

JUDGMENT

MOHSIN AKHTAR KAYANI, J.---Through this single judgment, we intend to decide the captioned intra court appeals as common questions of law and facts are involved therein.

2. Through the captioned intra court appeals, the appellants have called in question judgment passed by the learned Single Judge in Chambers, dated 04.12.2017, whereby writ petitions filed by the appellants against their removal from services have been dismissed for want of jurisdiction of this Court under Article 199(3) of the Constitution of the Islamic Republic of Pakistan, 1973.

3. Brief and consolidated facts referred in the captioned intra court appeals are that the appellants were appointed in PAF in different intervals of time and had been performing their duties since then till November, 2015, when the P&S personnel picked up the appellants for investigation regarding commission of homosexual activity with one Waqar/UDC, to which when the appellants replied in negative they were subjected to physical torture while keeping them in unlawful detention and ultimately the appellants were compelled to sign some documents, which were to be read out by the appellants in front of a camera. Consequently, a Board of Inquiry was constituted and pursuant to findings/proceedings conducted thereby the appellants were removed from services vide letter dated 13.04.2017 on the basis of allegation of homosexual activity with one Waqar/UDC. Feeling aggrieved thereof, the appellants preferred their complaints/appeals before President of Pakistan and Secretary, Ministry of Defence under Section 26 of PAF Act, 1953 read with AFO 111-46, but of no avail and resultantly, the appellants moved this Hon'ble Court by filing their respective writ petitions, which were dismissed by the learned Single Judge in Chambers vide impugned consolidated judgment dated 04.12.2017. Hence, the instant intra court appeals.

4. Learned counsel for appellants contended that the learned Single Judge in Chambers erred in law by declaring in Para-7 of the impugned judgment that powers conferred in Section 20 of the PAF Act, 1953 are independent in nature, whereby one can be removed from service without court martial trial, whereas the PAF Act, 1953 being special law provides an explicit/specific provision i.e. section 46 to cater the offence of unnatural offence i.e. the offence with which the appellants have been charged, which otherwise provides a particular punishment, than the punishment of removal from service under Section 20 of the PAF Act, 1953; that the appellants being tried under summary trial in terms of Section 81 of the PAF Act, 1953 cannot be imposed punishment of removal from service, which can only be imposed after the court martial trial; that confessional statements of the appellants were recorded during investigation and not before any independent forum or before Judicial Magistrate, which have no value and could not be considered admissible in the light of Rule 42 (Para-10) of the PAF Act, 1953 read with Articles 37, 38 and 39 of the Qanun-e-Shahadat Order, 1984; that the learned Single Judge in Chambers ignored that there was no eye-witness or independent witness available against the appellants, neither any medical report of victim or any of the appellants is available on record nor the alleged victim referred any particular/specific time or date of commission of offence; that despite the fact that the appellants in reply to show-cause notice have vehemently denied the levelled allegations, they were removed from service without any fair trial, but the learned Single Judge in Chambers resorted to passing of the impugned consolidated judgment, which is liable to be set-aside and appellants may be reinstated in service with all due benefits.

5. Conversely, learned AAG along with Sq. Ldr. Asif Raza Khan appeared before the Court and opposed the instant appeals on the grounds that the learned Single Judge in Chambers has rightly dismissed the writ petitions filed by the appellants for not being maintainable and barred under Article 199(3) of the Constitution of the Islamic Republic of Pakistan, 1973; that the appellants have failed to establish on record any act of mala fide on the part of respondents; that the confessional statements recorded by the appellants were volunteer in nature, who were also given reasonable opportunities to defend themselves, but they failed to do so; that the case of appellants have been dealt with in accordance with PAF law and the learned Single Judge in Chambers has rightly appreciated the law on subject and

passed the impugned consolidated judgment, which is liable to be maintained.

