Supreme Court of India
Union Of India And Ors vs Major S.P. Sharma And Ors on 6 March, 1947
Author: M Eqbal
Bench: B.S. Chauhan, J. Chelameswar, M.Y. Eqbal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs.2951-2957 OF 2001

UNION OF INDIA AND OTHERS … APPELLANT(S)

VERSUS

MAJOR S.P. SHARMA AND OTHERS … RESPONDENT(S)

JUDGMENT

M.Y. EQBAL, J.:

1. These appeals have been filed against the common judgment and order dated 21.12.2000 passed by Delhi High Court in L.P.A. Nos. 4, 43, 139, 148 of 1987, 21 of 1988, 77 of 1993 and 86 of 1994. By the said judgment, the High Court allowed the appeals preferred by the respondents and quashed not only their termination orders but also the General Court Martial (hereinafter referred to as 'GCM') proceedings held against Captain Ashok Kumar Rana and Captain R.S. Rathaur.

2. Before we proceed with the matter, it would be appropriate to highlight the factual background and brief history of the case.

In February 1971, Gunner Sarwan Dass was cultivated by Pakistan Intelligence. In 1972 Captain Ghalwat and Gunner Sarwan Dass crossed the international border. In 1973 Captain Ghalwat and Gunner Sarwan Dass were posted in Babina (M.P.). In 1974 Gunner Aya Singh was cultivated by Gunner Sarwan Dass for Pak Intelligence. Captain Nagial was then cultivated by Aya Singh for Pak Intelligence. In 1975 for the first time the espionage racket came to be noticed. Aya Singh and Sarwan Dass were arrested. In 1976-77 pursuant to the investigation, three more jawans were arrested. They corroborated the involvement of Sarwan Dass. Sarwan Dass and Aya Singh on further interrogation disclosed the names of Captain Ghalwat and Captain Nagial. In 1976-77 Captain Ghalwat and Captain Nagial were tried by GCM and were convicted. Ghalwat was cashiered and given 14 years' RI. Nagial was given 7 years' RI and was also cashiered. In addition, 12 jawans were tried and they were given RI of various descriptions and were dismissed from services. Aya Singh and Sarwan Dass were also among the 12 jawans tried and held guilty. Later in 1978 it was discovered that Aya Singh was holding back certain relevant information relating to espionage activities under certain alleged threat and pressure. Wife of Aya Singh claimed to be killed. Reeling under the shock of the circumstances, he made further disclosures wherein he named Captain Rathaur and Captain A.K. Rana; disclosed that he had been receiving threats that if he disclosed anything his wife would be killed. Accordingly, in 1978 Captain Rathaur and Captain A.K. Rana were interrogated. As a result, 42 army personnel i.e. 19 officers, 4 junior commissioned officers (JCOs) and 19 other ranks (ORs), were arrested.

Out of the 19 officers, 3 officers were tried by GCM, two were convicted, namely, Captain Ranbir Singh Rathaur and Captain A.K. Rana, and one was acquitted. Captain Ranbir Singh Rathaur and Captain A.K. Rana were sentenced to RI for 14 years each and were cashiered. Against 13 officers, disciplinary actions were initiated. However, a decision was taken not to try them and an administrative order under Section 18 of the Army Act, 1950 (in short "the Army Act") was passed terminating their services.

3. The present appeals arise out of the order passed way back in 1980 terminating the services of the respondents herein which were brought invoking the doctrine of pleasure as enshrined under Article 310 of the Constitution of India, 1950 (hereinafter referred to as the 'Constitution') coupled with the powers to be exercised under Section 18 of the Army Act. Initially, the orders of dismissal were passed on 11.1.1980, which were assailed in nine writ petitions that were dismissed by the High Court of Delhi on 21.4.1980. The special leave petitions against these writ petitions came to be dismissed by this Court on 1.9.1980.

4. In the meanwhile, a corrigendum came to be issued, as a result whereof, the orders of dismissal were described as orders of termination. On account of the substituted termination order, a decision for deducting 5% of the gratuity amount was taken, which was communicated afresh. These orders made a fresh ground of challenge before a learned Single Judge of the Delhi High Court. The learned Single Judge dismissed the petition by a detailed judgment dated 22.3.1985. Simultaneously, one Captain R.S. Rathaur had filed a Writ Petition No.1577 of 1985 under Article 32 of the Constitution before this Court, which stood dismissed refusing to re-open the issues already decided.

5. Against the order of the learned Single Judge dated 22.3.1985, several Letters Patent Appeals were filed. One of the appeals, being LPA No.116 of 1985, filed by one N.D. Sharma, was decided vide judgment dated 19.8.1986 upholding the order of termination approving the applicability of the doctrine of pleasure. However, at the same time, the appeal was partly allowed in relation to the post-retiral benefits keeping in view the provisions under the Army Act and Rules and it was found that the proposed 5% cut-off was not in accordance with the Act/Rules applicable therein.

6. Several LPAs were filed by other officers relying on the Division Bench judgment extending the post-retiral benefits, and a plea for similar relief was raised.

7. When these appeals came up for hearing, the Division Bench of the Delhi High Court hearing the matter differed with the view on the issue of the applicability of doctrine of pleasure and maintainability of the writ petitions on the ground of malafides vide order dated 15.5.1991. Consequently, this question of law was referred to be decided by a larger bench.

8. The Full Bench so constituted to answer this reference held that an order under Section 18 of the Army Act invoking the doctrine of pleasure was subject to judicial review if it is assailed on malafides. It was held that the onus lay on the petitioner/person alleging malafides and to bring material on record to satisfy the court in order to justify the interference. Aggrieved, the Union of India filed the Special Leave Petition, which stood dismissed.

9. It appears that after the answer of reference, the pending appeals were taken up for decision by the High Court. On account of the answer given by the Full Bench, fresh petitions were filed by those officers whose petitions had been dismissed earlier upto this Court as referred to hereinabove, in 1980. Some writ petitioners, whose petitions had been dismissed by learned Single Judge, filed Letters Patent Appeals with applications for condonation of delay. Appeals were also filed against those judgments that were given in the second round of litigation proposing to refuse 5% of the terminal benefits referred to hereinabove. These categories of petitions were described by the Division Bench hearing the matter in its order dated 2.5.1995, as under :-

> "LPA 77/93 & CM 823/95 In these batch of cases, we find there are at least two LPAs which are directed against the Judgments of dismissal of the writ petitions holding that the particular issue cannot be gone into in writ jurisdiction. Learned counsel for the appellants in those two cases rely upon the Full Bench Judgment and the recent Supreme Court Judgment to contend that the issue can be gone into by the Court. They have also wanted us to call for certain records from the respondents and in regard to those records, respondents are claiming privilege and that is a matter to be decided.
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> There is another group of cases in which fresh writ petitions are filed on the ground that notwithstanding the dismissal of the earlier writ petitions or dismissal of the S.L.Ps, fresh writ petitions are maintainable inasmuch as it is only now that the Full Bench and the Supreme Court have decided that the particular issue can be gone into by the High Court. In that batch of cases the question of res judicata falls for consideration.
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> There is yet another group of cases where writ petitions were dismissed by the learned Single Judges on the ground that the Court cannot go into the issue and the LPAs were preferred with application for condonation of delay with delay of more than 9 years.
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> There is yet another group of cases where writ petitions were filed against some latter orders passed by the Government imposing a cut of 5% from the pension and upon dismissal of the writ petitions challenging the said orders, LPAs have been filed and in those appeals the appellants want to take up the issue, that the Court can go into the validity of the order of dismissal order once again.
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> Inasmuch as there are four classes of cases, we are of the view that first we should decide the batch where fresh writ petitions are filed, and in case we hold that fresh writ petitions are maintainable, then the question of going into the privilege claimed by the respondents will have to be decided. If the fresh writ petitions are held to be maintainable, then the batch wherein appeals are filed with delay condonation applications can also be taken up for consideration. In one case the question of laches is to be decided whereas in another the question of sufficient cause for condonation of delay fall for consideration. In the matters challenging the orders imposing cut in

> pension, it will be for the parties to watch the view the court may take in other three batches mentioned above so that they can pursue one or the other remedies which the Court will be able to accept.
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> Therefore, we will first take up fresh writ petitions filed after the passing of the full Court Judgment and the Supreme Court Judgment."

10. Thereafter two writ petitions that were filed afresh, namely, in the case of Major Subhash Juneja and Harish Lal Singh, were heard separately and dealt with the principle of res judicata and constructive res judicata. The said writ petitions were held to be barred by law vide judgment dated 8.3.1996. The other connected petitions also appeared to have been dismissed as not maintainable by another Division Bench vide order dated 7.9.1992.

