aforesaid two ingredients were taken by the landlady in her replication filed in reply to the written statement. It is an established proposition of law that replication is a part of pleadings. In the circumstances, it cannot be said that the two ingredients of section 13(3)(a)(i) have not been pleaded by the landlady.

(19) Regarding the second argument, it has been held by the Rent Controller as well as by the Appellate Authority that the landlady required the premises for her own use and occupation. That finding has been given after taking into consideration the evidence on the record. I have also examined her statements and evidence. The landlady has a large family consisting of herself, her husband, 8 daughters and a son. Out of the aforesaid children, 4 or 5 were school-going. One of her daughters became a widow and she was permanently residing with her parents. It is not disputed that the landlady along with her husband and children was residing in a rented house which consists of only one living room. After taking into consideration all the aforesaid circumstances, I am of the view that the conclusions arrived at by the Courts below that she required the house in dispute for her own use and occupation, are correct, and I do not find sufficient reasons to interfere with the said conclusions. I, therefore, reject this contention of the learned counsel for the petitioner also.

(20) For the reasons recorded above, the revision petition fails and the same is dismissed with no order as to costs. The tenant, however, shall not be dispossessed for one month.

S. S. Sandhawalia, J.—I agree.

K. T. S.

MISCELLANEOUS CIVIL

Before Prem Chand Jain and Ajit Singh Bains, JJ.

K. N. S. SIDHU (LT. COL.),—*Petitioner.*

versus

THE UNION OF INDIA and another,—*Respondents.*

Civil Writ No. 1090 of 1973

October 1, 1976.

Army Act (46 of 1950)—*Section 162(2)—Order under—Rules of natural justice—Whether applicable—Appropriate authority—Whether bound to afford a personal hearing to the representationist.*

Held, that there is no hard and fast rule for the applicability of principles of natural justice and in each case it has to be definitely ascertained if the statute governing it leaves any discretion for involving their assistance. From a bare perusal of section 164 of the Army Act, 1950 it is clear that it gives two remedies to the person aggrieved by an order, finding or sentence of a court-martial, they being a petition to the authority which is empowered to confirm such order, finding or sentence and the petition to the Central Government or some other officer mentioned in sub-section (2), after the order or sentence is confirmed by the former authority. The final authority to which the person aggrieved by the order of the court-martial can go, is the authority mentioned in sub-section (2) of section 164. The legislature by enacting sub-section (2) has provided an additional remedy to the aggrieved person to represent to the Central Government or the Chief of the Army Staff or any prescribed officer superior in command to the one who confirmed the finding or sentence. The idea underlying this provision clearly is to enable an aggrieved person to point out any injustice that may have been caused to him by making a representation and the appropriate authority may, after going through the representation, find some justification to give relief to the aggrieved person; but by no process of reasoning it can be said that the legislature had ever intended to guarantee a right of personal hearing under sub-section (2) of section 164, and there is nothing in the Act or the Rules made thereunder from which necessary implication can be drawn that such a duty is cast upon the authority section 164(2) of the Act. The Act is applicable to a particular class of people and is self-sufficient. It is a complete code in itself and deals with each and every situation. The findings of a court-martial as and when confirmed by the appropriate authority are final and the only remedy available to the aggrieved person is to present a petition under section 164(2) of the Act and it is not incumbent upon the appropriate authority to afford a personal hearing even if the same is asked for by the representationist.

(Paras 8 and 10).

Case referred by Hon'ble Mr. Justice Ajit Singh Bains to a Larger Bench on 16th October, 1975 for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice Ajit Singh Bains after deciding the question referred to returned the case on 1st October, 1976 to a Single Judge for decision on merit.

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of Certiorari *or any other appropriate writ, order or direction be issued quashing the impugned orders dated October* 21, 1970 *and July* 21, 1972, *(Annexures 'K' and 'M') and declaring the petitioner in service.*

H. L. Sibal, Advocate with S. C. Sibal, Advocate and R. C. Sethia, Advocate, *for the Petitioner.*

M. S. Liberhan, Advocate, *for the respondent.*

JUDGMENT

Prem Chand Jain, J.—(1) The only question that was canvassed before us was as regards the validity of the order contained in Memorandum No. PCA/31300/PSI (Vig)/49, dated July 21, 1972, issued by the Government of India, Ministry of Defence rejecting the petitioner's petition in exercise of the powers conferred under sections 164(2) and 165 of the Army Act, 1950 (hereinafter referred to as the Act).

