

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

OA NO. 483/2013 WITH OAs No.40/2015 to 44/2015

LT GEN (R) S.S. DAHIYAPetitioner
Versus
UOI & OrsRespondents

For petitioner : Mr RS Kalkal, Advocate
For respondents : Mr Anil Gautam, Advocate

WITH

OA NOS.40/2015

COL NAVAL BHUTANIPetitioner
Versus
UOI & OrsRespondents

For petitioner : Mr. S.S. Pandey, Advocate
For respondents : Mr Anil Gautam

WITH

OA NOS.41/2015

COL K.P. KUMARPetitioner
Versus
UOI & OrsRespondents

For petitioner : Mr. S.S. Pandey, Advocate
For respondents : Mr JS Yadav, Advocate

WITH

OA NOS.42/2015

COL RAKESH NARULAPetitioner
Versus
UOI & OrsRespondents

For petitioner : Mr. S.S. Pandey, Advocate
For respondents : Mr Ankur Chhibber, Advocate

WITH

OA NOS.43/2015

COL AJAY KR. DASS**Petitioner**
Versus

UOI & Ors

.....Respondents

For petitioner : Mr. SS Pandey, Advocate
For respondents : Mr Ankur Chhibber, Advocate

WITH

OA NOS.44/2015

COL SURESH KUMARPetitioner

Versus

UOI & OrsRespondents

For petitioner : Mr. SS Pandey, Advocate
For respondents : Mr Satya Sehrawat, Proxy for
Mr. Ajai Bhalla, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.

HON'BLE MR. JUSTICE SUNIL HALI (J), MEMBER

HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER

Dated: July 24, 2015

Following issues are for our consideration:-

1. Whether Army Personnel who have been permanently seconded to Defence Research & Development Organization (hereinafter referred to as "DRDO") or to the Director General Quality Assurance (DGQA) continued to be subject to Army Act, 1950 even after their permanent secondment?
2. Whether the subject matter in the OAs filed by the petitioners are the service matters as defined in Section 3(o) of the Armed Forces Tribunal Act, 2007?

1. The above issues came up for our consideration in view of the direction of Hon'ble Supreme Court given in the order dated 28.05.2014 passed in Civil appeal No.3879 of 2013 ***Union of India & Ors. Vs. Col G.S. Grewal***. In the case of Col G.S. Grewal, Col G.S. Grewal filed one OA 582/2010 before the Armed Forces Tribunal, Regional Bench, Chandigarh. Said OA 582/2010 was allowed by the Chandigarh Bench of the Tribunal after overruling the respondent, Union of India's objection regarding the jurisdiction of the Tribunal in entertaining the OA pertaining to the service related matter of permanently seconded officers, in the Director General Quality Assurances (DGQA), (a "Corps" as defined in Section 3(VI)), of the Army Act. The objection raised by the respondent-UOI was

overruled by the Chandigarh Bench of the Tribunal in spite of earlier judgment of the Principal Bench of the Tribunal dated 09.04.2010 rendered in TA 125/2010 ***Maj Gen S.B. Akali etc. Vs. UOI***, wherein the Principal Bench of the Tribunal held that the matter arising out of and in the cases governed by the Defence Research & Development Organization (DRDO) Rules, framed by the Office Memorandum dated 23.11.1979, the Tribunal cannot decide the issues relating to the selection of the officers in the DRDO as it is not a dispute falling under the definition of service matters, as defined under Section 3(o) of the AFT Act, 2007.

2. It will be necessary to give some back ground why the above issues have come up for consideration of the Larger Bench. One Maj Gen S.B. Akali filed a TA 125/2010 before the Armed Forces Tribunal, Principal Bench, New Delhi. Said S.B. Akali was initially commissioned in Indian Army in 1965 and was permanently seconded to DRDO. He was promoted to the Rank of Maj Gen with effect from 06.03.2002 but was not promoted to the rank of Lt Gen. Therefore, he filed a writ petition before Delhi High Court challenging his non-selection to the post of Lt Gen. After creation of the Armed Forces Tribunal, the said writ petition was transferred to the Principal Bench of the Tribunal. The Principal Bench of the Tribunal was of the view that the said petitioner S.B. Akali's supersession was not under the Army Act or Rules and claim of the said S.B. Akali was based upon the DRDO Rules i.e., the Office Memorandum dated 23.11.1979. The Tribunal held, that service conditions of the permanently seconded officers under the DRDO is regulated by the Office Memorandum dated 23.11.1979 and is not under the Army Act and the Rules. The Armed Forces Tribunal, therefore, has no jurisdiction to decide the case of supersession of the petitioner S.B. Akali. The ratio of the decision of S.B. Akali was that Army personnel initially appointed in the "Regular Army", upon permanent secondment to the DRDO are governed by dual rules; a set of the rules framed for the DRDO personnel and the other, under some of the provisions of the Army Act, 1950. The Tribunal has jurisdiction to decide the matters of such persons only when it pertains to the action/in-action etc. under the Army Act and the Rules framed there under; and the Tribunal had no jurisdiction to decide the service matters

pertaining to the service conditions framed separately by separate orders for the DRDO.