11. The Letters Patent Appeals which were filed with applications for condonation of delay and also against the judgment proposing 5% cut-off in the terminal benefits were heard by another Division Bench that reserved the judgment on 14.8.1998 by passing the following order:

> "LPA Nos.4/87, 43/87, 139/87, 148/87, 21/88, 77/93, 86/94 and C.W. Nos.3063/95, 4082/95:
>
> Synopses have been placed on record. Mr. Tikku states that by 17.8.1998, photocopy of the relevant record will be made available to Court. Originals have been shown to us. Judgment reserved."

12. The Division Bench that went on to reserve the said judgment delivered it after almost 3 years and allowed the appeals. Therein, it was held that the proceedings initiated against the writ petitioners as also against other officers, who were appellants in the other LPAs, were vitiated as there was no material to support the impugned orders of termination which were camouflaged and thus, the same were subject to judicial review. Accordingly, vide judgment dated 21.12.2000, the relief of consequential benefits was granted after setting aside the order of termination. The relevant part thereof is extracted herein:

> "On a consideration of all the facts and circumstances we are of the view that there is no other conclusion possible except to say that the orders which are the subject matter of the writ petitions and in the Letters Patent Appeals are merely camouflage and orders have been passed for extraneous reasons under the cloak of innocuous form of orders of termination. To give an air on verisimilitude the respondents had held the Court Martial proceedings which are wholly void.
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> Accordingly, we declare that the proceedings initiated against the petitioners in the two writ petitions are void in law and the orders passed against the other officers, the appellants in L.P.As. are vitiated being without any material and being camouflage. Having dropped the idea not to conclude Court Martial proceedings knowing fully well that the officers were likely to be acquitted, without producing relevant record

> before the concerned authority orders of termination were passed flouting all norms. The appellants in the L.P.A's and the petitioners in the two writ petitions are entitled to all the consequential benefits. We also hereby declare that the orders passed against the appellants in the L.P.As are void in law and the conviction and sentence by the GCMs against the writ petitioners are void in law. Consequently, the judgments of the learned Single Judge which are subject matter in Latent Patent Appeals are set aside and the writ petitions in those cases are allowed and the Letters Patent Appeals stand allowed and the two writ petitions also stand allowed. All the writ petitions stand allowed to the above extent indicated and other reliefs prayed for cannot be considered by this Court and it is for the law makers to attend to the same. There shall be no order as to costs."

13. Another relevant event in this journey of judicial conflict which is worth mentioning is that two officers, namely, Subhash Juneja and Harish Lal Singh, whose writ petitions had been dismissed on the ground of constructive res judicata, filed special leave petitions that were converted to Civil Appeal Nos. 1931 and 1932 of 1997 and were finally dismissed by a three-Judge Bench of this Court vide order dated 23.4.2003, which is quoted as under:

> "The grievance of the appellants that is sought to be agitated in these appeals is already settled by an earlier judgment of the Delhi High Court in a Writ Petition filed by the appellants themselves. The appellants herein challenged the said judgment by filing Special Leave Petitions and those Special Leave Petitions having been dismissed by this Court, the contentions raised by them have been finally decided against the appellants herein.
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> The appellants are now trying to re-agitate those issues because the High Court in some other case has taken a different view. Mr. Yogeshwar Prasad, the learned senior counsel appearing for the appellants states that these cases should be heard along with the cases of Union of India which are pending against the latter view of the High Court. We find no reason to do so. The contention of the appellant raised was rightly dismissed by the High Court in the impugned judgment by applying the principles of constructive res judicata. The appeals are accordingly dismissed."
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> (Emphasis added)
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> 14. Thus, it can be seen from the narration of facts hereinabove that with regard to some of the officers, who were involved in this very incident, the evidence which had already been assessed by the High Court, had been looked into and it was found that the doctrine of pleasure had been upheld in the earlier round of litigation and, therefore, the matter stood foreclosed and could not be reopened. The adjudication, therefore, between the Union of India who is the present appellant and the officers who were involved in the same set of incidents had attained finality up to this Court. It was in this background that the Union of India filed the appeals in the year 2001 against the judgment dated 21.12.2000 referred to hereinabove. The judgment dated

21.12.2000 in relation to all the four sets of litigations that have been referred to by the High Court in its order dated 2.5.1995 is, therefore, extracted hereinabove.

15. The appeals filed by the Union of India, pending before this Court against the judgment dated 21.12.2000, were split into two parts by the order of this Court dated 14.2.2006, which is extracted herein:

"C.A. Nos.2949-2950/2001:

Arguments heard.

Judgment reserved.

The entire original record including the administrative receipts be called for either by FAX or by telephonic message immediately by the Registrar (Judicial).

C.A.Nos.2951-2957/2001:

De-linked.

These matters shall be heard separately. List after four months."

16. Accordingly, the arguments were heard and judgment was reserved in the matter arising out of the two writ petitions filed by Ranbir Singh Rathaur and Ashok Kumar Rana alongwith which delinked seven LPAs were also disposed of even though it was observed by this Court that they arose out of the same incident. This Court vide judgment dated 22.3.2006 in the case of Union of India & Ors. vs. Ranbir Singh Rathaur & Ors., (2006) 11 SCC 696 reversed the judgment of the High Court dated 21.12.2000 vis-a-vis the two writ petitions and held as follows:

"On a bare reading of the High Court's order and the averments in the writ petitions, one thing is crystal clear that there was no definite allegation against any person who was responsible for the so-called manipulation. It is also not clear as to who were the parties in the writ petitions filed. In the grounds indicated in the writ petitions it was stated that there is no bar or impediment on the High Court reviewing the petitioner's case as also connected cases to enquire into the validity of the acts done against the writ petitioner. Therefore, it was an accepted position that the writ petitioners wanted review of the High Court's order, which is clearly impermissible. No ground for seeking such review apparently was made out. In any event we feel that the High Court's approach is clearly erroneous. The present appellants in the counter-affidavit filed had raised a preliminary objection as regards the maintainability of the writ petitions and had requested the High Court to grant further opportunity if the necessity so arises to file a detailed counter-affidavit after the preliminary objections were decided. The High Court in fact in one of the orders clearly indicated that the preliminary objections were to be decided first. But

strangely it did not do so. It reserved the judgment and delivered the final judgment after about three years. There is also dispute as to whether the relevant documents were produced. What baffles us is that in the High Court, records with original documents were shown to it and the Bench wanted the copies to be filed. In the impugned judgment the High Court proceeded on the basis as if only a few pages of the files were shown. If that was really the case, there was no necessity for the High Court to direct the present appellants to file copies. If after perusal of the documents the High Court felt that these were not sufficient the same would have been stated. But that does not appear to have been done. The High Court also had not discussed as to how the matters which stood concluded could he reopened in the manner done. No sufficient grounds have been even indicated as to why the High Court felt it necessary to do so. To say that though finality had been achieved, justice stood at a higher pedestal is not an answer to the basic question as to whether the High Court was competent to reopen the whole issue which had become concluded. The persons whom the High Court felt were responsible for alleged manipulation or persons behind false implication were not impleaded as parties. Newspaper reports are not to be considered as evidence. The authenticity of the newspaper reports was not established by the writ petitioners. Even otherwise, this could not have been done in a writ petition, as disputed questions of fact were apparently involved. The matters which the High Court found to have been established were really not so. The conclusions were based on untested materials, and the writ petitioners had not established them by evidence. Since the High Court has not dealt with the matter in the proper perspective we feel that it would be proper for the High Court to rehear the matter. The High Court shall first decide the preliminary objections raised by the present appellants about the non-maintainability of the writ petitions. Normally such a course is not to be adopted. But in view of the peculiar facts involved, it would be the appropriate course to be adopted in the present case. Therefore, we remit the matter to the High Court for fresh hearing. We make it clear that whatever we have observed should not be treated to be the conclusive findings on the subject-matter of controversy. The appeals are allowed without any order as to costs. Since the matter is pending since long, we request the High Court to dispose of the matter as early as practicable, preferably within four months from the date of receipt of the judgment. No costs.

" (Emphasis added) On remand, the High Court dismissed the writ petitions vide judgment dated 20.12.2007 and the same has been placed on record by the appellants.

So far these appeals are concerned, the High Court by the impugned common order dated 21.12.2000, not only quashed the termination orders but also court martial proceedings held against some of the officers.

The Division Bench of this Court, after hearing the counsel appearing for the parties and legal contentions urged, formulated the following points for consideration by a larger bench [Union of India vs. S.P. Sharma, (2013) 10 SCC 150]:-

"31. With reference to the aforesaid rival factual and legal contentions urged, the following points would arise for consideration in these appeals:

31.1. Whether the orders of termination passed by the first appellant in absence of material evidence and improper exercise of power by the first appellant amount to fraud being played on the respondent officers and are vitiated in law on account of legal malafides and legal malice?

31.2. Whether the order of dismissal of earlier writ proceedings and confirming the same by this Court vide order dated 1-9-1980 in relation to the same respondent officers in C.As. Nos. 2951, 2954, 2955, 2956 and 2957 of 2001 amounts to doctrine of merger and operates as res judicata against the present appeals?

