A THE GENERAL COURT MARTIAL AND ORS.

v.

COL. ANILTEJ SINGH DHALIWAL

DECEMBER 12, 1997

B [M.M. PUNCHHI AND M. SRINIVASAN, JJ.]

Evidence Act, 1872—Section 94—Conditions for applicability of—Document admitted by the signatory thereto—Held, section will apply when the execution of the document is admitted and no vitiating circumstance has been
C *put forward against the same.*

Army Act, 1950—Sections 133 and 134—Judicial notice can be taken by the Court Martial that a lower official obeys implicitly the directions of a higher official.

D *Rule 182—Letter written by respondent to a senior officer who was not a member of the Court of Inquiry after the conclusion of the inquiry—Letter not referring to any query being put by addressee—R. 182 not attracted.*

Court Martial :

E *Evidence—Appraisal of by the Court Martial—Interference by High Court—When not called for—Court Martial held that the respondent was responsible for the lapse—No omission on the part of the Court Martial in considering the relevant evidence—Interference by High Court not justified.*

Charges—Vagueness—Charge that respondent being the Commanding
F *Officer of his unit came to know about losses/deficiencies—Omitted to report the said losses/deficiencies—Charge neither alleging that some other persons brought about losses/deficiencies and the same was not reported by the respondent nor that it was the respondent himself who caused such losses/deficiencies—Held, charge being vague and defective, respondent cannot*
G *be held guilty.*

Punishment—Sentence awarded by the Court Martial on the basis of proof of four charges against the respondent—One of the charges found to be unjustifiable and quashed—Question of punishment to be reconsidered by the Court Martial on the basis of the remaining three charges—Matter remanded
H *to the Court Martial.*

The respondent was an Army Officer and was posted as Commanding Officer. Nine charges were framed against him. Charges were in the nature of lapses relating to stores procurement against respondent. Prosecution witnesses attributed responsibility for the alleged lapses to a subordinate official and it was alleged by the respondent that the Court Martial did not consider this report. The Court Martial found him guilty on three of the charges. Respondent challenged the findings of the Court Martial before the High Court. Before the decision of the High Court, the order of the Court Martial was confirmed under Section 154 of the Army Act. However, the High Court allowed the writ petition filed by the respondent and quashed the order of the Court Martial. Hence this appeal.

It was contended by the appellant that the High Court had exceeded its jurisdiction not only by re-appreciating the evidence but also by an erroneous understanding of the provisions of the Evidence Act. It was also contended by the appellant that there has been no violation of principles of natural justice or rules of procedure and that there was ample evidence on record to support the findings of the Court Martial.

It was contended by the respondent that the Court Martial has relied on inadmissible evidence and overlooked certain relevant evidence on record. The contention of the respondent was that the letter Ex Q-10, on the basis of which Charge No. 2 was framed, was written by him in response to a query from the staff of Court of Inquiry and therefore it was not admissible in evidence in view of Rule 182 of the Army Rules. It was also contended that the Court Martial had not taken into consideration a report of PW-27 which was marked as Ex AW. The case of the respondent was that the oral evidence of PWs 6, 21 and 24 was not admissible in view of the provisions of Section 94 of the Evidence Act. It was Section 92, Proviso 1 of the Evidence Act and not Section 94 which was applicable.

Partly allowing the appeal, this Court

HELD : 1.1. Neither Section 92 nor Section 94 of the Evidence Act is attracted in this case. Section 94 will come into play only when there is a document and its language has to be considered with reference to a particular factual situation. That section will apply only when the execution of the document is admitted and no vitiating circumstances has been put forward against the same. [482-F-H; 483-A]

A 1.2. In the present case the document in question was a proceeding of the Board which contained an admission made by the signatories thereto that they had checked the materials and the serviceability thereof. An admission is not conclusive as to the truth of the matter stated therein and it is only a piece of evidence, the weight to be attached to which must
B depend upon the circumstances under which it is made. [483-A-B]

Nagubai Ammal v. *Shama Rao,* [1956] SCR 451; *K.S. Srinivasan* v. *Union of India,* [1958] SCR 1295; *Basant Singh* v. *Janki Singh,* AIR (1967) SC 341 and *Prem Ex-Serviceman Tenant Society* v. *State of Haryana,* AIR (1974) SC 1121, relied on.