(2) Lt. Col. K. N. S. Sidhu, who has filed this petition under Articles 226 and 227 of of the Constitution of India, was commissioned as an officer in the Army Service Corps on February 1, 1946, and thereafter, in due course, he was promoted as substantive Lieutenant-Colonel on February 14, 1967. After the promotion as Lieutenant-Colonel on February 14, 1967, the petitioner was appointed as Officer Commanding, 1969 Coy ASC (Supplies), which was operating Rail Head Supply Depot, Pathankot. During the period of posting at Pathankot, the petitioner was found guilty of certain irregularities. He was charge-sheeted and a general court-martial was convened for his trial. After recording the evidence, the General Court Martial found the petitioner guilty of Charge No. 1 and passed the sentenced "to be cashiered", vide order dated October 21, 1970 (Copy attached with the petition as Annexure 'K'). Feeling aggrieved from the order of the General Court Martial, a petition was preferred to the Government of India, Ministry of Defence, which, as earlier observed, was rejected, vide order, dated July 21, 1972 (copy Annexure 'M' to the petition), which reads as under:—

> "I am directed to say that the Central Government after considering the petitions dated 18th May, 1971, 20th August, 1971, 20th November, 1971; and dated nil, submitted by you under sections 164(2) and 165 of the Army Act, 1950, against the sentence of GCM held at Pathankot on 5th October, 1970, hereby reject the said petitions."

(3) This petition came up for hearing before my learned brother Bains, J., who, considering that the point involved in the petition was of considerable importance, decided to refer the matter to a larger Bench. That is how we are seized of the matter.

(4) Before us the only contention raised by Shri H. L. Sibal, Senior Advocate, learned counsel for the petitioner, was that before passing an order under sub-section (2) of section 164 of the Act, it was incumbent on the appropriate authority to have afforded an opportunity of personal hearing to the petitioner when the same was asked for by him and that the said opportunity having not been afforded, the order of the Central Government rejecting the petition of the petitioner in exercise of its powers conferred by sub-section (2) of section 164 of the Act, cannot legally be sustained. On the other hand, Shri M. S. Liberhan, learned counsel for the respondents, submitted that it was not obligatory on the Central Government to have afforded an opportunity of personal hearing to the petitioner as such was not the requirement under the relevant provisions of the Act and that the petition filed by the petitioner was rightly rejected by the Central Government.

(5) Before proceeding to examine the contentions advanced on either side, reference may be made at this stage to some relevant observations out of the judicial pronouncements on which reliance had been placed by Shri Sibal in support of his contention. The first decision is of the House of Lords in *Arthur John Spackman* v. *The Plumstead District Board of Works* (1).. In that case, the relevant legal provision empowered the authority in question to "make an order in writing on such owner or occupier, building or person, directing the demolition of any such building or erection or so much thereof as may be beyond the said general line so fixed as aforesaid." Such general line of buildings had to be decided by the Superintending Architect to the Metropolitan Board of Works for the time being. Earl of Selborne, L.C., while referring to the manner in which the architect should proceed for fixing the general line of buildings observed as follows:—

> "No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter, and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law.

(1) L.R. 10 (1885) A.C. 229.

> There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice. But is appears to me to be perfectly consistent with reason, that the statute may intentionally omit to provide for form, because this is a matter not of a kind requiring form, not of a kind requiring litigation at all, but requiring only that the parties should have an opportunity of submitting to the person by whose decision they are to be bound such considerations as to in their judgment ought to be brought before him. When that is done, from the nature of the case, no further proceeding as to summoning the parties or as to doing anything of that kind which a judge might have to do, is necessary."

The next case is the judgment of the House of Lords in *Board of Education v. Rice and others* (2), wherein Lord Loreburn; L.C.; observed thus:—

> "Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it was a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."

(2) L.R. (1911) A.C. 179.

(6) The next case is of the Supreme Court in *Union of India* v. *Col. J. N. Sinha and another* (3), wherein K. S. Hegde, J., while dealing with the question of application of the principles of natural justice observed thus:—

> "Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in *Kraipak* v. *Union of India* (4), 'the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it.' It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authoties intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice then the Court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

(7) The other decisions to which reference was made are the Full Bench judgments of this Court in *Gurdas Singh Badal* v. *The Election Commission of India and others,* (5) and *M/s. Bhagat Singh* v. *State of Punjab and others* (6).