3. In spite of decision in the case of Maj Gen S.B. Akali, the Chandigarh Bench of the Tribunal in Col G.S. Grewal's case held as under :-

“We have perused the evidence on record and heard the learned counsels of both sides. At the very outset we proceed to resolve the matter with regard to jurisdiction over the case. Notwithstanding the fact that terms and conditions of service of DGQA officers are inherently different from those of the officers in their parent service, the subject matter in the instant case bears an intricate connection between the two. In fact, the policy changes brought about vide Government letter dated 23-04-2010 are virtually a mirror image of the changes brought about in the Army sequel to the system of Selection Merit Board being revoked by the Government. This policy also gives option to the officers to revert back to the Army in the event of the changes not being found acceptable by them. Further, Regulations for the Army, 1987 (Revised Edition) lay down at Paras 67 and 76 certain aspects of terms and conditions of service with regard to permanently seconded officers in Inspection Organisations, the former designation of DGQA, suggesting a degree of duality of jurisdiction on certain matters. As such, with due deference to the cited judgment of the Hon’ble Principal Bench and without setting any Precedence, we are inclined to admit this case for adjudication by the Tribunal.”

4. The Hon’ble Supreme Court did not appreciate the taking of a different view by the Chandigarh Bench of the Tribunal, from that given in the judgment of Maj Gen B.S. Akali, and observed that the subsequent Coordinate Bench, while deciding Col G.S. Grewal’s case, if it had a different view, the matter should have been referred to the Larger Bench. Hon’ble Supreme Court, therefore, was pleased to set aside the final order in the case of Col G.S. Grewal passed by the Chandigarh Bench of the Tribunal dated 15.04.2011. Hon’ble Supreme Court then directed the Tribunal to constitute the Larger Bench, and decide the question of jurisdiction of the Tribunal with specific directions that, even if the petitioner is subject to Army act, it by itself would not be sufficient to conclude that Tribunal has jurisdiction to deal with any case brought before it by such a person (i.e. permanently seconded to the DGQA, in the said case). Then the Hon’ble Supreme Court observed that, jurisdiction would depend upon the subject matter which is brought before the Tribunal, and the Tribunal is also

required to determine as to whether such a subject matter falls within the definition of "service matters" as contained in Section 3(o) of the AFT Act.

5. Col G.S. Grewal's OA No.582 of 2010 was transferred to the Principal Bench of the Tribunal and registered as OA No.386 of 2014. Before the Larger Bench of Principal Bench, Col G.S. Grewal, after arguing his case at length withdrew his OA himself and, therefore, Col G.S. Grewal's OA was dismissed as withdrawn by our order dated 17.09.2014.

6. Before dismissal of Col G.S. Grewal's OA No.386/2014 as withdrawn, the Bench of the Tribunal (Chairperson and Lt Gen Sanjiv Langer) in another OA 483/2013 Lt Genl (Retd.) S.S. Dahiya, vide order dated 01.08.2014, directed to list the OA 483/2013 with Col G.S. Grewal's OA No.386/2014. Hence, the OA 483/2013 also came up for consideration before the Larger Bench, because in OA 483/2013 also the respondents have raised the same objection against the Tribunal's jurisdiction in entertaining the petitioner, Lt Gen S.S. Dahiya's OA, (on the same grounds which were operative in the case of Maj Gen B.S. Akali as also of Col G.S. Grewal).

7. After final arguments were concluded in the OA 483/2013, Lt Gen (Retd.) S.S. Dahiya on 17.09.2014, new OA 40/2015 to OA 44/2015 were filed by different petitioners who were permanently seconded to DGQA, and had their own grievances. These petitioners initially filed the writ petitions before the Hon'ble Delhi High Court. Before the Hon'ble Delhi High Court it was pointed out that Hon'ble Supreme Court in the case of Col G.S. Grewal had already directed the Armed Forces Tribunal, to decide the above referred issues which are also arising in these petitioners cases. The Hon'ble Delhi High Court in that situation by its order dated 23.12.2014 held, that the petitioners should first approach the Armed Forces Tribunal where only the Union of India's objections referred above may be decided. Since in OA 40/2015 to OA 44/2015 similar issues were involved which were pending consideration before the larger Bench in the Col. G.S. Grewal's OA, therefore, another coordinate Bench by order dated 23.01.2015, (following the order of the Hon'ble Delhi High Court), directed that

OA 40/2015 to 44/2015 be listed along with OA 486/2014. Since OA 386 of 2014 was dismissed as withdrawn, therefore, OA 40-44 of 2015 were listed long with OA 483/2013 again for hearing before the Larger Bench.

8. In spite of the fact that Hon'ble Delhi High Court by order dated 23.12.2014 directed that the petitioners of OA 40-44 of 2015 should go to the Tribunal for decision on the issues referred above which was followed by another coordinate Bench of the Principal Bench of the Tribunal, in it's order dated 23.01.2015 (and referred the matters to the larger Bench in the light of the order of the Supreme Court in G.S. Grewal's case dated 12.03.2015), the petitioner – Lt Gen S.S. Dahiya (in person) submitted that the issues raised in the OA 40/2015 and other connected matters have no bearing with petitioner's OA and, therefore, petitioner, S.S. Dahiya's OA 483/2013 may be de-linked. We observed in our order dated 12.03.2015 that looking to the issues involved, the matters have been tagged as connected matters and since Lt Gen S.S. Dahiya, had nothing more to submit it was ordered that the OA 483/2013 of Lt Gen S.S. Dahiya need not to be listed when the OA 40/2015 and connected matters are listed, and if the Larger Bench feels it necessary, it may decide the petitioner – Lt Gen S.S. Dahiya's OA 483/2013 separately.