C

2. Section 133 of the Army Act provides that the Indian Evidence Act shall be subject to the provisions of the Act applied to all proceedings before the Court Martial. Section 134 provided that a Court Martial may take judicial notice of any matter within the general military knowledge of the members. It is quite obvious that in this case the Court Martial had
D taken judicial notice of the fact that a lower official obeys implicitly the direction of a higher official. The respondent being an official higher in rank to the witnesses PWs 6, 21 and 24, they carried out his directions by signing the Board proceedings. [483-E-G]

E 3.1. The reasons given by the High Court for quashing the finding of the Court Martial are totally erroneous. As regards the admissibility of Ex. Q-10 in evidence, Rule 182 of the Army Rules is not applicable to the same. The letter Ex. Q-10 was written only after the Court of Inquiry concluded. Further the letter was addressed to a senior officer who was not a member of the Court of Inquiry and had nothing to do with the same.
F The contention that he was the Commanding Officer Incharge at the time when the alleged offence took place, is not sufficient to attract Rule 182 of the Army Rules. [479-D-F]

3.2. Rule 182 of the Army Rules only refers to the proceedings of the
G Court of Inquiry or any confession, statement or answer to a question made or given at a Court of Inquiry. Ex Q-10 does not belong to any of the above categories. The latter part of the Rule refers to evidence respecting the proceedings of the Court and prohibits the same being given except upon trial of such person for wilfully giving false evidence before the Court. Moreover, Ex. Q-10 does not refer to any query being put by the addressee.
H It has only referred to an earlier letter. Reliance is placed upon a caption

in Ex. Q-10 which makes a reference to staff of Court of Inquiry. That does not help the respondent in any way. The averments made in the writ petition do not disclose as to how the letter could be said to be falling within the scope of Rule 182. Hence the view of the High Court is based on a fragrant error that the document was inadmissible in evidence. [480-A-C]

4. The document Ex. AW is a report given by PW-27 who as a matter of fact found that 673 out of a total of 680 items were found when he checked the same. PW 27 was examined before the Court Martial and there is a specific reference to the same in the order of the Court Martial. The High Court is in error in thinking that the Court Martial had not taken into consideration Ex. AW. On the other hand, the Court Martial has expressly referred to the evidence of PW 27 and contents of Ex AW. High Court was wrong in thinking that the report fixing the responsibility on a subordinate official should have been accepted and the respondent should have been exonerated. The responsibility for the stores was with the respondent. He cannot escape by contending that a subordinate official was responsible. It is for the Court Martial to consider the said question and come to a conclusion. When the Court Martial has held that the respondent was responsible for the lapse, it was not for the High Court to interfere with the same as there was no omission on the part of the Court Martial to consider the relevant evidence. [480-D-H; 481-A]

Nagender Nath Bora v. *Commissioner of Hills Division and Appeals*, [1958] SCR 1240; *Board of High School and Intermediate Education, U.P.* v. *Bagleshwar Prasad,* [1963] 3 SCR 767; *Parry & Company Ltd.* v. *Judge, 2nd Industrial Tribunal, Cal.,* AIR (1970) SC 1334; *Bhagat Ram* v. *State of H.P.*, AIR (1983) SC 454; *S.N. Mukherjee* v. *Union of India,* [1990] 4 SCC 594; *Chaturvedi* v. *Union of India,* [1995] 6 SCC 749 and *Ranjit Thakur* v. *Union of India & Ors.,* [1987] 4 SCC 611, referred to.

