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R. VISWAN & OTHERS

v.

UNION OF INDIA & OTHERS

May 6, 1983

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[Y. V. CHANDRACHUD, C.J, P. N. BHAGWATI, O. CHINNAPPA REDDY, V. BALAKRISHNA ERADI AND R. B. MISRA, JJ.]

C

Army Act, 1950—S. 21—Constitutional validity of—Whether saved by Art. 33.

Army Act, 1950—Sub-ss. (1) and (4) of s. 4—'Force'—Meaning of.

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General Reserve Engineering Force (GREF)—Whether it is 'force' within the meaning of sub-ss. (1) and (4) of s. 4 of Army Act, 1950—Whether members of GREF are members of 'Armed Forces' within the meaning of Art. 33 of Constitution—Whether S.R. Os. 329 and 330 applying provisions of Army Act, 1950 and Army Rules 1954 to members of GREF in exercise of power under sub-ss. (1) and (4) of s. 4 of Army Act, 1959 ultra vires Art. 33 of Constitution—Whether application of Central Civil Services (Classification, Control and Appeal) Rules, 1965 as also provisions of Army Act and Army Rules to members of GREF violative of Art. 14 of Constitution.

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The petitioners who belonged to the General Reserve Engineering Force (GREF) were charged under s. 63 of the Army Act, 1950 on allegations *inter alia* that they had assembled in front of the Chief Engineer and shouted slogans demanding release of personnel placed under arrest, participated in a black flag demonstration and associated themselves with an illegal association. They were tried by Court Martial in accordance with the prescribed procedure and, on being convicted, were dismissed from service.

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The petitioners submitted that their convictions by Court Martial were illegal and raised the following contentions in support of their plea : that the GREF was a civilian construction agency and not a 'force' raised and maintained under the authority of the Central Government and consequently, the members of GREF were not "members of Armed Forces or the Forces charged with the maintenance of public order" within the meaning of Art. 33 of the Constitution and therefore the application of s. 21 of the Army Act read with rs. 19 to 21 of the Army Rules to them was unconstitutional since it restricted their fundamental rights in a manner not permitted by the Constitution; that S.R. Os 329 and 330 which were notifications having the effect of applying the provisions of the Army Act and the Army Rules to the members of the GREF were *ultra vires* the powers of the Central Government under sub-ss. (1) and (4) of s. 4 of the Army Act; that s. 21 of the Army Act was unconstitutional as it

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was not justified by the terms of Art. 33 since under that Article it was Parliament alone which was entrusted with the power to determine to what extent any of the fundamental rights shall, in application to the members of the Armed Forces or Forces charged with the maintenance of public order, be restricted or abrogated and Parliament could not have left it to the Central Government to determine the extent of such restriction or abrogation as was sought to be done under s. 21; that the petitioners were entitled to exercise their fundamental rights under cls. (a), (b) and (c) of Art. 19 (1) without any of the restrictions imposed by rs. 19 to 21 of the Army Rules and therefore they could not be charged under s. 63 of the Army Act on the facts alleged against them; that their trial was not in accordance with law; and that the application of the provisions of the Army Act and the Army Rules to the members of GREF for purposes of discipline was discriminatory and violative of Art. 14 inasmuch as the members of the GREF were governed both by the Central Civil Services (Classification Control and Appeal) Rules, 1965 and the provisions of the Army Act and the Army Rules in matters of discipline.

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Dismissing the petitions,

HELD 1. (a) The functions and duties of GREF are integrally connected with the operational plans and requirements of the Armed Forces. There can be no doubt that without the efficient and disciplined operational role of GREF the military operations in border areas during peace as also in times of war will be seriously hampered and a highly disciplined and efficient GREF is absolutely essential for supporting the operational plans and meeting the operational requirements of the Armed Forces. The members of the GREF answer the description of "members of the Armed Forces" within the meaning of Art. 33 and consequently the application of s. 21 of the Army Act to the members of GREF is protected by that Article and the fundamental rights of the members of GREF must be held to be validly restricted by s. 21 read with rs. 19 to 21 of Army Rules. The petitioners were therefore liable to be charged under s. 63 of the Army Act for the alleged violations of rs. 19 to 21 and their convictions and subsequent dismissals must be held to be valid.