(8) From the observations reproduced above, it is abundantly clear that there is no hard and fast rule for the applicability of

(3) A.I.R. 1971 S.C. 40.
(4) A.I.R. 1970 S.C. 150.
(5) I.L.R. (1972) 1 Pb. and Haryana 1.
(6) 1975 P.L.R. 506.

principles of natural justice and that in each case it has to be definitely ascertained if the statute governing it leaves any discretion for involving their assistance. Therefore, it is necessary to determine if the rules of natural justice can be made to operate on cases falling under section 164(2) of the Act. Mr. Sibal had contended that the authority under section 164(2) of the Act performs quasi-judicial functions and that affording of an opportunity of personal hearing, if asked for, is a must. In order to judge the depth and correctness of the contention of Mr. Sibal, reference may be made to section 164 of the Act, which reads as under:—

> "164. *Remedy against orders, finding or sentence of court-martial.*
>
> (1) Any person subject to this Act who considers himself aggrieved by any order passed by any court-martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court-martial, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.
>
> (2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any court-martial which has been confirmed, may present a petition to the Central Government, the Chief of the Army Staff or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the Chief of the Army Staff or other officer, as the case may be, may pass such order thereon as it or he thinks fit."

From the bare perusal of the aforesaid provision it is clear that section 164 gives two remedies to the person aggrieved by an order, finding or sentence of a court-martial, they being a petition to the authority which is empowered to confirm such order, finding or sentence and the petition to the Central Government or some other officer mentioned in sub-section (2), after the order or sentence is confirmed by the former authority. The final authority to which the person aggrieved by the order of the court-martial can go, is the authority

mentioned in sub-section (2) of section 164. The legislature by enacting sub-section (2) has provided an additional remedy to the aggrieved person to represent to the Central Government or the Chief of the Army Staff or any prescribed officer superior in command to the one who confirmed the finding or sentence. The idea underlying this provision clearly appears to be to enable an aggrieved person to point out any injustice that may have been caused to him by making a representation and the appropriate authority may, after going through the representation, find some justification to give relief to the aggrieved person; but by no process of reasoning it can be justifiably argued that the legislature had ever intended to guarantee a right of personal hearing under sub-section (2) of section 164. The learned counsel for the petitioner, except relying on the general observations made in various judicial pronouncements, could not point out any other section of the Act or the rules made therein from which necessary implication can be drawn that such a duty is cast upon the authority under section 164(2) of the Act. The Act is applicable to a particular class of people. The army Act was revised in the year 1950 to make it self-sufficient. It is a complete Code in itself and deals with each and every situation. The findings of a Court Martial as and when confirmed by the appropriate authority are final. The only remedy available to the aggrieved person is to present a petition under section 164(2) of the Act. In a given case even this remedy may not be available to the aggrieved person because the confirming authority may be the same to which a petition may lie under section 164(2) of the Act. In such a situation the aggrieved person cannot make any grouse on the ground that he has been deprived of his second remedy available to him under section 164(2) of the Act. See in this connection the decision of their Lordships of the Supreme Court in *Ram Sarup* v. *Union of India and another* (7), where in it has also been observed thus:—

> "Section 164 does not lay down that the correctness of the order of sentence of the Court-Martial is always to be decided by two higher authorities. It only provides for two remedies."

The Act applies to a class of people who are the backbone of the country. They are governed by the codified law. Discipline is maintained by resorting to the provisions of the codified law. There would hardly be any justification for importing the prinicples of

(7) A.I.R. 1965 S.C. 245.

natural justice in a completely codified statute. At this stage I would make reference to another decision of their Lordships of the Supreme Court in *Capt. Harish Uppal* v. *Union of India and others* (8), which lends full support to the view I am taking. The facts of the aforesaid case were that the petitioner in that case was an officer of the Indian Army. He was tried before the Summary General Court-Martial on the charge of committing robbery at Hajiganj. The Court sentenced him to be 'cashiered'. This sentence was subject to confirmation. The confirming authority passed an order directing the revision of the sentence. Thereafter, the petitioner was brought before the same Court-Martial as had tried him earlier and he was asked whether he wanted to address the Court. On receiving reply in the negative, the Court, after considering the observations of the confirming authority, revoked the earlier sentence which they had imposed and sentenced him to be 'cashiered' and to suffer rigorous imprisonment for two years. The finding and the sentence were referred for confirmation to the Chief of the Army Staff, who, in due course, confirmed the finding and the sentence. A petition under Article 32 of the Constitution was filed before the Supreme Court for quashing the order passed by the Chief of the Army Staff. One of the contentions raised before their Lordships was as follows:—

> "The officer who finally confirmed the sentence on the petitioner should also have heard the petitioner."