5. It is obvious that the charge framed against the respondent will not fall under Para 1(c) of SAO 13/s/80. The charge is not that some other persons brought about losses/deficiencies of Defence Brick Store and the same was reported by the respondent. Nor is the charge to the effect that it was the respondent himself who caused such losses/deficiencies. The charge itself is very vague. The High Court is therefore justified in holding that the the charge is defective and the respondent cannot be made guilty. [486-C-E]

A **6. There is no doubt that the High Court has erroneously set aside the findings of the Court Martial on charges 2, 3 and 8. After upholding the findings of the Court Martial on these charges, the only question which remains to be considered is that of punishment awarded to the respondent. *Prima facie* the punishment awarded by the Court Martial appears to be very serious. As the Court Martial awarded such a sentence**
B **on the basis of findings on all the four charges, namely 2, 3, 8 and 9, the same cannot be sustained as Charge No. 9 is unsustainable and the finding thereon has been rightly quashed. Hence, the question of sentence has to be considered on the basis of three charges namely, 2, 3 and 8 being found against the respondent. That has to be done by the Court Martial. Therefore, the matter has to be remanded back to the Court Martial for deciding**
C **that question. The sentence awarded by the Court Martial is set aside and the matter is remitted to the Court Martial for considering and passing an appropriate sentence on the basis of findings on charges 2, 3 and 8.**

[486-E-H; 487-A]

7. In the facts and circumstances of the case it in necessary to invite
D **attention of appellants 2 to 4 to consider initiating appropriate proceedings against PWs 6, 21, 26, 30 and 32 who deposed at the Court Martial that they had signed or prepared official record on the oral directions of the respondent without verifying the correctness thereof, which act of theirs was in dereliction of duties. These state of affairs is highly distressing for which**
E **the Court records its displeasure. [487-B-C]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 825 of 1997.

From the Judgment and Order dated 9.8.96 of the Sikkim High Court
F in Crl. W.P. No. 1 of 1995.

P.P. Malhotra, Ashok Srivastava and W.S.A. Qadri for the Appellant.

P.N. Lekhi and M.K. Garg for the Respondent.

G The Judgment of the Court was delivered by

SRINIVASAN, J. The respondent was an Army Officer of the rank of Lt. Col. and was posted as Commanding Officer under 116 Engineer Regiment, with head quarter, 17 Mta. Arty. Brde. Nine charges were framed against him on 24.6.1995 and General Court Martial was held from
H 1.7.95 to 10.11.95. He was found guilty on charges 2, 3, 8 and 9. He filed

Crl. Writ Petition No. 1 of 1995 in the High Court to Sikkim on 11.12.95. Thereafter on 2.3.1996 the order of the Court Martial was confirmed under Section 154 of the Army Act. By judgment dated 9.8.96 the High Court allowed the writ petition and quashed the order of the Court Martial. The appellant has preferred this appeal against the judgment of the High Court.

2. The main contention of the appellant is that the High Court has exceeded its power of judicial review under Article 226 and acted as a court of appeal by discussing and appreciating the evidence. Reliance is placed on *Nagendra Nath Bora* v. *The Commissioner of Hills Diven and Appeals,* [1958] SCR 1240 wherein this court held that the High Court had no power under Article 226 to issue a writ of certiorari in order to quash an error of fact, even though it may be apparent on the face of the record unless there is an error of law which is apparent on the face of the record. The Court observed that the jurisdiction of the High Court is limited to seeing that the judicial or quasi- judicial tribunals or administrative bodies exercising quasi-judicial powers do not exceed their statutory jurisdiction and correctly administer the law laid down by the Statute under which they act.

3. In *H.S. and I.E. Board, U.P.* v. *Bagleshwar,* AIR (1966) SC 875, the court held that an order passed by a Tribunal holding a quasi-judicial enquiry which is not supported by any evidence is an order which is erroneous on the face of it and as such is liable to be quashed by the High Court under Article 226. In *Parry & Co.* v. *Judge, 2nd I.T. Cal.,* AIR 1970 SC 1334 the court held that a writ is granted generally when a court has acted without or in excess of its jurisdiction or where the Tribunal acts in flagrant disregard of the rules of procedure or violates the principle of natural justice where no particular procedure is prescribed.

4. In *Bhagat Ram* v. *State of H.P.,* AIR (1988) SC 454 the court held that where a finding of the disciplinary authority is utterly perverse, the High Court can interfere with the same.