6. Arguments heard, record perused.

7. Perusal of record reveals that the appellants have been charged by the Air Force Authorities for their homosexual activities with UDC Waqar and as such Board of Inquiry was conducted. A show-cause notice was issued to every appellant in similar words, therefore, for the purpose of explanation, the show-cause notice is reproduced as under:--

"SHOW-CAUSE NOTICE : PAF JCO

1. Reference is made to PAF Faisal letter No.FSL/C-3002/43/P-1 dated 20 July, 2016.

2. On 11 February, 2016 a Board of Inquiry was held to inquire the circumstances under which UDC Waqar PC-881 was allegedly found involved in homosexual activities with various uniform /civilians personnel of PAF during his service. You were involved in homosexual activities with UDC Waqar PC-881 and in this regard Board has blamed you and recommended that a case for "Administrative Removal from Service" be initiated under AFO 39-1 against you.

3. You are therefore, called upon to explain in written as to why an administrative action in accordance with AFO-19-1 should not be taken against you. Your explanation in this regard is to reach undersigned at 1200 hrs on 03 August, 2016 positively, if you fail to reply than it will be considered that you have nothing to say in your defence."

8. The above mentioned show-cause notice has been issued to every appellant under Air Force Order 39-1. As per record, the appellants submitted their explanation against their show-cause notice and they have been removed from the service with separate order in January, 2017 under section 20(1) of Air Force Act, 1953. However, the appellants filed different departmental representations against their removal but nothing favourable came on record in their favour. The appellants filed writ petitions against the order of removal from service, which were dismissed vide consolidated judgment dated 04.12.2017 by learned Single Judge in Chambers with following observations:-

"9. Article 199(3) of the Constitution explicitly provides that an order shall not be made under clause (1) on an application made by or in relation to a person who is a member, of the Armed Forces of Pakistan, or who is for the time being subject to any law relating to any of those Forces, in respect of his terms and conditions of service, or a matter arising out of his or her service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law. It is settled law that the bar contained under Article 199(3) of the Constitution is not attracted if the petitioner is able to show that the authority had passed an order or acted without jurisdiction or that the order/action was coram non judice or based on mala fide. Reliance is placed on the cases of 'Muhammad Naveed and another v. Federation of Pakistan through Secretary Ministry of Defence' [2013 SCMR 596], 'Ghulam Abbas v. Federation of Pakistan through Secretary Ministry of Defence and others' [2014 SCMR 849], 'Federal Government Ministry of Defence, Rawalpindi v. Lt. Col. Munir Ahmed Gill' [2014 SCMR 1530], 'Ex-Gunner Muhammad Mushtaq and another v. Secretary Ministry of Defence through Chief of Army Staff and others' [2015 SCMR 1071], 'Ex-Lance Naik Mukarram Hussain and others v. Federal Government, Ministry of Defence through Chief of Army Staff and others' [2017 SCMR 580] and 'Brig. (R) F. B. Ali and another v. The State' [PLD 1975 SC 506].

10. In the facts and circumstances of the instant case, the impugned order of removal from service and the proceedings related thereto have not been found to suffer from mala fide, or that they were without jurisdiction or coram non judice. The petitioners have not been able to cross the hurdle imposed under Article 199(3) of the Constitution which bars jurisdiction of this Court to issue any writ in case of a person who is subject to the Act of 1953.

11. For what has been discussed above, the jurisdiction of this Court is barred under Article 199(3) of the Constitution. The petitions are, therefore, not maintainable and

are accordingly dismissed."

9. While considering above referred observations of learned Single Judge in Chambers, we have to go through the factual aspect at the first instance, whereby the appellants have been charged with allegation of commission of homosexual activities with Waqar/UDC, however, record appended with the writ petitions as well as with these appeals is silent qua any Board of Inquiry nor such documents were placed before learned Single Judge in Chambers, rather few documents which are on record, are statement of Waqar/UDC i.e. alleged victim, who was given detailed insight that he was produced before the medical specialist on 23.10.2015 due to headache and body pain and when he was prescribed injection of dicloran, certain marks of violence were seen on his private parts, where-after, the authorities under whom he was in custody, took him back and as such it has been seen that he remained in custody for 70 days and even Air Force authorities have not placed single document through which it could be presumed that alleged victim Waqar/UDC has alleged the factum of rape or homosexuality with any person.