9. After hearing the arguments of the Learned counsel for the parties in OA 40-44 of 2015 and after going through the various provisions of law and the orders referred above, we are of the considered opinion that issues involved in Lt Gen S.S. Dahiya's OA and in OA 40-44 of 2015, raises the same questions which we have framed and there exist no lawful reasons to disregard the order passed by the Hon'ble Delhi High Court and the order of the Coordinate Bench passed in OAs 40-44 of 2015, simply because petitioner Lt Gen S.S. Dahiya is in a hurry to have a decision of his case, we should deny the opportunity to others to argue on the issues, which even if are pertaining to different Corps (DGQA), but in our opinion involve the same issue. Furthermore, the Corps are defined under Sec 3(vi) and prescribed under Rule 187(of the Army Act, 1950), therefore, we are of the view that Lt Gen Dahiya's case as well as other matters can be

decided by this common order. Hence, the questions referred above are being decided by this common order.

10. In the backdrop of above facts now, we may proceed to decide the Issue No.1 that, whether Army Personnel who have been permanently seconded to Defence Research & Development Organization (DRDO) or to the Director General Quality Assurances (DGQA), have continued to be subject to Army Act, 1950 even after their permanent secondment?

11. As per the Army Act, 1950, Army personnel are taken into service by following the procedure as given under the Army Act, 1950 and the Rules framed there under, as well as with the help of the various Army Orders etc. including the Defence Service Regulations for the Army, 1987 (as amended time to time in short "DSR"). In the Army Act itself it has been provided that separate body of persons can be created which will be known as "Corps". The "Corps" is defined in Section 3 (i)(vi) of the Act of 1950. Section 3(i)(vi) is as under :-

"3(i)(vi) "Corps" means any separate body of persons subject to this Act, which is prescribed as a "Corps" for the purposes of all or any of the provisions of this Act;"

12. The petitioners were admittedly, initially, taken into Indian Army Service i.e., in Regular Army service, therefore, it is appropriate to consider the definition of "Regular Army" given in Section 3(xxi) of the Army Act 1950, which is as under :-

"3(xxi) "Regular Army" means Officers, Junior Commissioned Officers, Warrant Officers, non-commissioned Officers and other enrolled persons who, by their Commission, warrant, terms of enrolment or otherwise, are liable to render continuously for a term military service to the Union in any part of the World, including persons belonging to the Reserve Forces and the Territorial Army when called out on permanent service."

13. In view of the permissibility of forming separate bodies of persons as "Corps" under the Army Act 1950, under Rule 187, Army Rules, 1954, the different "Corps" have been recognized under Rule 187(1) which are enumerated in sub-paras (a) to (y) under Rule 187(1). As per sub rule (2) of Rule 187 of

Rules of 1954, where Unit Court Martial Book is maintained that also is a “Corps” for the purpose of Section 106 and Rule 183.

14. The “Corps” are constituted by Office Memorandum or order issued by the Government. The Defence Research & Development Organization (DRDO) and Quality Assurance Organization (QAO) are constituted by separate order /Office Memorandum and these corps of officers permanently seconded from the Army, are governed by the conditions of service as laid down in the Ministry of Defence Office Memorandum No.11(5)/58/12347/D(R&D) dated 18.03.1967 as amended from time to time. The combined cadre of Service Officers, of R & D and Quality Assurance Organization was bifurcated with effect from 01.08.1973 under Government of India letter No.1300/RD-23/6447/D (R&D) dated 17.07.1976. In view of the bifurcation of the combined cadre and also the revision of qualification requirements for tenure/permanent intake in DGQA Organization, Procedure and terms and condition of service was prescribed by Office Memorandum dated 29.05.1998 (***Annexure A-1 annexed to OA 483/2013***).

15. For DRDO, one Office Memorandum (Annexure R-1) was issued on 23.11.1979 by the Government providing, “procedure for intake of Service Officers in the Research & Development Organization of Ministry of Defence and Terms and Conditions of Service of those permanently retained”

16. The Petitioner of OA 483/2013 was permanently seconded to the DRDO in the year 1982 for which the petitioner, Lt Gen S.S. Dahiya, along with others submitted their Willingness Certificate for joining on permanent secondment to DRDO cadre of Service Officers. His Willingness Certificate is as under :-

“Willingness Certificate to be rendered by Officers on permanent secondment to DRDO Cadre of Service Officers

I hereby give my willingness for permanent secondment to the DRDO Cadre of Service Officers.

2. *I am fully aware that on permanent secondment I will be governed by terms and conditions of service, in so far as these are different from the terms and conditions of parent service, as laid down by the Government of India vide their Office Memorandum No.Peers/18601/RD Sel Bd/7971/D(R&D) dated 23 November 1979 as amended and such other letters/amendments which may be issued from time to time.*

3. *I hereby confirm that date of my substantive rank to Major is 21 DEC 1982.*

*Sd/-
(Signature of the Officer)
S.S. DAHIYA
(Name in block letters)*

*MAJOR, IC-23850W
(Rank & Personal No.)*

*ASSI. DIR, DIR.OF ED SYSTEMS
(Present appt/Estt)
DRDO COMPUTER CENTRE*

*SEAL
19 JUNE 87*

(Emphasis supplied)”

17. The contention of the respondents, therefore, is that the petitioner knowing fully well, admitted in writing that after permanent secondment he will be governed by the service conditions of DRDO and the DRDO is a separate organization and, thereafter, the petitioner Lt Gen S.S. Dahiya got all the benefits of service conditions prescribed for the DRDO, and also got the promotions and reached to the Rank of Lt Gen before his retirement. Now after having knowledge and accepted all benefits of DRDO Service, (stability of tenure in New Delhi), and promotions post-retirement from service, is submitting that he is governed by the same service conditions which are applicable to the regular Army personnel. The petitioner is estopped from taking such plea and his OA deserves to be dismissed only on this ground.