5. In *S.N. Mukherjee* v. *Union of India,* [1990] 4 SCC 594, the Constitution Bench dealt with a case wherein the appellant had challenged the validity of the finding and the sentence recorded by the General Court Martial and the order of the Chief of Army Staff confirming the same. The Court held that the Supreme Court under Article 32 and the High Court under Article 226 have the power of judicial review in respect of proceedings of Courts Martial and the proceedings subsequent thereto and can

A grant appropriate relief if the said proceedings have resulted in denial of the fundamental rights guaranteed under Part III of the Constitution or if the said proceedings suffer from a jurisdictional error or any error of law apparent on the face of the record. After elaborately considering the provisions of the Army Act and Rules, the court pointed out that at the B stage of recording of findings and sentence the Court Martial is not required to record its reasons. It will be advantageous to extract the following passage in the judgment :

> "From the provision referred to above it is evident that the judge-advocate plays an important role during the course of trial at C general court martial and he is enjoined to maintain an impartial position. The court martial records its findings after the judge-advocate has summed up the evidence and has given his opinion upon the legal bearing of the case. The members of the court have to express their opinion as to the finding by word of mouth or each charge separately and the finding on each charge is to be recorded D simply as a finding of "guilty" or of "not guilty". It is also required that the sentence should be announced forthwith in open court. Moreover Rule 66(1) requires reasons to be recorded for its recommendation in cases where the court makes a recommendation to mercy. There is no such requirement in other provisions E relating to recording of findings and sentence. Rule 66(1) proceeds on the basis that there is no such requirement because if such a requirement was there it would not have been necessary to make a specific provision for recording of reasons for the recommendation to mercy. The said provisions thus negative a requirement to F give reasons for its finding and sentence by the court martial and reasons are required to be recorded only in cases where the court martial makes a recommendation to mercy. In our opinion, therefore, at the stage of recording of findings and sentence the court martial is not required to record its reasons and at that stage reasons are only required for the recommendation to mercy if the G court martial makes such a recommendation".

6. In *Chaturvedi* v. *Union of India,* [1995] 6 SCC 749, the court observed that judicial review is not an appeal from a decision but a review of the manner in which the decision is made and the power of judicial H review is meant to ensure that the individual receives fair treatment and

not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. A

7. Relying on the aforesaid rulings learned counsel for the appellants submit that the High Court in this case has exceeded its jurisdiction not only by reappreciating the evidence but also by erroneous understanding provisions of the Evidence Act. It is argued by him that in this case there has been no violation of principles of natural justice or rules of procedure and that there is ample evidence on record to support the findings of the Court Martial. B

8. Learned counsel for the respondent contends that the Court Martial has relied on inadmissible evidence and overlooked certain relevant evidence on record and its findings are vitiated. He has placed reliance on the ruling in *Ranjit Thakur* v. *Union of India & Ors.*, [1987] 4 SCC 611. In that case the court found that there was failure to enquire from accused as required by Section 130 of the Army Act whether he objects to trial by any of the officers present and held that the entire proceedings was vitiated. The court went on to hold that the punishment awarded was disproportionately excessive and quashed the same. C D

9. Now, we shall proceed to consider the four charges found against the respondent and the decisions of the High Court thereon. E

10. (a) *Charge No. 2 read as under :*

"IN A DOCUMENT SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT [Army Act - Section 57 (a)]: F

in that he, at field, on 23rd October 1993, while being Commanding Officer 116 Engr. Regt. signed 116 Engr. Regy. letter No. 2012/Gen./SAT/UPV dated 23rd October 1993 addressed Maj. Gen. K.C. Dhingra, V.S.M. GOC 17 Mtn. Div. stating "It is brought fwd. for your information that all the SRTs procured from M/s. Dhariwal Steel Pvt. Ltd. Calcutta have since been issued out for the constr. of PDs in the current working season. All these PDs are likely to be completely ground applied by 30th October, 1993", well knowing the said statement to be false". G

(b) The Court Martial dealt with it in the following manner : H

A "*Second Charge*

After considering the evidence on record the court find that there is no denial on the part of accused for having written the said letter to Maj. Gen. K.C. Dhingra, V.S.M. It has also nowhere being brought on record that prior to date of writing this letter B dated 23rd October, 1992 (Ext. Q), the accused had ascertained that the said Arts. had been issued for ground application although the accused has averred in his unsworn statement (Ext. BT) that he had checked up with Maj. P.K. Mangal (PW 16). In addition to the above the following reasons clearly indicate the guilt of the C accused :-

(a) Maj. P.K. Mangal (PW 16) has deposed that on 27th September, 1992 he was told by the accused that he was issuing SRTs from defence brick stores so that early completion of permanent Defence OP Task could be ensured.