10. We have minutely gone through each and every document as well as have considered the stance of the appellants in this regard, whereby following facts have been noted:-

- (i) No direct complaint was lodged by the alleged victim against any person/appellant.
- (ii) No date, time or day of occurrence has been referred by the alleged victim that he was subjected to illicit intercourse.
- (iii) No medical evidence has been referred nor placed on record.
- (iv) No eye-witness or independent witness has been referred.

11. In view of above position, the Board of Inquiry under Air Force laws should have kept in view the test of care and caution or otherwise, but no such documents were placed on record. The appellants have referred one of the confidential documents dated 16.09.2016, written by Flying Officer/Base Legal Officer of PAF Base Korrangi Creek, who has thoroughly undergone through available evidence provided by the unit and has observed that the alleged offence is time barred, no eye-witness or forensic evidence has been produced against the appellants' and even statements recorded during the Board of Inquiry are inadmissible under the law, as such major penalty under section 20 of Pakistan Air Force Act, 1953 is not justified. The said law officer of Pakistan Air Force referred that statement recorded by Waqar/UDC is illogical and unbelievable, therefore, it has been recommended that severe action of removal may not be initiated against JCO on the basis of evidence.

12. The above referred background spells out that action taken by Air Force Authorities is based upon Air Force Order 39-A-1, which provides action against the airmen, who are undisciplined or inefficient, are not being dealt with by the bases/units or the section commanders effectively and expeditiously, whereas Air Force Order 39-A-1(3)(b)(c) provides procedure for taking action, which is reproduced as under:-

"In order to ensure that such cases are dealt with properly and effectively at the base/unit level, action is to be taken according to the following procedure:--

(a) Cases of in-discipline are to be dealt with appropriately under the PAF Act and the offenders be awarded suitable punishment by the commanding officer concerned. If a commanding officer considers that he cannot effectively deal with the offenders or if he considers that the state of discipline at his base/unit is likely to deteriorate due to further the continued misconduct, he may apply for trial of the accused by a Court Martial.

(b) Cases of indiscipline or general misconduct, not considered fit, for any reason, to be dealt with by a Court Martial are to be reported to Airmen Management Office through proper channels with specific recommendations for discharge on disciplinary grounds/removal/dismissal as the commanding officer may consider necessary. Recommendations in such cases are to be sent to Airmen Management Office under the

signature of Officer Commanding/Sector Commander.

(c)

(d)

(e)

(f)

(g)

4. When submitting a report in accordance with this order, the airman is to be apprised of the decision taken by the unit commander and is to be given an opportunity to make a statement. The statement, if any, is to be forwarded to Airmen Management Office and Air Headquarters along with the report on the airman concerned."

13. We have confronted learned DAG as well as Asif Raza Khan, Squadron Leader, PAF as to whether Air Force Order 39-1 defined the act of indiscipline, whereby they have failed to substantiate definition of discipline from Air Force Order, therefore, they were directed to produce anything wherein act of indiscipline has been defined, but there is no document available in this regard.

14. The above referred provisions of Air Force Order 39-1(3)(a)(b) cover two separate sets of individuals, who have been charged in case of indiscipline or misconduct or dealt with the Court Martial and it was argued by the respondents side that the Commanding Officer is the authority, who considers that he can effectively deal offender or he considers that the state of discipline base/unit is likely to deteriorate for continued misconduct of individual or where it has been considered fit for any reason to deal under Court Martial, the Airmen Management Office through proper channel may give proper recommendation for discharge of disciplinary grounds. Learned DAG as well as Asif Raza Khan, Squadron Leader, PAF have been confronted that whether all the steps have been followed during the course of inquiry, formal/informal investigation has been conducted, witnesses have been called, statements have been recorded and all the appellants have been given proper opportunity of cross-examination of the witnesses, where-after recommendations have been given, however, no such proof is available on record.