18. According to respondents, the job in the DRDO is basically of a civil nature and Gen Dahiya because of this reason went on deputation to National Technical Research Organization (NTRO) in September, 2005 (which again is essentially a civil organization), where he picked up the rank of Lt Gen on 17.10.2008 and from NTRO he was superannuated. Thus, out of total service of 39 years Lt Gen Dahiya was in regular Army only just for 16 years i.e. from 21.12.1969 to 05.03.1987.

19. It has also been pleaded in the counter that the rules applicable to Regular Army personnel are not applicable to the Officers permanently seconded to DRDO and to DGQA, and as such, are not applicable to the applicants and also

they were/are not on the live strength of the Army consequent to their permanent secondment to the DRDO.

20. The respondents also have submitted that, as per the subsequent order, (the corrigendum dated 18.07.2008), the permanently seconded officer can not revert back to the parent service and they would forego claims of seniority and promotion in the parent Army service. Because of this reason only, none of the petitioners got the promotion in regular Army and they got their promotions in their Departments. Such Officer, however, will be liable to be recalled temporarily, in the regular parent service, by a general or specific order of the Central government at a time of grave emergency or when a grave emergency appears imminent. Such temporary recall has no effect on the forfeiture of such officers claims of seniority, obviously in their parent Departments. Therefore, it is clear that the Army personnel permanently seconded to the DRDO or DGQA, both are not governed by the service conditions as prescribed for the regular Army Officers, nor are they or can they be considered for promotion in the Regular Army. Not only this, the petitioners of all these OAs while serving in their respective Organizations, DRDO and DGQA, got their promotions only in view of the provisions applicable to the officers and prescribed for DRDO and DGQA as the case may be. The petitioner Lt Gen Dahiya, got the promotion to the rank of Lt Gen only under the procedure prescribed and through the Promotion Board prescribed for promotion in DRDO, and has not been promoted to the rank of Lt Gen upon recommendation of the Regular Boards constituted under the Army Act and Rules for promotion of regular Army personnel. Therefore, according to the learned counsel for the respondents the petitioner cannot claim that he is governed by the Army Act, 1950, Rules framed there under and Defence Service Regulations (DSR) for the Army, after his permanent secondment to DRDO

21. And the same is the position of the petitioners of OA 40/2015 to 44/2015, who are governed by the rules framed for their services in DGQA. Learned counsel for the respondents pointed out that, in DGQA service the petitioners of

OA 40 to 44 of 2015 continuously took the service benefits which were given by separate orders from time to time and, therefore, these petitioners are also subject to the Army Act only for a limited purpose.

22. The petitioner Lt Gen Dahiya in OA 483/2013 placed on record voluminous documentary evidence. We have considered each of the document placed on record and gave our thoughtful consideration. According to learned counsel for the petitioner Mr. S.R. Kalkal and Gen Dahiya (in person), the Government at every level and at number of times, in several years, unequivocally accepted that the Army personnel permanently seconded are subject to Army Act, even after their permanent secondment and are controlled by the Army Act and Rules and they continued to remain in the live strength of the Army. Such persons are discharged from service, (for any reason) by an appropriate order, and its publication is in the manner in which any regular Army personnel is discharged from service. The permanently seconded officers in DRDO are subject to disciplinary action under the Army Act and the Rules framed there under and can be Court Martialed. Otherwise, also such persons can be recalled in the Regular Army, which fact also has been admitted at a number of places including before the Parliamentary Committee by the Govt. The petitioner also placed on record the replies given, by the Information Officer, on the queries raised by the petitioner in respect to the status of the permanently seconded officers in the DRDO, wherein also, repeatedly it had been stated that permanently seconded officers are subject to Army Act and the Rules framed there under and can be recalled in the Army service. The “permanent secondment” is not the end of the service in the Army nor is absorption in the “Corps”. To avoid making our order bulky, we are not giving the list of the large number of the documents placed on record by Lt Gen Dahiya and for the more important reason that in all these documents, we accept that Govt. officers in their different capacities accepted that a permanently seconded officer is always subject to Army Act, and it was also accepted, that till such personnel’s discharge

or removal etc. from Army in accordance with law, he will continue to be an Army Officer, irrespective of the fact where he is posted in the World.

23. After considering facts of the cases and the large number of the document placed on record, of OA 483 of 2013 and also in connected OAs, we are of considered opinion that, the definition of the "Corps" as given in sub-clause (iv) under Section 3 of the Army Act itself says that the "Corps" means "any separate body of persons" "subject to Army Act" is "Corps". The Corps may be for "all the purpose of" or "for any of the provisions" of the Army Act, 1950. The "Corps" are permissible to be constituted by the Army Act itself read with Rule 187 of Army Rules, 1954. Therefore, the law itself is very clear that the member of the "Corps" are subject to various provisions of the Army Act. The "Corps" may be constituted/created or established for the purposes of all or any of the provisions of Army Act, 1950. In view of this legal position, as given in Army Act 1950, no further evidence is required to hold that "Corps" are always subject to the Army Act 1950, irrespective of the fact; for which purpose; the "Corps" is formed.