D

(b) PW 16 has further stated that on the instar of the accused he wrote letter dated 24th October, 1993 (Ext. M) to all coys asking them to identify such PDs where the said SRT SRIs have been utilised and confirmed the same by 13th October, 1992, this action of accused is subsequent to and not prior to E his writing the said letter (Ext. Q).

(c) vide his noting sheet dated 20th October, 1993 (Ext.M) addressed to Maj. Gen. K.C. Dhingra, V.S.M. the accused in para (c) had mentioned that he had accepted below F specification SRTs to make up the SRTs of defence brick issued by him for Job S - 212.

(d) vide his letter to Maj. Gen. K.C. Dhingra, V.S.M. dated 20th October, 1993 (Ext. O) the accused had stated therein his opinion the SRTs supplied by M/s Dhariwal Steel Ltd. G should be utilised for making up of the deficiency of Defence Brick SRTs which had been issued for construction of PDs.

(e) 673 SRT out of a total of 680 were found at ETP-V when checked by Lt. Col. K.K. Khosla (PW 27) and Capt. Sant H Ram Verma (PW 25) on 10th December, 1993.

(f) By common military knowledge it can be inferred that between the date of writing the letter Ext. Q-10 i.e. 23rd October, 1993 and probable date of completion given therein i.e. 30th October, 1993 it is not possible to apply the said quantity of SRTs on ground".

11. Before the High Court the contention of the respondent was that the letter Ext. Q-10, on the basis of which Charge No. 2 was framed, was written by him in response to a query from the staff of Court of Inquiry and it was, therefore, not admissible in evidence. The High Court accepted that contention and held that the said letter was not admissible in view of the provisions in Rule 182 of Army Rules. It is also held by the High Court that the Court Martial had not taken into consideration a report of Lt. Col. K.K. Khosla which was marked as Ex. AW. On those grounds the High Court held that the findings of the Court Martial were wholly unsustainable.

12. Both the reasons given by the High Court for quashing the finding of the Court Martial, as stated above, are totally erroneous. As regards the admissibility of Ex. Q-10 in evidence, Rule 182 of the Army Rules is not applicable to the same. It is brought to our notice that factually, the Court of Inquiry commenced on 28th September, 1993 and culminated on 14th October, 1993. The letter Ex. Q-10 was written only on 23.10.1993 i.e. after the Court of Inquiry concluded. Further the letter was addressed to Maj. Gen. K.C. Dhingra, VSM. Admittedly he was not a member of the Court of Inquiry and had nothing to do with the same. The only contention urged before us is that he was the Commanding officer Incharge at the time when the alleged offence took place. That is not sufficient to attract Rule 182 of the Army Rules.

13. The Rule reads as follows :

"*182. Proceedings of Court of Inquiry not admissible in evidence*

The proceedings of a Court of Inquiry, or any confession, statement, or answer to a question made or given at a Court of Inquiry shall not be admissible in evidence against a person subject to the Act, nor shall any evidence respecting the proceeding of the Court be given against any such person except upon the trial of such person for wilfully giving false evidence before that Court."

A The Rule refers only to the proceedings of a Court of Inquiry or any confession, statement or answer to a question made or given at a Court of Inquiry. Ex. Q-10 does not belong to any of the above categories. The latter part of the Rule refers to evidence respecting the proceedings of the Court and prohibits the same being given except upon the trial of such person for wilfully giving false evidence before that Court. That part of the rule is B also not acceptable. Moreover, Ex. Q-10 does not refer to any query being put by the addressee. It has only referred to an earlier letter dated 20.10.1993. Reliance is placed upon the caption in Ex. Q-10 which makes a reference to 'staff of Court of Inquiry'. That does not help the respondent in any manner. We have been taken through the averments contained in C the writ petition filed by the respondent before the High Court. They do not disclose as to how the letter could be said to be falling within the scope of Rule 182 of the Army Rules. Hence, the view of the High Court is based on a flagrant error that the document was inadmissible in evidence.