15. While considering above background, we have gone through Rule 191, Chapter VIII of Manual of Pakistan Air Force Law, which deals with Board of Inquiry, which gives complete insight of the mechanism, whereby the authority shall prescribe the investigation required and in terms of Rule 191(11), the Board of inquiry is not governed by rules of evidence, which is followed in Civil Court. The board may, therefore, receive any evidence, whether oral or documentary, which in their opinion is relevant to the issue. The Board of Inquiry shall record all its proceedings and may also record any confession or statement in answer to any question. It has also been settled in these rules that proceedings of inquiry are privileged and these proceedings are not disclosed to the members of the public, local authorities, police or any government or civil department except with permission of Chief of Air Staff or the Local Government as prescribed in Rule 191(19), but question arises whether these rules under Pakistan Air Force Act, 1953 supersede the concept of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 and whether the appellants have been given fair chance to defend themselves in terms of Article 10-A of the Constitution, which ensures and provides guarantee of due process under fair trial, which are key factors of every formal and informal investigation, inquiry or trial.

16. The appellants have been charged with the allegation of commission of homosexual activities with Waqar/UDC, although the timeline reflected from the reply of show-cause notice reveals that the allegations are at least five to seven years prior to the issuance of show-cause notice and as such, the availability of witnesses or any other evidence is impossible but the principles and guarantees referred in Article 10-A of the Constitution have to be applied in these cases, in which victim Waqar/ UDC himself referred the factum of severe torture, to which he has been subjected for extraction of different statements, which is reflected from his statement available on record and even one of the witnesses of Board of Inquiry i.e. witness

No.46 has supported and justified his stance.

17. In view of above, question arises that whether the order of removal of the appellants from service is legally justified and covered under Article 199(3) of the Constitution and whether such bar can be lifted, the answer to this proposition is "Yes". The answer to this question has to be seen in the light of procedure and law provided in Air Force Act, Rules and Air Force Orders and if all the necessary steps were taken in accordance with law without infringement of rights of individuals, the orders are considered to be passed within the four corners of law, therefore, we have heard learned counsel for the parties on the question whether the proceedings of Board of Inquiry in terms of Section 106(a) of Pakistan Air Force Act, 1953 read with Rule 191 of the Air Force Rules, 1957 have been followed in letter and spirit and what material has been confronted to the appellants through which it could be demonstrated that all necessary steps have been followed. In response to said questions, the learned DAG as well as officials of Pakistan Air Force have taken a categorical stance that the proceedings of Board of Inquiry are privileged documents and same could not be given and the extract therefrom could not be disclosed in terms of Rule 191(19) of the Pakistan Air Force Rules, 1957, therefore, not a single document of Board of Inquiry has been placed before this Court nor appended with the para-wise comments.

18. We have gone through Rule 191 of Chapter 8 (Board of Inquiry) with the able assistance of learned counsel for the parties and officials of the Pakistan Air Force, which requires a thorough procedure including its evidentiary value, as such, the proceedings of Board of Inquiry are not admissible in evidence against a person who is subjected to Pakistan Air Force Act, 1953 and such proceedings could only be used in a trial where any person is guilty of willfully giving false evidence before the Board. This aspect has left nothing in favour of the Pakistan Air Force to proceed against the appellants on the basis of Board of Inquiry or its findings, especially when nothing has been brought on record of this court to establish the minimum requirement of any act of indiscipline provided in Chapter 6 (Offences) of the Pakistan Air Force Act, 1953, where offence in terms of unbecoming conduct or the offences in terms of Section 46, which deals with certain form of disgraceful conduct, although, those offences ended through conviction by the court martial, but all these offences were not applied in this case, rather the powers provided in Section 20 of the Act for dismissal/removal have been applied by the Chief of Air Staff.