31.3. Whether the exercise of doctrine of pleasure under Section 18 of the Army Act read with Article 310 of the Constitution by the first appellant in the absence of any material evidence against the respondent officers and non-production of the relevant records/files of these officers render the orders of termination as illegal and invalid?

31.4. Whether the order of termination is arbitrary, capricious, unreasonable and violative of Articles 14, 16, 19 and 21 of the Constitution of India?

31.5. Whether the impugned judgment and order of the High Court is vitiated either on account of erroneous reasoning or error in law and warrant interference by this Court?"

20. The learned Additional Solicitor General at the very outset submitted that issues involving security of the State were extremely complex and the issue related to the expediency and desirability of retaining officers in the Army who had become security suspects. The instant cases of the respondent officers were examined at various levels in the Army Headquarters as also in the Central Government and the final decision to exercise the power to pass an order of termination was taken by it under Section 18 of the Army Act. Learned counsel relied upon the judgment of this Court in B.P. Singhal vs. Union of India & Ors. (2010) 6 SCC 331 and contended that the parameters that are required to be taken into consideration for exercise of power under Article 310 of the Constitution are varied. Several of these parameters entail evaluation of issues relevant to the security of the State. The factors that form the basis of exercise of power under Article 310 of the Constitution cannot be said to be objective parameters that are amenable to judicially manageable standards. The reasons that form the basis of exercise of power under Article 310 can extend to varied levels of subjective assessments and evaluations in entailing expert knowledge as to issues of security of the State. In that view of the matter it is submitted that exercise of power of judicial review would accord great latitude to the bona fide evaluation made by the competent authorities in the course of discharge of the duties. The correctness of the opinion formed or the sufficiency of material forming the basis of their decision to pass an order of termination would not be subjected to judicial scrutiny of either the High Court or this Court. Further, placing strong reliance upon B.P. Singhal case, (supra) it is contended by the learned Additional Solicitor General that exercise of power of judicial

review under Article 310 is extremely narrow and is limited to only one parameter, namely, violation of fundamentals of constitutionalism. The standard of judicial review which applies to the case of exercise of executive or statutory or quasi-judicial power cannot be extended to the case of judicial review of constitutional power under Article 310. Learned counsel submitted that the fact that Article 311 does not apply to the case of officers/employees of armed forces, the power under Article 309 also cannot be exercised for limiting the ambit of Article 310. The Army Act is an enactment under Article 309. The aforesaid legal principle has been followed consistently in all subsequent decisions of this Court. In this connection learned counsel relied upon the judgment of this Court in Moti Ram Deka vs. North East Frontier Railways (1964) 5 SCR 683. Further, the Constitution Bench of this Court in Ram Sarup vs. Union of India, AIR 1965 SC 247 with reference to Article 33 of the Constitution, has laid down limitations provided on the applicability of fundamental rights guaranteed to the officers/employees of the Army under Articles 14, 16 and 21 of the Constitution and under Section 21 of the Army Act. He has further contended that each of the provisions of the Army Act also carries the sanction of Parliament against the applicability of all other fundamental rights contained under Part III of the Constitution to the extent to which the rights contained in the fundamental rights are inconsistent with the provisions of the Army Act. The aforesaid enunciation of law has again been followed consistently by this Court in subsequent decisions.

21. The learned Additional Solicitor General further contended that in a matter of civilian employees, Article 311 represents a limitation over the absoluteness of pleasure doctrine contained in Article 310. In Moti Ram Deka (supra) and in the subsequent cases, this Court laid down that Article 311 introduces a twofold procedural safeguard in favour of an employee/officer in relation to the exercise of pleasure doctrine. However, Article 311 applies only in cases of punishment and not otherwise. The availability of the safeguards provided for under Article 311 is contingent upon and limited to cases where the power of termination of services of an employee/officer is exercised by the disciplinary authority by way of punishment. The applicability of Article 311 of the Constitution being dependent on the factum of the order of termination being in the nature of a punishment, judicial review undertaken in case of civilian employees entails the necessity for and the power of determining as to whether the order impugned is in the nature of a punishment or not. The doctrine of “foundation”, “camouflage” and the principles of judicial review, encompassing the necessity and the power of determining, whether the order impugned is by way of a punishment is thus a direct emanation and a logical corollary of the nature of enquiry warranted when Article 311 applies to a case.

22. Since the provisions of Article 311 of the Constitution admittedly do not apply to these cases, it relates to the domain of civilian employees/officers service jurisprudence, which is controlled by Article 311, cannot be invoked in the case of employees/officers of armed forces. Since the protection of Article 311 cannot be claimed in the case of employees of armed forces, no enquiry as to whether the order is by way of a punishment, which is the sine qua non for applicability of Article 311, is warranted. The legal issue requires to be considered by this Court in the context of the fact as to whether by virtue of anything contained in the language of Article 310 or the other provisions of the Constitution, the constitutional power under Article 310 can be construed to be limited to cases of termination simpliciter. It is contended on behalf of the appellants that neither the language of Article 310 nor any other provision of the Constitution warrants adoption of such a narrow

construction. Further, the learned Additional Solicitor General has contended that this Court has consistently held that the ambit of the doctrine of pleasure, contained under Article 310, is an absolute power, save to the extent provided otherwise by an express provision of the Constitution. The only express limitation on the power of Article 310 exists under the Constitution in relation to the tenure of certain constitutional functionaries such as the Hon'ble Judges of the High Court and the Supreme Court. He further contends, placing reliance upon Moti Ram Deka (supra) that this Court has laid down the legal principle; that the ambit of Article 310 is circumscribed only by the provisions of Article 311 and that even Article 309 does not circumscribe the said power. The conferment of power upon the President of India under Article 310 is in absolute terms. Therefore, there is no basis for suggesting that the power under Article 310 ought to be construed as excluding the power to dismiss an employee or officer for misconduct. The very fact that Article 310 makes the tenure subject to the absolute pleasure of the President means that the President can exercise the said power for any reason and without assigning any cause or reason and this is precisely what has been laid down by this Court in B.P. Singhal (supra). He further contends that the power under Article 310 also encompasses the power to dismiss an employee or officer for misconduct and Article 311 is inapplicable in respect of an employee or officer of the armed forces. It is further submitted that in case of armed forces scrutiny of an order passed under Article 310 would neither warrant an enquiry as to the foundation of the order nor an enquiry as to whether the order is in the nature of punishment. Therefore, he submits that the necessary corollary thereof would be that the competent authority is also free to abandon any statutory procedure at any stage and take resort to the constitutional power under Article 310 by the President to terminate the services of an employee/officer of the armed forces. The ambit of such power cannot be circumscribed with reference to the concepts that govern the exercise of the power in relation to civilian employees/officers.

23. Learned Additional Solicitor General put reliance on Chief of Army Staff vs. Major Dharam Pal Kukrety, (1985) 2 SCC 412 where this Court has also upheld the competent authority's power to switch over to its power under Section 18 of the Army Act upon abandonment of the GCM proceedings against its employees/officers. The authorities are competent to take recourse to their statutory power under Section 19 in a case where the court martial exercise initiated by them becomes futile. It cannot be contended by the officer that where alternative powers under the statute can be resorted to in such situations the authority cannot resort to its constitutional power under Article 310 but pass an order of termination against the officer of the Army. Such provision of the statutory power including Section 19 of the Army Act can be said to be subject to the limitations of the scheme of the Army Act. Power under Article 310, which is constitutional power, is wider and certainly cannot be subjected to the constraints flowing from the scheme of the Army Act. It is further contended that this Court has examined the legality and validity of similar orders of termination in exercise of power under Article 310 of the Constitution by the President upholding the orders of termination passed in exercise of the aforesaid constitutional statutory provisions.

24. Shri P.P. Rao, learned senior counsel appearing for respondent Major S.P. Sharma, firstly brought to our notice the sequence of the events happened so far as this respondent is concerned. According to the learned counsel in spite of unblemished career and academic experience Major Sharma was arrested in 1979 and was lodged in a cell and was denied the basic facilities. The said

respondent represented to the Chief of Army Staff and Deputy Chief of Army Staff-GOC about the inhuman treatment. However, in 1979 a charge report was handed over to the respondent on 14.04.1979 for which he was arrested. It was alleged by the respondent that the army authorities released false, defamatory and fabricated press release stating that the respondent was the ring leader of the group with 15 others and was spying for Pakistan, having received huge sum in Indian currency for passing of information to Pakistan about the Indian Army. A second charge report was handed over to the respondent. Later on a summary of evidence was commenced on the basis of false allegation.

Mr. Rao, then contended that about 27 prosecution witnesses were examined and all of them spoke about his honesty and integrity and uprightness. Learned senior counsel submitted that when the charges against the present respondent were not substantiated he was released from arrest and suspended from duties. He was granted leave and after that he was recalled for duty and an order of dismissal dated 11.01.1980 was served and handed over to the respondent. Subsequently, by a corrigendum the order of dismissal of the respondent was substituted by an order of termination.