D 14. The other reason given by the High Court for interfering with the findings is that Ex. AW has been ignored. The said document is a report given by Lt. Col. Khosla who as a matter of fact found that 673 SRTs out of a total of 680 were found at ETP-V when he checked the same on 10.12.1993. Lt. Khosla was examined as PW 27 before the Court Martial and there is a specific reference to the same in the order of the Court E Martial. The respondent places reliance on a portion of that report in which the responsibility for the lapses was attributed to Sub. Sukhdev Singh. It is argued that the report of Lt. Col. Khosla fixing the responsibility on Sub. Sukhdev Singh should have been accepted by the Court Martial. There is no merit in this contention. In the first place, the High Court is F in error in thinking that the Court Martial had not taken into consideration Ex. AW. On the other hand, the Court Martial has expressly referred to the evidence of Lt. Col. Khosla himself and contents of Ex. AW. Secondly, the High Court is wrong in thinking that the report fixing the responsibility on Sub. Sukhdev Singh should have been accepted and the respondent should have been exonerated. Admittedly, Sub. Sukhdev Singh is a subor- G dinate officer. The responsibility for the stores was with the respondent. He cannot escape by contending that a subordinate official was responsible. It is for the Court Martial to consider the said question and come to a conclusion. When the Court Martial has held that the respondent was responsible for the lapse, it was not for the High Court to interfere with H the same as there was no omission on the part of the Court Martial to

consider the relevant evidence.

15. (a) Turning to *Charge No. 3,* the same is to the following terms :

IN A DOCUMENT SIGNED BY HIM KNOWINGLY MAKING A FALSE STATEMENT :- Army Act - Sec. 57(a)

In that he, at field, on 23rd Oct. 1993, while being Commanding Officer 116 Engr. Regt. signed 116 Engr. Regt. letter 2012/Gen/SAT/OPW dated 23rd Oct. 1993 addressed to Maj. Gen. K.C. Dhingra, VSM, GOC 17 MTN Div. stating "It is brought fwd. for your info. that all the FRTs procured from M/s Dhariwal Steel Pvt. Ltd. Calcutta has since been issued out for the constr. of PDs in the current working season. On these PDs are likely to be completely ground applied by 30th Oct. 1993", well knowing the said statement to be false".

(b) The decision of the Court Martial was as followed :

THIRD CHARGE : In support of this finding the evidence i.e. on record is as follows :

(a) Lt. Col. B. Manickam, PW-5 has deposed that during second week of November 1992 he was called by the accused in his office where he was made to sign the Bd. proceedings pertaining to generators and alternators (Ex. U). At the same time the accused asked him to take the Bd. proceeding to Maj. G.K. Mediratta (PW 21) and obtained his signatures also on the Bd. proceeding to whom the accused had already spoken to PW 6 has also stated that at no stage the Bd. of offers had physically assembled to check the generators/alternators after repairs.

(b) Maj. G.K. Mediratta, (PW 21) has deposed that the Bd. proceedings were brought to him by PW 6 and he signed the said Bd. proceedings. He has also averred that the Board physically never assembled.

(c) Sub. KKV Pilla (PW 24) has deposed that he signed the Board proceedings on insistence of PW 21 and he did not even know at that stage which Bd. proceeding he was signing.

A (d) Major MMS Bharaj (PW 11) has deposed that before making the payment he had told the accused that the said Bd. proceeding (Ex. U) were neither countersigned nor dated and on the instar. of accused he put the date as '27' (Exihibited as U- 5)d. He (PW 11) has further stated that at the time of making payment he had also informed the accused that it will not be correct to make the payment since all generators had not come after repairs.

(e) According to deposition of Hav. Amin Ali (PW 12) and Hav. B.L. Prajapati (PW 28), the generators kept coming even after 30th Nov. 1992 i.e. the date of payment."

16. The respondent contended before the High Court that the oral evidence of PWs 6, 21 and 24 was not admissible in view of the provisions of Section 94 of the Evidence Act as the same was contrary to the proceedings of the Board. The High Court has accepted the said contention and held that Section 94 of the Evidence Act barred the admissibility of the oral evidence. The High Court has also observed that the Members of the Board who had deposed that they had assigned the Board proceedings because the respondent wanted them to do so should have been proceeded against for their lapses. According to the High Court the non consideration of the said aspect of the matter was a gross omission on the part of the Court Martial. It was further observed by the High Court that the evidence of PW 20 was omitted to be considered by the Court Martial.