19. Although, the proceedings of Board of Inquiry are privileged and not to be disclosed to the general public, local authorities, police or any Government department, except with the permission of Chief of Air Staff or the Federal Government, but it does not exclude the courts of law to have a look into the extracts of inquiry as to whether necessary steps had been followed, but the respondent authorities have failed to justify their privilege, which is not applicable to the courts of law as due to the result of Board of Inquiry all the appellants have been dismissed from the services of Pakistan Air Force with a stigma for rest of their lives, therefore, in such situation the fundamental rights have to be given due protection.

20. Furthermore, the respondents authorities have been given wide powers in terms of Section 31-A read with section 20 of Pakistan Air Force Act, 1953, but on the other side, these absolute discretionary powers have put stigma upon the appellants, who could not be considered legally chargeable under the allegation of homosexual activities unless the victim supports the case of Air Force Authorities. Even otherwise, mere statement of victim, if considered to be the Gospel truth, even then after five or seven years, it cannot be justified to believe the statement of such victim, who himself claims that he was subjected to severe torture for 70 days by Air Force Authorities and he was compelled to make statements against different individuals and such statement has negated the stance of respondents authorities, who could not justify their charges of indiscipline as the Rules and Act are silent in this regard. Even otherwise, the Air Force authorities have not initiated Court Martial proceedings against the officials, which fact clearly spells out that there was no evidence against the individuals.

21. It is sacred duty of the Courts of law to apply true spirit of the law applicable i.e. Air Force Act, 1953, Pakistan Air Force Rules, 1957 and Air Force Orders. The order passed by the Air Force authorities for removal of appellants from service is based upon the proceedings

discussed above, which clearly spells out that the appellants have not been confronted with minimum standards required in such type of proceedings, therefore, the entire edifice constructed upon the Board of Inquiry is not legally maintainable as the same suffers from mala fide, passed without jurisdiction and is coram non judice. Whereas, in this case, the writ petitions filed by appellants have been dismissed on the ground that they have failed to cross the jurisdictional hurdle, but in other words, the action of respondents authorities is purely motivated to remove the appellants without applying minimum requirements of fairness, reasonableness and caution, in which the factual side of allegation has not been substantiated in any manner, which can be considered as mala fide on the part of respondents authorities. There might be certain truth in the charges, but at this stage, while considering the same in judicial review, the record is silent and this Court believes that factual aspect cannot be re-appreciated at this level, however, when the record is silent and no charge is made out, such kind of proceedings and orders are considered to be based upon mala fide, which could not be given protection in any manner. The wisdom laid down in Article 10-A of the Constitution has to be seen in the light of due process of law, which guarantees equal protection of law and fairness in the exercise of authority, but in this case, no such process has been adopted or seen, nor even proved, rather respondents authorities are bent upon to remove the appellants in a manner not warranted under the law. The respondents' side has taken the categorical stance that they have afforded fair opportunity to the appellants to defend themselves, but it does not mean that mere verbal statements of one person against another person can be believed without corroboration and without confirmation from independent source. Even otherwise, it has been argued by the appellants' side that alleged victim has also been removed from the service on the same charges after passing of impugned orders against the appellants.

