (Control, Classification and Appeals) Rules, 1965, would not amount to double jeopardy, because, a disciplinary procedure, as contemplated by Article 311(2)(a) of the Constitution, is a summary procedure provided to take disciplinary action against a government servant, who is already convicted in a criminal proceeding, and Rule 19 of the Central Civil Services (Control, Classification and Appeals) Rules, 1965, is in conformity with the above provisions of the Constitution. The Supreme Court further held, in Sunil Kumar Sarkar (supra), that the two proceedings aforementioned operate in two different fields though the crime or the misconduct might arise out of the same act. The Court Martial proceedings deal with the penal aspect of the misconduct, but the proceedings under the Central Civil Services (Control, Classification and Appeals) Rules, 1965, deal with the disciplinary aspect of the misconduct. The two proceedings do not overlap. The relevant observations, made by the Supreme Court, in Sunil Kumar Sarkar (supra), read as under:

8. The Division Bench also found fault with the order of dismissal passed by the disciplinary authority on the ground that the same was solely based on the conviction suffered by the respondent in the court-martial proceedings. The Court in this regard held that the disciplinary authority had a predetermined mind when he passed the order of dismissal. Here again, in our opinion, the Division Bench did not take into consideration Rule 19 of the Central Rules which contemplates that if any penalty is imposed on a government servant on his conviction in a criminal charge, the disciplinary authority can make such order as it deems fit (dismissal from service is one such order contemplated under Rule 19) on initiating disciplinary proceedings and after giving the delinquent officer an opportunity of making a representation on the penalty proposed to be imposed. As a matter of fact, this type of disciplinary procedure is contemplated in the Constitution itself as could be seen in Article 311(2)(a). Rule 19 of the Central Rules is in conformity with the above provisions of the Constitution. This, as we see, is a summary procedure provided to take disciplinary action against a government servant who is already convicted in a criminal proceeding. The very foundation of imposing punishment under Rule 19 is that there should be a prior conviction on a criminal charge. Therefore, the question of having a predetermined mind does not arise in such cases. All that a disciplinary authority is expected to do under Rule 19 is to be satisfied that the officer concerned has been convicted of a criminal charge and has been given a show-cause notice and reply to such show-cause notice, if any, should be properly considered before making any order under this Rule. Of course, it will have to bear in mind the gravity

of the conviction suffered by the government servant in the criminal proceedings before passing any order under Rule 19 to maintain the proportionality of punishment. In the instant case, the disciplinary authority has followed the procedure laid down in Rule 19, hence, we cannot agree with the Division Bench that the said disciplinary authority had any predetermined mind when it passed the order of dismissal.

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11. Before concluding we must point out that during the course of arguments, a doubt was raised as to the maintainability of the concurrent proceedings initiated against the respondent by the authorities. The respondent in this case has been punished for the same misconduct both under the Army Act as also under the Central Rules. Hence, a question arises whether this would tantamount to "double jeopardy" and is in violation of Article 20 of the Constitution of India. Having considered the arguments addressed in this behalf, we are of the opinion that so far as the concurrent proceedings initiated by the Organisation against the respondent both under the Army Act and the Central Rules are concerned, they are unexceptionable. These two proceedings operate in two different fields though the crime or the misconduct might arise out of the same act. The court-martial proceedings deal with the penal aspect of the misconduct while the proceedings under the Central Rules deal with the disciplinary aspect of the misconduct. The two proceedings do not overlap. As a matter of fact, Notification No. SRO-329 dated 23-9-1960 issued under the Central Rules and under sub-sections (1) and (4) of Section 4 of the Army Act makes this position clear. By this notification, the punishments that could be meted out under the Central Rules have been taken out of the purview of the court-martial proceedings under the Army Act. We further find support for this view of ours in the judgment of this Court in R. Viswan v. Union of India.
(Emphasis added)

30. Consequently, in the past, a member of the GREF, when tried by a Court Martial, could have, ordinarily, invoked, against the order, decision or finding, the High Court''s jurisdiction under Article 226; but such recourse cannot, in the light of R. Viswan''s case (supra), be had, now, in respect of matters, which are covered by the Armed Forces Tribunal Act, 2007. However, as persons, subject to the Army Act, they would not fall under the Armed Forces Tribunal Act, 2007, in respect of those matters, which are covered by the Central Civil Services (Control, Classification and Appeals) Rules, 1965, inasmuch as in respect of those matters, which are covered by Central Civil Services (Control, Classification and Appeals) Rules, 1965, a member of the GREF would not be able to take recourse to the Armed Forces Tribunal Act, 2007, because Armed Forces Tribunal Act, 2007, would not, in the light of the provisions of

the Armed Forces Tribunal Act, 2007, have jurisdiction to deal with the matters, which are covered by the Central Civil Services (Control, Classification and Appeals) Rules, 1965, and, hence, in such cases, his remedy would lie, in an appropriate case, in taking recourse to Article 226 of the Constitution of India inasmuch as jurisdiction of the Armed Forces Tribunal Act, 2007, does not oust, and could not have ousted, in the light of the decision, in L. Chandra Kumar (supra), the High Court''s jurisdiction, under Article 226, by virtue of Section 14 of the Armed Forces Tribunal Act, 2007.

31. What surfaces from the above discussion is that the present respondent, as a member of the GREF and a member of the Armed Forces, cannot, in the light of the decision, in R. Viswan (supra) read with the decision, in Vidyawati''s case (supra), and could not have taken recourse to the provisions of the Administrative Tribunals Act, 1985. Consequently, the learned Central Administrative Tribunal has/had no jurisdiction in the matter of the petitioner''s (i.e., the present respondent''s) grievance as regards refusal to grant him financial upgradation and, at the same time, the respondent''s grievance shows that even the Armed Forces Tribunal cannot redress, and could not have redressed, his grievance as regards refusal to grant him financial upgradation. The remedy of the respondent, therefore, lies in making appropriate application in the High Court, under Article 226 of the Constitution of India, or in instituting appropriate suit for remedy of his grievances.

32. In the result and for the reasons discussed above, this writ petition succeeds and the impugned order, dated 18.06.2012, passed by the learned Tribunal is hereby set aside and quashed.

33. Before parting with this writ petition, we record our deep appreciation of the assistance provided to us by Mr. U.K. Nair, learned Amicus Curiae.

34. With the above observations and directions, this writ petition shall stand disposed of. No order as to costs.