While repelling the said contention the following observations were made by their Lordships:—

> "The contention that Brig. Bhilla should either have given a hearing to the petitioner or the Chief of Army Staff should have given a hearing to the petitioner before confirming the subsequent sentence by the court-martial is not a requirement under the Act. While it can be at least said that there is some semblance of reasonableness in the contention that before he ordered what in effect was an upward revision of the sentence passed on the petitioner, he should have been given a hearing, to insist that the confirming authority should give a hearing to the petitioner before it confirmed the sentence passed by the court-martial, is a contention which cannot be accepted. To accept this contention

(8) A.I.R. 1973 S.C. 258

would mean that all the procedure laid down by the Code of Criminal Procedure should be adopted in respect of the court martial, a contention which cannot be accepted in the face of the very clear indications in the Constitution that the provisions which are applicable to all the civil cases are not applicable to cases of Armed Personnel. It is not a requirement of the principles of natural justice. Indeed when he was informed that the subsequent sentence passed on him had been sent to the Chief of the Army Staff for confirmation it was open to the petitioner to have availed himself of the remedy provided under Section 164 of presenting a petition to the confirming officer, i.e., the Chief of the Army Staff in this case. He does not appear to have done so."

(9) Reference may also be made to an unreported decision of their Lordships of the Supreme Court rendered in *Som Datt Datta* v. *Union of India and others* (9). In that case, one of the contentions raised was that it was necessary to give reasons under section 164 of the Act by the confirming authority, before confirming the proceedings of the Court-Martial. While negativing this contention their Lordships observed thus:—

"In the present case it is manifest that there is no express obligation imposed by section 164 or section 165 of the Army Act on the confirming authority or upon the Central Government to give reasons in support of its decision to confirm the proceedings of the Court Martial. Mr. Dutta has been unable to point out any other section of the Act or any of the rule made therein from which necessary implication can be drawn that such a duty is cast upon the Central Government or upon the confirming authority. Apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, we are unable to accept the contention of Mr. Dutta that there is any general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision .....

....

As already stated, there is no express obligation imposed in the present case either by section 164 or by section 165 of the Indian Army Act on the confirming authority or on

(9) Writ P. No. 118/68 decided on 20th September, 1968.

the Central Government to give reasons for its decision. We have also not been shown any other section of the Army Act or any other statutory rule from which the necessary implication can be drawn that such a duty is cast upon the Central Government or upon the confirming authority."

(10) In view of the aforesaid discussion, I hold that before disposing of the petition under section 164(2) of the Act it is not incumbent on the appropriate authority to afford an opportunity of personal hearing even if the same was asked for by the representationist.

The matter shall now go before the learned Single Judge for deciding the same on merits.

Ajit Singh Bains, J.—I agree.

K.T.S.

APPELLATE CIVIL.

Before S. S. Sandhawalia and S. P. Goyal, JJ.

STATE OF PUNJAB,—*Defendant-Appellant.*

versus

SHRI KARTAR SINGH GREWAL,—*Plaintiff-Respondent.*

Regular Second Appeal No. 1863 *of* 1974.

October 21, 1976.

Punjab Civil Services (Punishment and Appeal) Rules 1970—*Rule* 22—*Whether directory—Order passed against a Government servant—Communication thereof—Whether necessary—Communication—When can be said to be complete.*

Held, that rule 22 of the Punjab Civil Services (Punishment and Appeal) Rules 1970 was meant to do no more than provide a broad guideline for the manner in which service of orders and notices etc. was to be made and there could hardly be any intention to preclude all other modes of communication even though they may be equally or indeed more effective. The context in which this rule is placed in and its nature also would negative any assumption that it was meant to be mandatory. Again the rule is of a procedural nature