22. Keeping in view the above background, the appellants have been stigmatized for rest of their lives and such stigma cannot be detached in any manner, therefore, the removal order is considered to be illogical, illegal and void as the same has no basis to stand at the touchstone of Article 10-A of the Constitution, which confirms the due process and right to fair trial to every citizen of Pakistan. Article 10-A of the Constitution places a heavy onus upon the respondent authorities for disclosure of material to be used against the person i.e. the appellants in this case, whereby prejudicial allegations have been levelled against the appellants, therefore, the respondent authorities must handover sufficient details/particulars pertaining to the allegations to the appellants before hearing, so that the appellants could have prepared their answer and it is their right to controvert, correct or comment on the evidence or the information that might be relevant to the decision or the incriminating material on which the decision matter is intended to rely. Where the relevant incriminating material was not disclosed at all to a party, which was potentially prejudiced by it, there was prima facie unfairness irrespective of whether material in question arose before, during or after the hearing. Reliance is placed upon PLD 2013 Lahore 413, (Liaqat Ali Chughtai v. Federation of Pakistan and others). Whereas, Article 199(3) of the Constitution is a procedural provision, which is meant for an individual seeking remedy in terms of Article 199(1) of the Constitution being an aggrieved person in case when no other adequate remedy is available. However, this Court has reached to an irresistible conclusion that the Courts are bound to consider the true intention of the legislature, who has framed Article 10-A of the Constitution having knowledge that Article 199(3) of the Constitution bars exercise of jurisdiction in some matters. At the same time, Article 199(3) of the Constitution put much emphasis on the term "subject to any law or subject to such law", whereas all the statutes, Act, Rules and Regulations are based upon the principle of fairness and in the interest of justice, they cannot circumvent fundamental rights in any manner, whereas in this case, action taken by the Air Force Authorities is considered to be negation of fundamental rights and based on mala fide intention as the victim has not referred any misconduct on the part of appellants, but despite such circumstances reflected from the record, the respondents authorities have declared the appellants guilty in their Board of Inquiry. The recommendations given by the Board of Inquiry, which have been made basis for passing of order of removal from service, are not based on the appreciation of facts in a proper manner, thus rendering the action taken by the respondents' authorities to be illegal.

23. The protection of fundamental rights is on much higher pedestal than the bar contained in Article 199(3) of the Constitution and in cases where rights have been managed,

extraordinary jurisdiction of the High Court under Article 199(3) of the Constitution can competently be invoked. Reliance is placed upon PLD 2007 SC 498 (Federation of Pakistan v. Raja Muhammad Ishaque Qamar).

24. We have gone through the impugned consolidated judgment passed by learned Single Judge in Chambers, whereby writ petitions of the appellants have been dismissed on the scope of Article 199(3) of the Constitution while relying upon judgments of superior Courts as such, there is no cavil to the proposition that in the case laws referred in the impugned judgment, concept of Article 199(3) of the Constitution has rightly been appreciated, however, in the instant case, as the fundamental rights of the appellants guaranteed under the Constitution have been infringed and it is trite law that every citizen of Pakistan is equally entitled to protection of law and his right to fair trial has been protected in terms of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973.

25. Similarly, when excess of jurisdiction has been claimed, the respondents are bound to prove that they have observed the procedure and mandatory conditions provided by law under the Pakistan Air Force Act, 1953 read with Pakistan Air Force Rules, 1957 or the Air Force Orders, but all these necessary requirements are missing, especially when the appellants have relied upon one of the confidential document of Board of Inquiry relating to the testimony of a doctor of Pakistan Air Force namely Scr. Ldr. Muhammad Tariq, Medical Specialist (Witness No.46), who, on 23.10.2015, during the course of checkup of Waqar Ahmad/ UDC (alleged victim) had seen visible assault marks, whereafter such matter was reported to the higher authorities, however the statement of Waqar Ahmad/ UDC before the Board of Inquiry further substantiated that he has been assaulted, abused and forced to record a statement after subjecting to physical torture, which was confirmed by the statement of the doctor hence in such scenario the excess of jurisdiction and violation of procedure are apparent. It is settled law that no one can be forced to record his statement against his wishes or any statement extracted on the basis of torture and physical abuse bears no legal effect, although the same was recorded in the investigation or at inquiry stage, but the effect of such statement recorded in Board of Inquiry has no admissibility under the law nor it could be relied upon for the purpose of conviction in Court Martial proceedings or can be used for such kind of allegation of homosexuality. Even otherwise, there is not a single report of the hospital or a medical evidence through which it could be proved that such allegation of homosexuality could be justified. In this backdrop, the bar contained in Article 199(3) of the Constitution of the Islamic Republic of Pakistan, 1973 related to the terms and conditions of the service of armed forces is not absolute and all these aspects have not been considered by learned Single Judge in Chambers, therefore, I have considered the strength of judgments reported as 2017 SCMR 580 (Ex-Lance Naik Muhammad Hussain v. Federation of Pakistan and others), 2015 SCMR 1071 (Ex-Gunner Muhammad Mushtaq v. Secretary Ministry of Defence), 2014 SCMR 1530 (Federal Government v. Munir Ahmad Gill) and 2014 SCMR 849 (Ghulam Abbas v. FOP and others), which have also been considered by the learned Single Judge in Chambers while passing the impugned judgment, although the commonalities in all these case laws regarding order passed by Military Authorities, if based upon mala fide, coram non judice or without jurisdiction, the bar of jurisdiction imposed on the High Court under Article 199(3) of the Constitution is not applicable and constitutional petition filed by an aggrieved person is maintainable as the bar has no applicability in such type of cases therefore, while relying upon said judgments, we truly believe that:

- a) The statement of victim Waqar Ahmad/UDC regarding commission of alleged forced act of homosexuality has been obtained under torture and physical abuse, such evidence or statement in Board of Inquiry has no legal worth, hence same could not be relied upon for the purpose of charge of indiscipline.
- b) The statement of Waqar Ahmad/ UDC (alleged victim) has been confirmed through the testimony of witness No.46 namely Sqd. Ldr. Dr. Muhammad Tariq.
- c) The charges of indiscipline could only be seen if all the material is placed before this Court for its perusal and observance, rather the same was withheld by the Pakistan Air Force authorities, therefore, no opinion could be formed to that proceedings of the

Board of Inquiry, which are not available on record.

- d) The law i.e. Pakistan Air Force Act, 1953 and Pakistan Air Force Rules, 1957, if applied in the proposition in hand along with Pakistan Air Force Order 39(A-1)(B), which is made basis for the dismissal and removal of appellants from service, the same has to be construed strictly, especially when the removal or dismissal is attached with stigma.
- e) Any administrative decision for removal of any Air Force official under the charges of indiscipline has to be applied while considering the severity of the allegation and the availability of some evidence through which the allegations could hypothetically be justified, failing which the Pakistan Air Force authorities can only discharge the official without any stigma.
- f) The Chief of Air Staff has an absolute authority to remove/ dismiss any of the Air Force official in terms of powers exercised under Section 20 of the Pakistan Air Force Act, 1953 read with Rule 31(A) of the Pakistan Air Force Rules, 1957, but the minimum requirements of Article 10-A of the Constitution has to be observed in letter and spirit, and if the circumstances, factors, charges or reasons could not be justified through some tangible or intangible evidence and the Pakistan Air Force authorities are of the view that the persons so charged for a misconduct, if remain in service, might affect the discipline of the force, such person be removed with benefits and not with a stigma.
- g) Any person who is in service of Armed Forces cannot be deprived of his fundamental rights i.e. equal protection of law, including due process, which are the dominant factors while interpreting the law and Constitution and as such, these fundamental rights have over-riding effect qua Article 199(3) of the Constitution.

26. In view of above discussion, all the captioned intra court appeals are ALLOWED the impugned consolidated judgment dated 04.12.2017, passed in the writ petitions is hereby SET ASIDE. It is pertinent to mention here that to maintain the discipline of the Armed Forces which is most essential factor as the Forces are custodians and protectors of the Pakistan's geographical and ideological territories, hence, the writ petitions stand DISPOSED OF in view of the powers conferred under Section 20 of Pakistan Air Force Act, 1953 read with Rule 31-A of the Pakistan Air Force Rules, 1957, the Chief of Air Staff is empowered to dismiss or remove any person from the service, hence, the cases of the appellants are referred to the competent authority i.e. Chief of Air Staff, who will reconsider the same for the purpose of discharge from the service without any stigma.

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