24. Further, as per the Section (2) of the Army Act, 1950 all persons as enumerated under sub-Sec. (1) of Section 2 of the Act of 1950, wherever Army Personnel may be, they shall continued to subject to Army Act, 1950. Therefore, the substantive section itself permits that person may be anywhere, yet, he shall be subject to the Army Act. Therefore, the petitioners in both the cases, being member of Army Service, permanently seconded to the in DRDO and DGQA, will continue to subject to Army Act till, as per Section (ii) of Section 2, such persons are duly retired, discharged, released, removed, dismissed or cashiered. The "Corps" itself are constituted and created by virtue of the provisions in the Army Act and the Army Rules and specifically it has been provided that Army persons may be sent any where obviously, before he retired/discharged/released/removed/ dismissed or cashiered, therefore, shall continued to be subject to the Army Act and the Rules framed there under. Since, in our opinion, the law is very clear. Therefore, we need no help of

opinions expressed at different levels by different offices and officers which have been relied upon by the petitioner, which incidentally favours the case of the petitioner, and which opinions appear to in consonance with the law to the above extent.

25. Further more, we found force in the argument of learned counsel Mr. S.R. Kalkal, the petitioner Gen Dahiya and Mr. S.S. Pandey that, the permanent secondment is not the severance of the relations of officers from the Army. One of the reason for such view is that such officer can be recalled for disciplinary action including for Court Martial. Such action can be taken by the employer/appointing authority and not by the ex-employer or ex-appointing authority. In addition to the above, the permanent secondment is not the absorption in the respective "Department" because of the reason that there is a procedure for absorption and by which, if an officer is absorbed, he will become a civilian officer from an Army Officer in view of Para 18 of the Office Memorandum dated 23.11.1979 (for DRDO), which the petitioners are not, and they are holding the respective ranks though in their respective "Corps" i.e. DRDO or DGQA as the case may be.

26. The secondment and the permanent secondment have not been defined in the Army Act as well as in the Army Rules but definition of "Corps" made it clear that the "Corps" are separate body of persons. The petitioners have not been absorbed in the respective Corps and as per the definition of secondment given in Chambers 21st Dictionary published by Allied Publishers Pvt. Ltd., New Delhi, the secondment means temporary transfer to another position or organisation. As per the Free Dictionary by Farlex, a Web Dictionary, the secondment is detachment of a person from their regular Organization for temporary assignment. As per the definition given in the Dictionary – dreg.com the secondment is – the transfer of a military officer or corporate executive to another post for temporary duty. In sum and substance the meaning of the secondment as given in the dictionaries as well as understood and further more,

as per the Section 3(vi) read with Rule 187 the secondment is temporary transfer of an Army personnel to the respective Corps. The petitioners are not only on secondment but they have been taken on permanent secondment. "Permanent" has its own meaning and, therefore, the permanent secondment amounts to transfer to the respective organization/corps and in view of the specially framed law under the Army Act and the Rules framed there under. Even after their permanent secondment not amounting to absorption, the permanent seconded officer who have been sent on permanent secondment to the Corps continued to subject to Army Act and Rules for limited purpose. This discussion also supports our above view that the petitioners, the officer permanently seconded to the DRDO & DGQA and they are governed by dual service conditions.

27. The permanently seconded officer to the "Corps" in DRDO & DGQA may be subject to limited application of the Army Act, 1950 and Rules framed there under still they are subject to Army Act and cannot be said that they are not subject to Army Act. For the purpose of jurisdiction of the Tribunal as given in Sec. 3(o), it is not necessary that such person should be subject to all the provisions of the Army Act, Rules framed thereunder and should be subject to DSR for Army. If we hold otherwise, and we hold, that the Army personnel once appointed in the Army, shall always be subject to all the provisions of Army Act, 1950, and the Rules framed there under and Defence Service Regulation for the Army (DSR), then that will be against the Sec. 3(vi) which allows creation of "Separate body of persons subject to Army Act" and contrary to Rule 187 of the Army Rules 1954. Even the "corps" for all purposes would have been 'regular Army', there was no reason for defining the "Corps" in the Army Act, 1950, under Sec. 3(vi) as a "separate body of persons" And instead of defining "Corps" as "separate body of persons", it could have been a different trade/rank or service within army under the administrative control of Chief of Army Staff (COAS). As per Sec. 3(IV) of the Act of 1950, read with para 4(b) of the DSR, COAS is responsible to the supreme command, the President of India through the Central Government for the commander, discipline, recruitment, training, organisation,

administration and preparation for War of the Army. In contrast, the “Corps” are manned by the head of the respective ‘Corps’ and not by the COAS. For DRDO, as per the para 2 of the Memorandum dated 23rd November, 1979 the Director General, Research and Development is the controlling authority. Such Director General is to advise the government in the matters of promotions and permanent retention of service officers. For the ‘Corps’, for promotions, the separate Boards are constituted, which Boards cannot consider the promotion matters in regular Army.