17. None of the reasons given by the High Court is sustainable. A perusal of Section 94 of the Evidence Act shows that it has no applicability whatever. The Section reads thus :

94. Exclusion of Evidence against application of document to existing facts :-

When language used in a document is plain in itself and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts"

The Section will come into play only when there is a document and the language of it has to be considered with reference to a particular factual situation. That Section will apply only when the execution of the document

is admitted and no vitiating circumstance has been put forward against the same. In the present case, the document in question is a proceeding of the Board. If at all, it can only be said that the said document contains an admission made by the signatories thereto that they had checked the materials and the serviceability thereof. It is well settled that an admission can be explained by the makers thereof. In *Nagubai* v. *B. Shama Rao,* AIR (1956) S.C. 593 the Court held that an admission is not conclusive as to the truth of the matter stated therein and it is only a piece of evidence, the weight to be attached to which must depend upon the circumstances under which it is made. The Court said that it may be shown to be erroneous or untrue so long as the person to whom it was made has not acted upon it at the time when it might become conclusive by way of estoppel. The same principle has been reiterated in *K.S. Srinivasan* v. *Union of India,* AIR (1958) S.C. 419; *Basant Singh* v. *Janki Singh,* AIR (1967) S.C. 341 and *P. Ex-S. Co-op. T. F.S.* v. *State of Haryana,* AIR (1974) S.C. 1121.

18. The appellants herein contended before the High Court that the relevant provision of the Evidence Act is Section 92, Proviso 1. The same contention was repeated before us. In our view neither Section 92 nor Section 94 is attracted in this case. Hence, the view of the High Court that the oral evidence given by PWs 6, 21 and 24 is inadmissible is totally erroneous.

19. There is another aspect of the matter to be considered. Section 133 of the Army Act provides that the Indian Evidence Act shall subject to the provisions of the Act applied to all proceedings before the Court Martial. Section 134 provides that a Court Martial may take judicial notice of any matter within the general military knowledge of the members. It is quite obvious that in this case the Court Martial had taken judicial notice of the fact that a lower official obeys implicity the directions of a higher official. The respondent being an official higher in rank to the aforesaid witnesses, the latter carried out his directions by signing the Board proceedings. The High Court has also observed that the evidence of PW 20 was not considered by the Court Martial. We are unable to appreciate how the evidence of PW 20 is relevant in this regard. Hence, the reasoning of the High Court for setting aside the finding of the Court Martial on Charge No. 3 is wholly unsustainable.

20.(a) *Charge No. 8* was in the following terms :-

SUCH AN OFFENCE AS IS MENTIONED IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT WITH INTENT TO DEFRAUD

in that he, at field, between 30 Dec. 1992 and 22 July 1993, while being the Commanding Officer of 116 Engr. Regt. with intent to defraud, made payments of Rs. 7,720 (Rupees seven thousand seven hundred twenty only) against purported supply of ATG Stores as per Appx. 'B' to the chargesheet, well knowing that no such items were infact received in the said unit.

(b) It is dealt with by the Court Martial in the following terms.

"*Eight Charge :* The reasons are as follows :

(a) Hav. Rajkumar Singh (PW 30) has deposed that on 18 March 1993, Hav. Pillai brought a CRX for 2 Ltrs of paint and 4 brushes 75mm. As he was not dealing with ATO stores he refused to sign the CRV. Thereafter he was called by the accused and ordered to sign the CRV and he accordingly signed CRV dt. 18 March 1993 (Ex. BL)

(b) Capt. A.K. Gautam (PW 32) has deposed that he had not received any ATG stores in February 1993. He has further deposed that he signed the Bill No. 420/92-93 dated 27 February 1993 after he had informed the accused that Capt. A.K. Jain has refused to sign since no stores have been received. Capt. A.K. Jain was also not available at Mile 2 location at that time. The accused, thereafter, instructed Capt. A.K. Gautam (PW 32) to sign the said bill and he accordingly signed.