25. Mr. Rao, has not disputed the fact that the said respondent Major S.P. Sharma filed a writ petition being W.P. No.418 of 1980 challenging the order of dismissal dated 11.01.1980. The said writ petition was dismissed by a Division Bench of the Delhi High Court and against the said order the respondent preferred a Special Leave Petition before this Court being 7225 of 1980 which was also dismissed. When the order of dismissal attained finality, the respondent was served with a show cause notice as to why a cut-off 5% in the retirement gratuity and Death-Cum-Retirement Gratuity be not imposed as his service was not satisfactory. The respondent Sharma again challenged the said notice by filing a writ petition in the High Court being W.P. No.1643 of 1982. In the said Writ Petition the respondent also challenged the order dated 03.03.1980 by which the dismissal was substituted by an order of termination. The said writ petition was dismissed by the High Court on 22.03.1985 holding that the said order of termination is a termination simpliciter without being any stigma attached. The said order was challenged by the respondent by filing LPA No.77 of 1993. The matter then travelled to a Full Bench and finally concluded by the impugned order passed by the Division Bench of the Delhi High Court.

26. Mr. P.P. Rao, learned senior counsel advanced his argument on the points formulated by this Court and submitted that the second writ petition cannot, at any stretch of imagination, be held to be barred by the principles of res judicata. Learned counsel further submitted that by issuing an order of termination in place of dismissal, the entire finding recorded by the Court while considering the order of dismissal got washed off, hence there can be no res judicata.

27. Mr. Rao then drew our attention to the counter affidavit filed by the appellant Union of India before the High Court and submitted that if the offence was so grave then the respondent should have been punished instead of dismissal from service.

28. Mr. Rao vehemently argued by giving reference to the finding recorded by the High Court that non-production of records and the materials which are the basis for passing the order of termination is wholly illegal, arbitrary and unjustified. He reiterated that for the non- production of materials

and records in spite of being directed by the Court, adverse inference has to be drawn. According to the learned senior counsel, withholding of documents by the constitutional authority and the Government is a serious matter and, therefore, the High Court has rightly held the order of termination bad in law. In this regard learned counsel referred and relied upon the decisions of this Court in Gopal Krishnaji Ketkar vs. Mahomed Haji Latif & Ors. 1968 (3) SCR 862 and Ghaio Mall & Sons vs. State of Delhi & Ors., 1959 SCR 1424.

29. On the question of doctrine of pleasure, Mr. Rao firstly contended that the constitutional provisions contained in Article 309, 310 and 311 are subject to Article 14 of the Constitution. According to the learned counsel, Article 14, 15 and 21 constitute the core values and such right cannot be taken away on the plea of doctrine of pleasure. In this connection he relied on I.R. Coelho vs. State of Tamil Nadu, (2007) 2 SCC 1.

30. Mr. Rao then contended that Article 33 of the Constitution is in the nature of exception but it does not abrogate the fundamental rights. In other words, Article 33 does not speak about the basic structure of the Constitution. Learned counsel relied upon the decision of this Court in B.P. Singhal vs. U.O.I., (2010) 6 SCC 331.

31. Mr. Rao then contended that Article 33 in any event shall be given restricted interpretation for the reason that any law which restricts the fundamental rights shall be strictly interpreted. In this connection learned counsel referred to (1974) 1 SCC 645: Bhut Nath Mete vs. State of West Bengal. Mr. Rao addressed on legal malice and malice in law and referred a decision of this Court in Ravi Yashwant Bhoir vs. District Collector, Raigad & Ors., (2012) 4 SCC 407.

32. Mr. Rao submitted that only notings were produced before the High Court but the material on the basis of which opinion was formed was not produced. The detailed summary of evidence, different memos and other documents produced in the court martial proceeding were also not produced before the High Court. Learned counsel submitted that those notings produced before the High Court are not material, rather advisory material. Learned counsel referred to some of the paragraphs of the judgment rendered in S.R. Bommai and Ors. vs. Union of India and Ors., (1994) 3 SCC 1.

Learned counsel lastly submitted that although 5% cut in gratuity has been withdrawn by the appellant, the termination has to be held as bad.

33. Mr. Deepak Bhattacharya, learned counsel appearing on behalf of Major Ajwani in C.A. No.2953 of 2001, firstly submitted that the order of termination under Section 18 of the Army Act is a colourable exercise of power which is arbitrary, capricious and unreasonable. Learned counsel submitted that the pleasure doctrine is the residual executive power under Section 53 of the Constitution and hence amenable to judicial review to ensure that the same follows the satisfaction of the President after due application of mind and without any arbitrary, capricious and un-reasonable exercise of power. According to the learned counsel the respondent Major Ajwani was arrested and kept in solitary confinement without being informed of any reason for the same and, thereafter, criminal proceedings were initiated against him. It was contended that the criminal

proceedings against him was abandoned without informing him any reason for the same and finally he was illegally terminated under Section 18 of the Army Act.

34. On the question of res judicata, learned counsel submitted that there is no pleading of res judicata ever raised by the appellant. However, learned counsel adopted the argument advanced by Mr. P.P. Rao on the question of res judicata.

35. Mrs. Kiran Suri, learned counsel appearing for Capt. Arun Sharma and Capt. J.S. Yadav in C.A.No.2954 of 2001 and C.A.No. 2957 of 2001, firstly submitted that there is no decision on merit in the earlier writ petition and, therefore, the question of application of res judicata does not arise. The writ petition was dismissed since the pleasure doctrine was invoked and it is open to judicial review. Learned counsel relied upon the decision of this Court in Mathura Prasad Bajoo Jaiswal vs. Dossibai N.B. Jeejeebhoy (1970) 1 SCC 613; Supreme Court Employees' Welfare Association vs. Union of India and Anr. (1989) 4 SCC 187; Isabella Johnson (Smt.) vs. M.A. Susai(dead) by LRs. (1991) 1 SCC 494 and Kishan Lal vs. State of J&K (1994) 4 SCC 422. Learned counsel then contended that the issue involved in the later proceedings was not an issue in the earlier proceedings inasmuch as the later writ petition was filed challenging the subsequent order converting the order of dismissal to order of termination and also a notification as to cut of gratuity.

36. Mrs. Suri then submitted that the order in the first proceeding is an order which has been the result of suppression of documents/facts by the appellant when these facts/documents were only within the knowledge of the appellant. Hence suppression of facts and documents would not entitle the appellant to raise the technical plea of res judicata and to take advantage of the same. It was contended that the appellant is under the public duty to disclose the true facts to the court which has not been done and it will amount to obtaining the order by fraud.

37. On the issue of doctrine of pleasure Mrs. Suri submitted that exercise of doctrine of pleasure in the absence of any material evidence against the respondent and non-production of relevant records of these officers render the order of termination as illegal and invalid. Learned counsel submitted that the justiciability of an action by the executive government is open to challenge on the ground of malafide and also that the formation of opinion is on irrelevant material. Learned counsel in this regard referred to a decision of this Court in the case of B.P. Singhal (supra) and Jay Laxmi Salt Works (P) Ltd. vs. State of Gujarat (1994) 4 SCC 1. Lastly, it was contended that the President has been misled without producing the relevant material and on the basis of false and misleading noting, order was obtained which amount to fraud and legal malafide.

38. Mr. A.K. Panda, learned senior counsel appearing on behalf of respondent Capt. V.K. Diwan in C.A. No.2956 of 2001, made his submission with regard to the interpretation of Articles 309, 310 and 311 of the Constitution. According to the learned counsel Article 310 is not controlled by any legislation, on the contrary it is contended that Article 310 is subject to Article 309 or 311 of the Constitution. It was contended that the respondent would have been exonerated had the court-martial proceedings been continued. But just to avoid court martial the appellant took recourse to terminate the services by applying the 'pleasure' doctrine. On the point of res judicata learned counsel relied upon the decision in the case of V. Rajeshwari (Smt) vs. T.C. Saravanabava,

(2004) 1 SCC 551 and Maneka Gandhi vs. Union of India & another, (1978) 1 SCC 248.

39. Mr. Panda, learned senior counsel further contended that in spite of the several opportunities given by the Delhi High Court, the appellants failed to produce any material against the present respondents to satisfy the Court that the termination was justified. Learned counsel submitted that the High Court has carefully analysed all the facts of the case and recorded a finding that the termination was wholly malafide and devoid of any substance.

40. Mr. Kameshwar Gumber, learned counsel appearing on behalf of Ex.Major R.K. Midha (now deceased) in C.A. No. 2952 of 2009, at the very outset submitted that although the respondent is dead now, the instant appeal is contested only with an object to restore the honour and to remove the stigma cast on him and the family. Learned counsel, however, admitted that the family of the deceased respondent has been getting all pensionary benefits.