28 The legal position explained above justifies the keeping and maintaining of service records of members of the DRDO and DGQA under the same Department of the Ministry of Defence which is handling the record of the Regular Army personnel, as well as, they are given service benefits at par, if not otherwise prescribed by the respective ‘Corps’, with the Regular Army personnel and their discharge orders are published in accordance with law applicable to the Regular Army personnel. So is because of the reason that the permanently seconded officers in DRDO & DGQA are subject to Army Act and the Rules framed there under to the extent applicable to them. In addition to above such officers are also governed by their own service Rules, framed by their own Departments by the Government of India’s orders and Office Memorandum to the extent they have been prescribed by their organisation. Therefore, the permanently seconded officers to DRDO and DGQA are subject to Army Act and at the same time governed by their own specific service conditions in DRDO or DGQA as the case may be and such personnel (DGQA) are governed by Government letter No.67952/Q/DGI/(Adm-4)/10412/D(Prod) dated 28.10.1978 as amended from time to time on 16th November, 2007 and on 23rd April, 2010. Where as the DRDO personnel are governed by their service rules, i.e., as framed by the Office Memorandum dated 23rd November, 1979.

29. If we consider the facts of the case of DGQA, the Ministry of Defence consists of four departments and each is headed by an officer of the rank of

Secretary to Govt. of India. The DGQA is part of "The Department of Defence Production". This is headed by the Secretary (Defence Production). Officers are inducted in each Department as per their specific requirements. The DGQA consists of both; civilian officers and service officers. The 'Terms and Conditions of Service' in respect of service officers posted to DGQA on tenure and permanent secondment are governed by the Government of India letter dated 28th October, 1978 (supra) and as amended from time to time. The DGQA's purpose is for carrying out quality assurance of all defence stores and equipments of vital importance to the Defence forces. We have given brief facts about DGQA and DRDO which are sufficient to understand the purpose for having provisions for "separate body of persons" under different "Corps", obviously, outside the regular Army. Therefore, there is a reason for having different commanding authority and different service conditions for "Corps", different than prescribed for the Regular Army.

30. Before answering the Question No.1, we deem it proper to mention here that we are not addressing issue that what is the value of various opinions/decisions or comments given by the various officers in the documents, copies of which have been placed on record by the petitioner in the OA 483/2013 as well as not commenting on the value of the replies given on the petitioner's queries raised in his application filed under RTI Act, 2005 for the simple reason that we have accepted from the statutory provisions of law that the Army Act and the Rules apply to the permanently seconded Army personnel to the DRDO and also to DGQA. We are leaving the questions open that whether the opinions expressed by the officers while considering the representations or case of any individual, can be said to be Government's decision, or even Government's opinion on the question of law. Therefore, we need not to comment on what is the value of such opinions and recommendation related to a case of any individual for grant of any benefit. We are of the view that for any interpretation of law, the law is required to be interpreted as it is when language of the law is unambiguous and clear and there is no need to take help of any opinion or

opinion expressed while recommending the case of any individual. Further more, we are not also deciding issue of jurisdiction of the Information Officer appointed under the RTI Act, and are not finding out whether such officer in the case of OA 483 of 2013, in place of giving information and recorded opinion, gave his own opinion on questions of laws. We are observing so because of the reason that a number of times some note-sheets as well as some observations of officers dealing with the matter, are misunderstood to be opinion and decision of the Government. Even when replies are given in RTI, a number of times the Information Officer without mentioning from where and from which record he is furnishing the information and from where he got the information of "opinion", gives answer to the various queries according to his own opinion. We are observing so because of the reason that in response to queries raised by the petitioner of OA 483/2013 replies have been given by the Information Officer, but there is no reference from where and from which office and from which source, he got the information to reply the queries raised by the petitioner. If the answers were available in the file maintained by the office for which the Information Officer was appointed, he may commit wrong by giving his own opinion in place of furnishing "the information" or "opinion" on record, to the applicant under RTI. At the cost of repetition since we have decided the issue purely on the basis of the statutory provisions i.e. Army Act, 1950, Army Rules, 1956 and the service conditions prescribed for DRDO and DGQA, we are not going deep in the issues raised above.

31. Therefore, the answer to question No.1 is that, the Army personnel even after permanent secondment to the DRDO or to DGQA remain subject to Army Act, 1950, and the Army Rules, 1954, for limited purpose to the extent prescribed by law. Such personnel are not subject to all provisions of the Army Act and the rules framed there under and DSR for the Army.

32. Now the question arises is that whether the subject matter in these OAs falls within the definition of service matters as defined in Section 3(o) of the AFT Act, 2007.

33. We may recapitulate that Hon'ble Supreme Court specifically observed that "merely because the respondent is subject to Army Act would not by itself be sufficient to conclude that the Tribunal had the jurisdiction to deal with any case brought before it by such a person. It would depend upon the subject matter which is brought before the Tribunal and the Tribunal is also required to determine as to whether such a subject matter falls within the definition of "service matters" as contained in Section 3(o) of AFT Act. In Maj Gen S.B. Akali's case the Principal Bench of the Tribunal held that, since the service conditions of the seconded officers under the DRDO is regulated by the Office Memorandum dated 23.11.1979 and it is not under the Army Act and the Rules, therefore, the Tribunal has no jurisdiction to decide the case of superannuation of the petitioners for promotion to the rank of Lt Gen. This view has been expressed by the Bench of the Tribunal after considering the argument of Maj Gen S.B. Akali and others that the Army Officer continued to be an officer till the officer is removed/dismissed or discharged and also petitioners argument that they are getting the pension under Army Act and Rules. The correctness of this judgment given in S.B. Akali's case is under consideration in these matters as well as, in the OA 483/2013 it has been submitted that, since the case is related to pay and allowances and not related to the promotions, therefore, the ratio of S.B. Akali's case has no application to the petitioner's case. It will be appropriate to mention here that Maj Gen Akali's case was followed by Bench of the Armed Forces Tribunal, Principal Bench, New Delhi in OA 230/2010 Col P.K. Saran Vs. Union of India & Others decided on 02.06.2010 and in the case of TA 380/2010 **Col R.S. Upadhyaya Vs. Union of India** dated 18.11.2011 and in OA 370/2012 **Col Rajiv Negi Vs. Union of India and Others**, wherein some other judgments of other Benches of the Tribunal were also considered. The ratio of above decisions with leading case of Maj Gen S.B. Akali is that, that permanently