(c) Lt. Col. B. Manickam (PW 6) has deposed that the accused asked him to take on charge ATG stores which he refused since no stores had arrived. He further reflected the deficiency of ATG stores in handing taking over noted ME-2 which was brought to the notice of accused on 09 June 1993.

(d) The fact that accused was made aware on 09 June 1993 that physically no ATG store had been received and yet he did not take any action, is an indication of his intent."

21. The High Court reversed the finding on this charge on the same reasoning as with reference to Charge No. 3. The High Court has held that the oral evidence adduced before the Court Martial was inadmissible. The reasons which we have already given when we dealt with Charge No. 3 are equally applicable here.

22. Hence, we hold that the High Court is in error in interfering with the findings of the Court Martial on Charge No. 8.

22. The Nineth Charge read as follows :

AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE

In that he, at field, between 01 Nov. 92 and 21 Nov. 93 while being the Commanding Officer of 116 Engr. Regt. and having come to know about the losses/deficiencies of Defence Brick stores on charge of his regiment, improperly omitted to report the said losses/deficiencies in contravention of Para 1(c) of SAO 12/s/80.

23. It is unnecessary for us to consider the discussion of this charge by the Court Martial for on the face of it the charge is unsustainable. The charge is under Para 1 (c) of SAO 13/s/80. A copy of the said SAO has been produced before us. The relevant part of it reads as follows :

ADJUTANT GENERAL'S BRANCH

SAO 13/s/80 DISCIPLINE-PROCEDURE FOR SUBMISSION OF REPORTS REGARDING INCIDENTS AND OFFENCES INVOLVING ARMY PERSONNEL AND FOR THEIR INVESTIGATION

Incidents and offences to be reported.

1. The following incidents and offences will be reported :-

(a) All cases of assault and affray where persons subject to Army Act are involved.

A (b) Breaches of discipline :-

(i) Collective insubordination.

(ii) Suicide, attempted or suspected suicide;

B (iii) Murder or an attempt to murder.

(iv) Rape

(v) MT accidents resulting in fatal or serious casualities, accidents involving civilian vehicles resulting in damages to property or C injuries to civilians or person subject to Army Act.

(c) Other serious cases e.g. unnatural deaths not covered under sub-para (b) above.

24. It is quite obvious that the charge framed against the respondent D will not fall under Para 1(c). The charge is not that some other persons brought about losses/deficiencies of Defence Brick Store and the same was not reported by the respondent. Nor is the charge to the effect that it was the respondent himself who caused such losses/deficiencies. The charge itself is very vague. The High Court is therefore justified in holding that E charge is defective and the respondent cannot be made guilty.

25. There is no doubt that the High Court has erroneously set aside the findings of the Court Martial on Charges 2, 3 and 8. Now that we uphold the findings of the Court Martial on the said charges, the only question which remains to be considered is that of punishment awarded to F the respondent. *Prima facie*, the sentence awarded by the Court Martial appears to be very severe. But we do not want to decide the question here. As the Court Martial awarded such a sentence on the basis of the findings on all the four charges, namely, 2, 3 8 and 9 the same cannot be sustained as we have now hold that Charge No. 9 is unsustainable and the finding G thereon has been rightly quashed. Hence, the question of sentence has to be considered on the basis of three charges namely 2, 3 and 8 being found against the respondent. That has to be done by the Court Martial. Therefore, the matter has to be remanded back to the Court Martial for deciding that question.

H 26. Consequently the appeal is partly allowed and the judgment of

the High Court is set aside except with reference to its conclusion on Charge No. 9. The sentence awarded by the Court Martial is set aside and the matter is remitted to the Court Martial for considering and passing an appropriate sentence on the basis of findings on Charges 2, 3 and 8. A

27. In the facts and circumstances of the case we find it necessary to invite attention of appellants 2 to 4 to consider initiating appropriate proceedings against PWs 6, 21, 26, 30 and 32 who deposed at the Court Martial that they had signed or prepared official record on the oral directions of the respondent without verifying the correctness thereof, which act of theirs was in dereliction of duties. These state of affairs is highly distressing. We record our displeasure. B C

R.K.S. Appeal allowed.