41. Ms. Amrita Sanghi, learned counsel appearing for the respondent in C.A. No.2955 of 2001 on the issue of res judicata, firstly contended that the earlier writ petition filed by the respondent challenging the order of dismissal was dismissed up to this Court without going into the merit of the case and the issue of malafide was not discussed. It was contended that the second writ petition challenging the order of termination and the show cause notice for deducting 5% of the gratuity was on the basis of a fresh cause of action inasmuch as the dismissal of writ petition up to this Court put an end to the proceedings of dismissal until the Government came out with the order of termination with ulterior motives. Learned counsel then contended that this Court in the order dated 17.11.1994 in Special Leave Petition agreed with the Full Bench and the matter was sent back to the High Court for decision on merit. It was for the first time the appellant-Union of India made out a case that petitioners had been caught doing espionage activity and thus considered a security suspect. Adopting the argument of Mr. P.P. Rao, learned senior counsel submitted that Article 33 of the Constitution does not contemplate restricting or abrogating the basic structure of the Constitution or the core values of the Constitution.

42. First of all, we shall deal with the following important points formulated by this Court referred hereinabove i.e.

a) Whether the exercise of doctrine of pleasure under Section 18 of the Army Act read with Article 310 of the Constitution in absence of any material evidence against the respondent- officer and the non production of relevant records/files of these officers rendered the order of termination as illegal and invalid?

b) Whether the order of termination is arbitrary, capricious, unreasonable and violative of Articles 14,16,19 and 21 of the Constitution of India.

c) xxxxxxxx

d) Whether the order of termination passed by the first appellant in absence of material evidence and improper exercise of power by the first appellant amount to fraud being played on the

respondent officers and are vitiated in the law on account of legal malafides and legal malice?

43. All these three points are interconnected and, therefore, will be discussed together. Admittedly, the Division Bench while hearing the matter called for the relevant records from the appellant and same were produced in the Court. The Division Bench took notice of those files and observed:-

> "55. The respondents had submitted for our perusal four thin files without proper pagination and indexing.
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> 56. From a reading of the files one could see that the proposal had come from the Army Headquarters
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> Directorate of Military Intelligence for termination of services of certain officers under Section 18 of the Army act, 1950 and that was accepted by the concerned Ministry. The circumstances under which the Directorate Military Intelligence formed the opinion has not been disclosed. A single sheet file has been submitted to show that on 17.12.1980 there was a review of the decision taken earlier and it appears from a note typed out without any signature of any authority, that the very Director of the Military Intelligence who proposed action have been a party to the review meeting. From the records produced no authority can come to any conclusion on the decision to be taken by the authorities concerned for terminating service of the officers. We wanted to satisfy ourselves about the basis on which the action was proposed by the Directorate Military Intelligence. Apparently, the Directorate of Military Intelligence though that they are not obliged in law to produce any record before the Court and the decision of the Directorate Military Intelligence cannot be scrutinised by this Court.
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> xxxxx
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> xxxxx
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> 129. It has now become absolutely necessary to
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> Notice the records produced by the respondents. When one the learned addl. Solicitor General submitted that though the respondents had claimed privilege they had no objection to place all the records for the perusal of this Court to satisfy whether the respondents had acted in accordance with law. It is a little disturbing to note that respondents instead of producing the relevant records pertaining to the officers involved in the cases had just produced three flaps. No numbers are given. On flap contains three sheets. The first sheet is mentioned as Index sheet. Index sheet itself mentions that there is only one page in the file. The other sheet contains a note which states that all the cases have been thoroughly reviewed at Army Headquarters. The other sheet shows that the matter was discussed in a meeting held in the Home Secretary's Room on 1.10.1980.

> 130. The next flap is empty. The same note, as found in the earlier flap, is found pinned on to the flap itself. In the third flap there are 15 sheets. The first sheet is typed as Index Sheet. It states that "this file contains a total of 12 pages". When there are 14 sheets besides the Index Sheet and in some sheets both sides are typed. Therefore, the flap contains 12 pages is not accurate. These sheets also do not give us any relevant material to form an opinion about the action taken by the respondents. Therefore, - the irresistible conclusion is that the respondents have suppressed the material records from this Court and are not willing to part with or produce the same for perusal of the Court. It cannot be pretended by the respondents that there are no other files available with them except the three flaps produced before this Court, as in the written notes submitted by the learned Addl. Solicitor General reference is made to file No. 9, 10, 18, 1, 2 and pages of the files are also given in the written notes, some files containing more than 600 pages."

44. On the basis of the aforesaid findings, the Division Bench held that the respondent-appellant has not placed any material justifying their action. The Court has, therefore, concluded its findings in para 168 of the judgment which is reproduced hereunder:-

> "168. The whole of the bundle of facts in the instant batch of cases would appear to be a pot boiler to project the image of the Military Intelligence Directorate, leaving us at the end with the cliff hanger without any iota of materials to form an opinion about the involvement of the appellants and the petitioners. They have chosen not to produce the entire records without realising their constitutional obligation. Just to make an apology they have produced some flaps as if they constitute all the records in the case. In a system where rule of law reigns supreme the deportment of the respondents cannot at all be tolerated. Justice Holmes of the Supreme Court of the United States of America Speaking for the Supreme Court in Wisconsin vs. Illinois, 281 US 179.
>
> "The State "must... yield to an authority that is paramount to the State".

45. Mr. Paras Kuhad, learned Additional Solicitor General assailed the aforesaid finding as being incorrect and submitted that all the relevant materials were produced before the Court and after hearing was concluded, all those original papers were returned back to the appellant. The appellant had submitted the photocopy of all the relevant material.

46. During the course of hearing, Learned Additional Solicitor General produced before us all those files and documents which were produced before the High Court. The Additional Solicitor General also produced the link file as directed by us.

47. Mrs. Kiran Suri, learned senior counsel appearing in one of the Civil Appeal No.2954 of 2001, submitted a note wherein she has mentioned that on 3.1.2001 the Advocate received back the following original file from the High Court as per the receipt produced by the appellant in L.P.A. No.43 of 1987 and other connected matters.

i) GCM proceedings in respect of Capt. A.K. Rana IC 23440H (Page 1-615)

ii) GCM Proceedings in respect of Capt R.S. Rathaur IC 23720 N (Page 1-

577)

iii) File containing analysis of Espionage cases in the respect of all the Appellants.

(Page 1-13)

iv) Brief of Samba spy Cases (Page 1-6)

v) File showing approval of Chief of Army Staff in respect of all cases. (Page 1-9)
vi) File showing approval of Govt, of India in respect of all the cases. (Page 1-12)
vii) File showing note from PMO's Office regarding review note of review at office of Home Secretary (Page 1-2)

48. We have minutely perused all the records including notings along with link file produced by the Additional Solicitor General. On perusal and scrutiny of all those materials we are of the view that the High Court has committed grave error of record and there is total non- application of mind in recording the aforesaid findings. From the record, it is evidently clear that the inquiry against these respondents were initiated by the Army Headquarters, Director of Military Intelligence. The file traveled from Chief of the Army Staff to Ministry of Defence with the strong recommendation to terminate the services of the respondents in the interest of security of the State as there was some material to show that these officers were involved in espionage cases. The recommendation for termination of their services up to the Defence Ministry was finally approved by the Prime Minister who also happened to be the Defence Minister of India at that time. The file was then placed before the President of India who in exercise of the constitutional power terminated the services of these officers.

49. The link file further reveals that confessional statements of Captain Rana and other officers were also recorded and strong prima facie case was found relating to the involvement of these officers in espionage activities and sharing information with the Pakistani intruders.

50. On assessing the materials contained in link file and the notings showing the suggestions and recommendations up to the level of defence ministry and the Prime Minister, it cannot be held that the impugned order of termination of services have been passed without any material available on record. There is no dispute that order of termination passed against the Army personnel in exercise of 'pleasure doctrine', is subject to judicial review, but while exercising judicial review, this court cannot substitute its own conclusion on the basis of materials on record. The Court exercising the power of judicial review has certain limitations, particularly in the cases of this nature. The safety

and security of the nation is above all/everything. When the President in exercise of its constitutional power terminates the services of the Army officers, whose tenure of services are at the pleasure of the President and such termination is based on materials on record, then this court in exercise of powers of judicial review should be slow in interfering with such pleasure of President exercising constitutional power. In a constitutional set up, when office is held during the pleasure of the President, it means that the officer can be removed by the Authority on whose pleasure he holds office without assigning any reason. The Authority is not obliged to assign any reason or disclose any cause for the removal.

51. Thus, it is not a case where the decisions to terminate the services of these officers were taken under the 'pleasure doctrine' without any material against the officers. On the contrary, as noticed above, charges were leveled that these officers were involved in certain espionage activities.

52. In the instant case, on perusal of the link file it is further revealed that detailed investigation was conducted and all evidence recorded were examined by the Intelligence Department and finally the Authority came to the finding that retention of these officers were not expedient in the interest and security of the State. In our view, sufficiency of ground cannot be questioned, particularly in a case where termination order is issued by the President under the pleasure doctrine.