seconded persons in the DRDO/DGQA are subject to Army Act to a limited extent only and such officer's other service conditions are governed by the service condition prescribed for the respective "Corps" namely, DRDO & DGQA. The grievance of such officers if pertains to the action taken under Army Act applicable to such officer is under challenge, then the Armed Forces Tribunal has jurisdiction to decide the issues. If the foundation or order based upon which claim of permanently seconded officers to the DRDO and DGQA is based on the service conditions and the service benefits in their respective Corps, then such officers are challenging the action/in-action or omission, obviously, of their organisation, DRDO/DGQA. As per the Office Memorandum dated 23.11.1979 the Controlling Authority is the Director General Research and Development (DGR&D) and for DGQA, Ministry of Defence (Deptt. Of Defence Production) in both cases COAS is not the Controlling Authority nor is the Secretary, Defence Ministry is a Controlling Authority.

34. We may recapitulate here, at the cost of repetition that, for permanently seconded officers Controlling Authority is different, their promotion Board is different, their procedure for promotion is different and undisputedly, the officers permanently seconded need not to face the Selection Boards in the Regular Army. Without approval/recommendation of Selection Boards under the Army Act and Rules framed there under and DSR they get the higher rank obviously, because their benefit of dual service conditions, and they get promotions by virtue of the application of an entirely separate sets of service rules for their progress. It is not material that, whether upon permanent secondment of officer to any "Corps" a permanent vacancy is created or not and the vacancy is kept in the total strength of the Army or not. It makes no difference and it is only a working arrangement and may be under the Army Act but the position will remain as it is that the permanently seconded person will be governed by his own (Departmental), service conditions, in addition to their liabilities under the Army Act, 1950. The petitioners are beneficiary of the service conditions prescribed under the Service Rules of the DRDO & DGQA and, therefore, it does not lie in

their mouth to contend that for all purposes they are subject to Army Act and Rules framed there under. At this juncture, it will be worthwhile to mention here that in the case of Col G.S. Grewal, Hon'ble Supreme Court noticed the important material facts, that a Army personnel who may not have been promoted because of certain reasons after a particular number of specified attempts and he is permanently superseded, such superseded officers can get the opportunity of promotion after permanent secondment to the DGQA. This clearly is because of application of dual service conditions from Lt Col to Lt Gen). In Lt Gen Dahiya's case also admittedly he only got the promotion under the provisions of the DRDO service conditions. Therefore, this also establishes that in the Army service, (the officer while remaining in the Regular Army service and subject to Army Act) would have had a completely different progression profile under different orders and circumstances.

35. In the background of above discussion, we are of the considered opinion that the view taken in Maj Gen S.B. Akali's case appears to be correct, and we may hold, that the Army personnel permanently seconded to the DRDO and DGQA, continued to be subject to Army Act and Rules to a limited extent and such persons are governed by the Office Memorandum/Rules framed for the personnel in DRDO and DGQA. In this peculiar situation of application of dual service conditions to members of "Corps", two situations may arise. One, pertaining to a Service dispute arising out of action/inaction by the Army authority exercising, (or who is supposed to decide the matter in exercise of powers vesting by virtue of the Army Act, rules or under DSR or Govt. orders. Others are those related to orders/action or inaction under separate terms and service conditions applicable to respective Departments. In view of the totally separate controlling authorities for different corps under the same Defence Ministry, the grievance and redressal can be through the controlling authority and the respective departments for the Corps. If the subject matter in an OA falls in and gives right and remedy under the Army Act and/or the Army Rules, then the Armed Forces Tribunal has jurisdiction to decide the issues raised in such OAs.

If the subject matter raised in OA pertains to service conditions under specific Government orders or Office Memorandums applicable to any Member of the DRDO or DGQA (who become Members of such organisation because of permanent secondment), then such disputes cannot be adjudicated by the Armed Forces Tribunal.

36. In the case of Lt Gen S.S. Dahiya, his grievance is with respect to not giving the appropriate scale of pay to him in spite of several specific recommendations in his favour even upto the level of Defence Secretary and the Raksha Mantri. We need not to categorise those recommendations by which it has been recommended that petitioner may be granted the HAG + Scale because of the reason that we have to decide that whether the AFT has jurisdiction to decide this issue treating it to be a service matter as defined under the AFT Act, 2007.

37 According to facts stated in OA 483/2013, there are so many recommendations and notes whereby petitioner's case for grant of HAG+Scale has been recommended. Yet, by letter dated 13.07.2010, annexed with the OA 483/2013 at page 37, the Under Secretary in the Ministry of Defence forwarded the petitioner's case to the DRDO with request to the Controller of Authorities to examine the cases at their end for grant of HAG + Scale to the Officers. Along with this letter dated 13.07.2010, petitioner Lt Gen S.S. Dahiya's representation dated 19.02.2010 and the legal notice dated 24.06.2010 were also send to the DRDO for necessary action. The petitioner S.S. Dahiya's contention is that even after so many recommendations in favour of the petitioner no relief has been granted to the petitioner. His matter was sent from one office to another office without taking any decision. According to the petitioner the decision is required to be taken by the Government and the Competent Authority in the Government. The petitioner, even after permanent secondment, is still under the administrative control of the Ministry of Defence under Raksha Mantri and, therefore, they have to take a decision and, therefore, this prayer can be made under the Army Act.

Therefore, the cases, where question of promotion or expungement of ACRs have been raised, and the Tribunal has held that such matters pertain to the specific service condition under DRDO or DGQA the Tribunal, for different subject matter held, that the Armed Forces Tribunal has no jurisdiction to decide the issue. The petitioner's case is distinguishable as he is not claiming any promotion or expungement of ACRs, but is claiming the Pay & Allowances for which he is entitled to by virtue of his service in the Army and in a particular rank, and which benefit has been given to not only the officers who were his batch mates, but such benefit has been given to his junior also.

38. After our thoughtful consideration, we are of the view that Pay & allowances to permanently seconded DRDO personnel have been made at par with officers of their respective rank in the Army by virtue of adoption of the Pay & allowances under the petitioner's service conditions under Office Memorandum dated 23.11.1989. As per Para 12 of the Office Memorandum dated 23.11.1979 the Pay & Allowances may also be different. But incidentally no different Pay & Allowances have been specified for the Officers of the DRDO till petitioner's retirement or may be even thereafter. Relevant is clear from Para 12 of the Office Memorandum dated 23.11.1979, which is as under :-

“Unless, otherwise, specified the officers get allowances and other benefits of their respective service”

Therefore, the petitioner is not getting the Pay & Allowances because he is entitled to Pay & Allowances under the Army Act, or Rules framed there under or in view of the DSR or any order passed for Regular Service Officers. Because of the application of dual service conditions a number of benefits under the Army Act or liability may continue to apply upon the permanently seconded officers. The pay and allowances may be exactly same as of regular Army Officer but that is by virtue of provision made in DRDO service conditions specifically it is due to para 12 (supra). Therefore, the retiral benefits including the disability pension etc., if they are allowed ,at par or even under the Army Act, but they are given to the permanently seconded officer of DRDO because of the adoption of the above

rules by the DRDO. Here, the Pay & Allowances have been adopted by the Office Memorandum prescribing the service conditions of the permanently seconded DRDO Officers and, therefore, for this benefit the decision can be taken administratively through the Director General Research & Development (DGR&D) in view of the Para 12 of the Office Memorandum dated 23.11.1979. Therefore, such issue is arising under the DRDO service condition Memorandum issued by the order of the Government and not applicable to Army personnel in regular Army. Hence, the subject matter in OA 483 of 2013 are not the "service matter" as defined in Sec. 3(o) of the AFT Act, 2007.

39. We do not find any force in the submission of learned counsel for the petitioner of OA 483/2013 that since the controlling Ministry for DRDO and the Army is the Ministry of Defence and every file ultimately moves to the Ministry of Defence and said Ministry alone can take decision even with respect to the benefits arising out of the service conditions of the DRDO, therefore, the petitioner's dispute can be decided by the Armed Forces Tribunal. Our above view is for the simple reason that in one Ministry, as we have noticed, there are different independent Secretaries and even when there may not be different Secretaries and there may be one Secretary in the Ministry through whom different organization's files are processed and cleared and decisions are taken. In both the situation the organization under which one is serving, his controlling authority is the proper channel through which the matters can be processed and decided. In the DRDO or in the DGQA the matters are required to be processed by the Head of the Department or controlling authority without which no further steps can be taken. The Head of the DRDO or DGQA as the case may be has no jurisdiction over the Army personnel in the Regular Army nor is the Chief of Army Staff the controlling authority for the permanently seconded officers. Therefore, the petitioner may, even if he has grievance pertaining to his Pay and Allowances, it is to be dealt with only under his own service conditions and also through his own organisation, the DRDO or the DGQA and, therefore, this subject matter as raised by the petitioner in OA 483/2013, and OAs 40-44 of

2015, the AFT has no jurisdiction. The petitioners in OA 40-44 of 2015 also have grievance for non-application of the policy dated 16.11.2007, for grant of promotion to the petitioners to the rank of Col Selection Grade, which is definitely a service matter arising out of the service conditions for the DGQA prescribed separately by separate Memorandum. Therefore, the disputes raised in the OA 40-44 of 2015 gives rise to subject matter outside the Tribunal's jurisdiction.

40. In view of the above discussions, it is held that the subject matter of the OA 483 of 2013 and OA 40-44 of 2015 are not falling within the definition of the service matters as defined in Section 3(o) of the AFT Act, 2007 and the Question No.2 is answered accordingly.

41. Since Tribunal has no jurisdiction to entertain these OAs, therefore, these OAs are dismissed for want of jurisdiction. At the cost of the petitioner, we are making it clear that none of the observations be taken as decision or observation against the petitioners on merit of their cases.

(PRAKASH TATIA)
CHAIRPERSON

(SUNIL HALI)
MEMBER

(SANJIV LANGER)
MEMBER