53. A Constitution Bench of this Court in the case of the State of Rajasthan & Ors. vs. Union of India & Ors. 1977 (3) SCC 592, while considering a constitutional power of the President under Article 356 of the Constitution observed:-

> "81. A challenge to the exercise of power to issue a proclamation under Article 352 of the Constitution would be even more difficult to entertain than to one under Article 356(1) as all these considerations would then arise which Courts take into account when the Executive, which alone can have all the necessary information and means to judge such an issue, tells Courts that the nation is faced with a grave national emergency during which its very existence or stability may be at stake. That was the principle which governed the decision of the House of Lords in Liversidge v. Anderson. The principle is summed up in the salutary maxim: Salus Populi Supreme Lex. And it was that principle which this Court, deprived of the power to examine or question any materials on which such declarations may be based, acted in Additional District Magistrate, Jabalpur v. Shivakant Shukla We need not go so far as that when we have before us only a proclamation under Article 356(1).
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> xxxxxxxx xxxxxxxx
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> 87. Courts have consistently held issues raising questions of mere sufficiency of grounds of executive action, such as the one under Article 356(1) no doubt is to be non-justiciable. The amended Article 356(5) of the Constitution indicates that the Constitution-makers did not want such an issue raising a mere question of sufficiency of grounds to be justiciable. To the same effect are the provisions contained in Articles 352(5), 360(5). Similarly, Articles 123(4), 213(4), 239 B(4) bar the

jurisdiction of courts to examine matters which lie within the executive discretion. Such discretion is governed by a large element of policy which is not amenable to the jurisdiction of courts except in cases of patent or indubitable malafides or excess of power. Its exercise rests on materials which are not examinable by courts. Indeed, it is difficult to imagine how the grounds of action under Article 356(1) could be examined when Article 74(2) lays down that "the question whether any, and if so, what advice was tendered by the Ministers to the President, shall not be inquired into in any court".

54. In order to appreciate the application of constitutional provisions in respect of defence services, it would be appropriate to quote Articles 309, 310 and 311 of the Constitution. These articles read as under:-

"Article 309:- Recruitment and conditions of service of persons serving the Union or a State Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State: Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act." Article 310:- Tenure of office of persons serving the Union or a State (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period, that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post." Article 311:- Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State (1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil

post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank ins satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry;

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

55. Article 309 empowers the appropriate legislature to regulate the recruitment and conditions of services of persons appointed in public services and posts in connection with the affairs of the Union or the State. But Article 309 is subject to the provisions of the Constitution. Hence, the Rules and Regulations made relating to the conditions of service are subject to Articles 310 and 311 of the Constitution. The Proviso to Article 309 confers powers upon the President in case of services and posts in connection with the affairs of the Union and upon the Governor of a State in connection with the services and posts connected with the affairs of the State to make rules regulating the recruitment and the conditions of services of the persons appointed. The service condition shall be regulated according to such rules.

56. Article 310 provides that every person, who is a member of the defence service or of a civil service of the Union or All India Service, or any civil or defence force shall hold such posts during the pleasure of the President. Similarly, every person who is a Member of the Civil Services of a State or holds any civil post under a State, holds office during the pleasure of the Governor of the State. It is worth to mention here that the opening word of Article 310 "Except as expressly provided by this Constitution" makes it clear that a Government servant holds the office during the pleasure of the President or the Governor except as expressly provided by the Constitution.

57. From bare perusal of the provisions contained in Article 311 of the Constitution, it is manifestly clear that clauses (i) and (ii) of Article 311 impose restrictions upon the exercise of power by the President or the Governor of the State of his pleasure under Article 310 (1) of the Constitution. Article 311 makes it clear that any person who is a member of civil services of the Union or the State or holds civil posts under the Union or a State shall not be removed or dismissed from service by an authority subordinate to that by which he was appointed. Further, clause (ii) of Article 311 mandates that such removal or dismissal or reduction in rank of the members of the civil services of the Union or the State shall be only after giving reasonable opportunity of hearing in respect of the charges leveled against him. However, proviso to Article 311 (2) makes it clear that this clause shall not apply inter-alia where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry.

58. The expression "except as otherwise provided in the Constitution" as contained in Article 310 (1) means this Article is subject only to the express provision made in the Constitution. No provision in the statute can curtail the provisions of Article 310 of the Constitution. At this juncture, I would like to refer Sections 18 and 19 of the Army Act as under:-

> "18. Tenure of service under the Act – Every person subject to this Act shall hold office during the pleasure of the President.
>
> 19. Termination of service by Central Government. Subject to the provisions of this Act and the rules and regulations made there under the Central Government may dismiss, or remove from the service, any person subject to this Act.

59. The aforesaid two Sections i.e. 18 and 19 are distinct and apply in two different stages. Section 18 speaks about the absolute discretion of the President exercising pleasure doctrine. No provisions in the Army Act curtail, control or limit the power contained in Article 310(1) of the Constitution. Article 309 enables the legislature or executive to make any law, rule or regulation with regard to condition of services without impinging upon the overriding power recognized under Article 310 of the Constitution. A Constitution Bench of this Court in State of Uttar Pradesh and others vs. Babu Ram Upadhayay, (1961) 2 SCR 679, held that the Constitution practically incorporated the provisions of Sections 240 and 241 of the Government of India Act, 1935 in Articles 309 and 310 of the Constitution. But the Constitution has not made "the tenure of pleasure" subject to any law made by the legislature. On the other hand, Article 309 is expressly made subject to the provisions of Article 310 which provides for pleasure doctrine. Hence, it can safely be concluded that the Army Act cannot in any way override or stand higher than Constitutional provisions contained in Article 309 and consequently no provision of the Army Act could cut down the pleasure tenure in Article 310 of the Constitution. In another Constitution Bench Judgment of this Court in Moti Ram Deka case (1964) 5 SCR, 683, their Lordships observed that Article 309 cannot impair or affect the pleasure of the President conferred by Article 310. There is no doubt, Article 309 has to be read subject to Articles 310 and 311 and Article 310 has to be read subject to Article 311.

60. In the case of B.P. Singhal (supra), a Constitution Bench of this Court has elaborately discussed the application and object of the doctrine of pleasure and considered most of the earlier decisions

rendered by this Court. Some of the paragraphs are worth to be quoted herein below:-

> "22. There is a distinction between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by the rule of law. In a nineteenth century feudal set-up unfettered power and discretion of the Crown was not an alien concept. However, in a democracy governed by rule of law, where arbitrariness in any form is eschewed, no Government or authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for the public good.
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> 33. The doctrine of pleasure as originally envisaged in England was a prerogative power which was unfettered. It meant that the holder of an office under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. But where the rule of law prevails, there is nothing like unfettered discretion or unaccountable action. The degree of need for reason may vary. The degree of scrutiny during judicial review may vary. But the need for reason exists. As a result when the Constitution of India provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the "fundamentals of constitutionalism". Therefore in a constitutional set-up, when an office is held during the pleasure of any authority, and if no limitations or restrictions are placed on the "at pleasure" doctrine, it means that the holder of the office can be removed by the authority at whose pleasure he holds office, at any time, without notice and without assigning any cause.
>
> 34. The doctrine of pleasure, however, is not a licence to act with unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure. In other words, "at pleasure" doctrine enables the removal of a person holding office at the pleasure of an authority, summarily, without any obligation to give any notice or hearing to the person removed, and without any obligation to assign any reasons or disclose any cause for the removal, or withdrawal of pleasure. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can only be for valid reasons."

61. In fact the 'pleasure doctrine' is a Constitutional necessity, for the reasons that the difficulty in dismissing those servants whose continuance in office is detrimental to the State would, in case necessity arises to prove some offence to the satisfaction of the court, be such as to seriously impede the working of public service.

62. There is no dispute with regard to the legal proposition that illegality, irrationality and procedural non-compliance are grounds on which judicial review is permissible. But the question is

as to the ambit of judicial review. This court in Civil Appeal filed by the respondents challenging the order of termination passed under Section 18 of the Army Act observed that the order of termination can be challenged only on the ground of malafide. It was further observed that it is for the person alleging malafide to make out a prima facie case. For better appreciation, the order passed by this Court is quoted herein below.

"1. Special leave granted.

2. Heard both sides. According to us, all that the impugned judgment holds is that an order passed under Section 18 of the Army Act can be challenged on the ground of malafides. This statement of law is unexceptional. However, it is for the person who challenges it on the ground of malafides, to make out a prima facie case in that behalf. It is only if he discharges the said burden, that the Government is called upon to show that it is not passed in the malafide exercise of its powers. While doing so, the Government is not precluded from claiming the privilege in respect of the material which may be in its possession and on the basis of which the order is passed. The Government may also choose to show the material only to the court. With regard to the pleadings in respect of the challenge to the order on the ground of malafides, no particular formula can be laid down. The pleadings will depend upon the facts of each case.

3. The appellants are permitted to withdraw from the appeal-memo, pp. 221 to 232 which according to the learned Solicitor General have been annexed to the memo inadvertently.

4. The appeals are disposed of accordingly with no order as to costs."

63. The Full Bench of the Delhi High Court while answering the reference has observed in paragraphs 37 and 38 which is quoted hereunder:-

> "37. Undoubtedly, the power under Section 18 cannot be ordinarily invoked for dealing with cases of misconduct and the other provisions in the Army Act dealing with the various kinds of misconduct have to be invoked for dealing with such cases. This power under Section 18 must be used sparingly only when it is expedient to deal with such cases under the other provisions of the Army Act. In view of the sensitive nature of cases involving security of State that may come up in the case of armed forces it cannot be said that in no case of misconduct section 18 can be invoked. There may be cases where security of State is involved and it may not be expedient to continue with the inquiry provided under the Army Act for dealing with misconduct. It appears that it is specifically for this reason that section 18 has been incorporated in the Army Act despite the fact that Article 310 of the Constitution already provided that tenure of an Army personnel would be at the pleasure of the President. This is a power given to the Supreme Commander of the Armed Forces, i.e. the President of India to be invoked in such cases where inquiry in other form is not advisable and is inexpedient. This power is similar to second proviso (a), (b) &

(c) of Article 311 (2) which provides for dispensing with the inquiry in certain cases even in the case of civil service. The safeguard provided for a government servant by clause (2) of Article 311 is taken away when second proviso to Article 311(2) becomes applicable. The Supreme Court in Tulsi Ram Patel's case (supra) observed that "the second proviso has been mentioned in the Constitution as a matter of public policy and in public interest for public good." The Supreme Court further observed that much as it may seem harsh and oppressive to a government servant, the court must repel the temptation to be carried away by feelings of commiseration and sympathy in such cases. Therefore, even if an order under Section 18 for removing a defense personnel for misconduct is passed if it is found that there were sufficient reasons for resorting to Section 18, the same would not be open to challenge on merits. The Supreme Court in Chief of Army Staff & Anr. v. Major Dharam Pal Kukrety, 1985 CriLJ 913, has held that even after Court Martial proceedings had been concluded, the finding of the general court martial having not been confirmed by the Chief of Army Staff, further retention of the Army personnel being undesirable, the Chief of Army Staff could resort to Rule 14, indicating thereby that even after resorting to court martial proceedings if it is found inexpedient to continue with the Court Martial proceedings it was open to resort to proceedings under Section 19 of the Army Act. The Supreme Court observed:

"The crucial question, therefore, is whether the Central Government or the Chief of the Army Staff can have resort to Rule 14 of the Army Rules. Though it is open to the Central Government or the Chief of the Army Staff to have recourse to that rule in the first instance without directing trial by a court-martial of the concerned officer, there is no provision in the Army Act or in Rule 14 or any of the other rules of the Army Rules which prohibits the Central Government or the Chief of the Army Staff from resorting in such a case to Rule 14. Can it, however, be said that in such a case a trial by a court- martial is inexpedient or impracticable? The Shorter Oxford English Dictionary, Third Edition, defines the word 'inexpedient' as meaning "not expedient; disadvantageous in the circumstances, inadvisable, impolite". The same dictionary defines 'expedient' inter alias as meaning "advantageous; fit, proper, or suitable to the circumstances of the case". Webster's Third New International Dictionary also defines the term 'expedient' inter alias as meaning 'characterized by suitability, practicality, and efficiency in achieving a particular end; fit, proper or advantageous under the circumstances."

38. That being the position even after resorting to court martial proceedings if it is found inexpedient to continue with the same it is always open to the respondent to resort to either section 18 or 19 of the Army Act."

64. Indisputably, defence personnel fall under the category where President has absolute pleasure to discontinue the services. Further in our considered opinion as far as security is concerned, the safeguard available to civil servants under Article 311 is not available to defence personnel as judicial review is very limited. In cases where continuance of Army officers in service is not practicable for

security purposes and there is loss of confidence and potential risk to the security issue then such officers can be removed under the pleasure doctrine. As a matter of fact, Section 18 of the Army Act is in consonance with the constitutional powers conferred on the President empowering the President to terminate the services on the basis of material brought to his notice. In such cases, the Army officers are not entitled to claim an opportunity of hearing. In our considered opinion the pleasure doctrine can be invoked by the President at any stage of enquiry on being satisfied that continuance of any officer is not in the interest of and security of the State. It is therefore not a camouflage as urged by the respondents.

65. The next question that arises for consideration is as to whether the order of dismissal of the earlier writ petitions and confirmation of the same by this court amounts to "Doctrine of Merger" and operates as res judicata against the present appeals. As discussed above, the services of the present respondents along with other permanent commissioned officers of the Indian Army were terminated, since they were found suspected to be involved in espionage activities. Aggrieved by the termination order, the present respondents, except Major R.K. Midha and Major N.R. Ajwani, filed writ petitions being C.W.P. Nos. 418, 419, 421, 424 and 425 of 1980 before the Delhi High Court. These respondents challenged the said termination order as being illegal and malafide. The High Court vide order dated 21.4.1980 dismissed the writ petitions. The Order dated 21.4.1980 reads as under:-

> "Dismissal from service is under Section 18 of the Army act which is complimentary to Article 310 of the Constitution. This means that the Officer held the tenure during the pleasure of the President. It has been contended that it was not in accordance with the provisions of the Act and that due procedure for dismissal for misconduct has not been followed. The impugned order does not say whether the dismissal is for misconduct or otherwise. It only sets out the pleasure doctrine. In this view of the matter, no case made out for interference. Dismissed."

66. Respondents then preferred special leave petitions against the aforesaid order dated 21.4.1980 being SLP Nos. 7225 and 7233 of 1980. A three-Judge Bench of this Court dismissed the special leave petition by order dated 1.9.1980. In the year 1982, the show cause notices dated 10.5.1982 were issued to the officers whose services were terminated informing them that their services were not considered satisfactory by the Pensionary Authority and, therefore, why not 5% of the gratuity or pension be deducted. On receipt of the said show cause notices, eight of the officers, whose services were terminated initiated the second round of litigation by filing writ petitions being C.W.P Nos. 1643-1646 of 1982, 1777 of 1982, 804 of 1982, 1666 of 1982 praying not only to quash the show cause notices, but also to quash the order of termination of their services. All those writ petitions were finally heard and came to be dismissed by the Delhi High Court vide judgment dated 22.3.1985. Aggrieved by the said order, the respondents filed Letters Patent Appeal before the Delhi High Court. The Division Bench of the High Court after hearing the appeal formulated questions of law and referred the same to the Full Bench by order dated 15.5.1991. The question of law framed by the Division Bench was "whether the order of termination passed by and in the name of President under Section 18 of the Army Act read with Article 310 of the Constitution invoking doctrine of pleasure of the President be challenged on the ground that it is camouflage and as such is violative

of principles of natural justice and the fundamental rights guaranteed under Article 14 of the Constitution?".

67. From the above, it is clear that the Union of India has been consistently contesting these petitions and this Court has found substance in the argument of the appellants that the High Court while delivering the judgment dated 21.12.2000 overlooked this important legal aspect of finality coupled with the doctrine of res judicata. In our considered opinion, this aspect cannot be ignored and the issue of fact cannot be re-opened in the instant case as well as has been done under the impugned judgment by relying on certain material which the High Court described to have been fraudulently withheld from the courts. In our opinion, fraud is not a term or ornament nor can it be presumed to exist on the basis of a mere inference on some alleged material that is stated to have been discovered later on. The discovery of a reinvestigated fact could have been a ground of review in the same proceedings, but the same cannot be in our opinion made the basis for re-opening the issue through a fresh round of litigation. A fresh writ petition or Letters Patent Appeal which is in continuation of a writ petition cannot be filed collaterally to set aside the judgment of the same High Court rendered in earlier round of litigation upholding the termination order. In our view, the High Court has committed a manifest error by not lawfully defining the scope of the fresh round of litigation on the principles of res judicata and doctrine of finality. To establish fraud, it is the material available which may lead to the conclusion that the failure to produce the material was deliberate or suppressed or even otherwise occasioned a failure of justice. This also, can be attempted if legally permissible only in the said proceedings and not in a collateral challenge raised after the matter has been finally decided in the first round of litigation. It is to be noticed that the judgment which had become final in 1980 also included writ petition no.418 of 1980 filed by the respondent S.P. Sharma. Once, this Court had put a seal to the said litigation vide judgment dated 1.9.1980 then a second round of litigation by the same respondents including S.P. Sharma in writ petition no. 1643 of 1982 was misplaced.

68. The very genesis of an identical challenge relating to the same proceedings of termination on the pretext of a 5% cut in terminal benefits was impermissible apart from the attraction of the principle of merger. This aspect of finality, therefore, cannot be disturbed through a collateral challenge.

69. In Naresh Shridhar Mirajkar vs. State of Maharashtra & Anr. AIR 1967 SC 1, this Court by a majority decision laid down the law that when a Judge deals with the matter brought before him for his adjudication, he first decides the questions of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes up the matter before the appellate court.

70. A decision rendered by a competent court cannot be challenged in collateral proceedings for the reason that if it is permitted to do so there would be "confusion and chaos and the finality of proceedings would cease to have any meaning".

71. In the case of Mohd. Aslam vs. Union of India, AIR 1996 SC 1611, a writ petition under Article 32 of the Constitution was filed seeking reconsideration of the judgment rendered by this Court on the ground that the said judgment is incorrect. Rejecting the prayer, this Court held that Article 32 of the Constitution is not available to assail the correctness of the decision on merit or to claim its reconsideration.

72. In the case of Babu Singh Bains etc. versus Union of India and others etc., AIR 1997 SC 116, this Court reiterated the settled principal of law that once an order passed on merit by this Court exercising the power under Article 136 of the Constitution has become final no writ petition under Article 32 of the Constitution on the self-same issue is maintainable. The principle of constructive res judicata stands fast in his way in his way to raise the same contention once over.

73. In Khoday Distilleries Limited & Anr. vs. The Registrar General, Supreme Court of India, (1996) 3 SCC 114, this Court re-iterated the view as under:

> "In a case like the present, where in substance the challenge is to the correctness of a decision on merits after it has become final, there can be no question of invoking Article 32 of the Constitution to claim reconsideration of the decision on the basis of its effect in accordance with law. Frequent resort to the decision in Antulay (AIR 1988 SC 1531) in such situations is wholly misconceived and impels us to emphasis this fact."

74. In M. Nagabhushana vs. State of Karnataka & Ors., AIR 2011 SC 1113, this Court held that doctrine of res-judicata was not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. The main object of the doctrine is to promote a fair administration of justice and to prevent abuse of process of the court on the issues which have become final between the parties. The doctrine was based on two age old principles, namely, 'interest reipublicae ut sit finis litium' which means that it is in the interest of the State that there should be an end to litigation and the other principle is 'nemo debet bis vexari si constat curiae quod sit pro una et eadem causa' meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause.

75. Thus, the principle of finality of litigation is based on a sound firm principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end to litigation. The doctrine of res- judicata has been evolved to prevent such an anarchy.

76. In a country governed by the rule of law, finality of judgment is absolutely imperative and great sanctity is attached to the finality of the judgment and it is not permissible for the parties to reopen the concluded judgments of the court as it would not only tantamount to merely an abuse of the process of the court but would have far reaching adverse affect on the administration of justice. It would also nullify the doctrine of stare decisis a well established valuable principle of precedent which cannot be departed from unless there are compelling circumstances to do so. The judgments of the court and particularly the Apex Court of a country cannot and should not be unsettled lightly.

77. Precedent keeps the law predictable and the law declared by this Court, being the law of the land, is binding on all courts/tribunals and authorities in India in view of Article 141 of the Constitution. The judicial system "only works if someone is allowed to have the last word" and the last word so spoken is accepted and religiously followed. The doctrine of stare decisis promotes a certainty and consistency in judicial decisions and this helps in the development of the law. Besides providing guidelines for individuals as to what would be the consequences if he chooses the legal action, the doctrine promotes confidence of the people in the system of the judicial administration. Even otherwise it is an imperative necessity to avoid uncertainty, confusion. Judicial propriety and decorum demand that the law laid down by the highest Court of the land must be given effect to.

78. In Rupa Ashok Hurra v. Ashok Hurra & Anr., AIR 2002 SC 1771, this Court dealt with the issue and held that reconsideration of a judgment of this Court which has attained finality is not normally permissible. A decision upon a question of law rendered by this Court was conclusive and would bind the court in subsequent cases. The court cannot sit in appeal against its own judgment.

79. In Maganlal Chhaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay, AIR 1974 SC 2009, this Court held as under:

> "At the same time, it has to be borne in mind that certainty and continuity are essential ingredients of the rule of law. Certainty in law would be considerably eroded and suffer a serious setback if the highest court of the land readily overrules the view expressed by it in earlier cases, even though that view has held the field for a number of years. In quite a number of cases which come up before this Court, two views are possible, and simply because the Court considers that the view not taken by the Court in the earlier case was a better view of the matter would not justify' the overruling of the view. The law laid down by this Court is binding upon all courts in the country under Article 141 of the Constitution, and numerous cases all over the country are decided in accordance with the view taken by this Court. Many people arrange their affairs and large number of transactions also take place on the faith of the correctness of the view taken by this Court. It would create uncertainty, instability and confusion if the law propounded by this Court on the basis of which numerous cases have been decided and many transactions have taken place is held to be not the correct law. "

Thus, in view of above, it can be held that doctrine of finality has to be applied in a strict legal sense.

80. While dealing with the issue this court in Ambika Prasad Mishra v. State of U.P. & Anr., AIR 1980 SC 1762, held as under:

> "6. It is wise to remember that fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority 'merely because it was badly argued, inadequately considered and fallaciously reasoned'".

81. The view has been expressed by a three-Judge Bench of this Court in these very proceedings while dismissing the special leave petitions of Subhash Juneja and Harish Lal Singh vide order

dated 23.4.2003. This court applied the doctrine of finality of judgment and res-judicata and refused to reopen these very proceedings.

82. Mrs. Kiran Suri, learned counsel appearing for the respondent, put heavy reliance on a decision of this Court in the case of Mathura Prasad Bajoo Jaiswal & Ors. v. Dossibai N.B. Jeejeebhoy, (1970)1 SCC 613, for the proposition that question relating to the jurisdiction of a court cannot be deemed to have been finally determined by an erroneous decision of the court. Further by an erroneous decision if the court resumes jurisdiction which it does not possess under the Statute, the question cannot operate as res judicata between the same parties whether the cause of action in the subsequent litigation is same or otherwise. In our opinion, the aforesaid decision is of no help to the respondent for the simple reason that the facts and the law involved in the instant case and the earlier round of litigation are the same. In para 5 of the aforesaid judgment, this Court has laid down the principle, which reads as under:-

> "5. But the doctrine of res judicata belongs to the domain of procedure: it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby. A decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties: the "matter in issue" may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent Court is finally determined between the parties and cannot be re-opened between them in another proceeding. The previous decision on a matter in issue alone is res judicata: the reasons for the decision are not res judicata. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is res judicata. A previous decision on a matter in issue is a composite decision: the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.

83. In the case arising out of these very proceedings reported in Union of India & Ors. v. Ranbir Singh Rathaur & Ors., (2006) 11 SCC 696, this Court held:

a) That review of the earlier orders passed by this court was "impermissible": approach of the High Court of reopening the case was "erroneous"; the issue of maintainability of the petitions was of paramount importance:

b) The finding recorded by the High Court that the entire record was not produced by the Union of India was not factually correct;

c) To say that "justice stood at the higher pedestal" then the finality of litigation was not an answer enabling the court to reopen a finally decided case;

(d) Persons behind the false implication were not impleaded as parties; and

(e) Newspaper reports/statement made by any officer could not be considered as evidence.

84. Violation of Fundamental Rights guaranteed under the Constitution have to be protected, but at the same time, it is the duty of the court to ensure that the decisions rendered by the court are not overturned frequently, that too, when challenged collaterally as that was directly affecting the basic structure of the Constitution incorporating the power of judicial review of this Court. There is no doubt that this Court has an extensive power to correct an error or to review its decision but that cannot be done at the cost of doctrine of finality. An issue of law can be overruled later on, but a question of fact or, as in the present case, the dispute with regard to the termination of services cannot be reopened once it has been finally sealed in proceedings inter-se between the parties up to this Court way back in 1980.

85. The term ‘dismissal’ in the original order was substituted by the term ‘termination’ issuing the corrigendum to ratify a mistake committed while issuing the order. In fact, the competent authority had taken a decision only to terminate, and therefore it was found necessary to issue the corrigendum. However, in view of such substitution of word ‘dismissal’ by the term ‘termination’, does not tilt the balance in favour of the respondents. More so, as pointed out by Mr. Paras Kuhad, learned ASG that the proposed 5% deduction had been withdrawn, and therefore the issue did not survive.

86. Analysing entire facts of the case and the material produced in Court and upon an exhaustive consideration of the matter, we are of the definite opinion that the power of pleasure exercised by the President in terminating the services of the respondents does not suffer from any illegality, bias or malafide or based on any other extraneous ground, and the same cannot be challenged on the ground that it is a camouflage. As discussed above, the onus lay on the respondent- officers who alleged malafides. No credible evidence or material produced before the Court impels us to come to the conclusion that the order of termination is baseless or malafide.

87. For the reasons aforesaid, these appeals are allowed and the judgment and order passed by the Delhi High Court is set aside. Ordered accordingly. No costs.

.....J.

(Dr. B.S.

Chauhan) .....J.

(J.

Chelameswar) .....J.

(M.Y.

Eqbal) New Delhi, March 6, 2014.