[88 F-89 B]

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(b) The fact that the members of the GREF are described as civilian employees and they have their own special rules of recruitment and are governed by the Central Civil Services (Classification, Control and Appeal) Rules, 1965 is not determinative of the question whether they are members of the Armed Forces. The question whether the members of GREF can be said to be members of the Armed Forces for the purpose of attracting the applicability of Art. 33 must depend essentially on the character of GREF, its organisational set up, its functions, the role it is called upon to play in relation to the Armed Forces and the depth and intimacy of its connection and the extent of its integration with the Armed Forces. The history, composition, administration, organisation and role of GREF clearly show that GREF is an integral part of the Armed Forces and that the members of GREF can legitimately be said to be members of the Armed Forces within the meaning of Art. 33. It is undoubtedly a departmental construction agency as contended on behalf of the petitioners but it is distinct from other

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construction agencies such as the Central Public Works Department in that it is a force intended primarily to support the Army in its operational requirement: [87 D-H, 83 G]

Ous Kutilingal Achudan Nair and Ors. v. *Union of India and Ors.*, [1976] 2 S.C.R. 769, referred to.

(c) The Central Government is empowered under sub-s. (1) of s. 4 of the Army Act to apply any of the provisions of that Act to any force raised or maintained in India under the authority of that Government. When the provisions of the Army Act are applied to any force under sub-s. (1) of s. 4, the Central Government can, by notification issued under sub-s. (4) thereof, direct by what authority, the jurisdiction, powers and duties incident to the operation of those provisions shall be exercised or performed in respect of that force. The word 'force' is not defined any where in the Army Act but sub-s. (2) of s. 4 clearly contemplates that 'force' referred to in sub-s. (1) of s. 4 must be a force organised on similar lines as the army with rank structure. There can be no doubt that GREF is a force organised on army pattern with units and sub-units and rank structure. It is clear from the letter dated June 16, 1960 addressed by the Secretary, Border Roads Development Board to the Director General Border Roads that GREF is a force raised and maintained under the authority of the Central Government. The Central Government therefore had the power under sub-ss. (1) and (4) of s. 4 to issue notifications S.R.O. 329 and S.R.O. 330 applying some of the Army Act and the Army Rules to the GREF. [82 B-H]

(d) There is no substance in the contention that applying the provisions of the Army Act and the Army Rules to the members of GREF for purpose of discipline is discriminatory and violative of Art. 14. The nature of the proceedings which may be taken under the Central Civil Services (Classification, Control and Appeal) Rules against an erring employee is different from the nature of the proceedings which may be taken against him under the provisions of the Army Act read with Army Rules, the former being disciplinary in character while the latter being clearly penal. There is no overlapping between the two because ss. 20 and 71 of the Army Act which deal with dismissal, removal or reduction in rank have not been made applicable to the members of GREF by S.R.O. 329. The respondents have positively stated in their affidavit that clear and detailed administrative guidelines have been laid down for the purpose of guiding the disciplinary authority in exercising its discretion whether to take action against an employee of GREF under Central Civil Services (Classification, Control and Appeal) Rules or the Army Rules and therefore it is not possible to say that the discretion vested in the authorities is unguided or uncanalised. Moreover, the decision in *Northern India Caterers* v. *Punjab* on which this contention is based has been overruled in *Maganlal Chhaganlal* v. *Municipal Corporation, Greater Bombay*. In any event, the provisions of the Army Act and the Army Rules as applied to the members of GREF are protected by Art. 33 against invalidation on the ground of violation of Art. 14. [90 G-92 B]

Northern India Caterers v. *Punjab*, [1976] 3 S.C.R. 399; and *Maganlal Chhaganlal* v. *Municipal Corporation, Greater Bombay*, [1974] 2 S.C.C. 402, referred to. A

(e) The contention that the trial of the petitioners was not in accordance with law was strongly resisted by the respondents and having regard to the averments made by them on this point it is not possible to hold that the convictions of the petitioners by the Court Martial were not in accordance with law. In any event, the allegation of the petitioners in this behalf raised disputed questions of fact which it is not possible to try in a writ petition. [90 A-F] B

(f) The alleged disparity between the Army personnel posted in GREF units und officers and men of GREF in so far as the terms and conditions of service such as salary, allowances and rations has no real bearing on the question whether the members of GREF can be said to be members of Armed Forces. Since the members of GREF are drawn from different sources it is possible that the terms and conditions of service of the personnel coming from the two sources may be different. In case it is found that there is any disparity the Central Government may consider the advisability of taking steps for its removal. [89 C-H] C

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2. Section 21 of the Army Act empowers the Central Government to make rules restricting "to such extent and in such manner as may be necessary" three categories of rights of any person subject to the Army Act. These rights are part of the fundamental rights under cls. (a), (b) and (c) of Art. 19(1) and under the constitutional scheme, they cannot be restricted by executive action unsapported by law. But s. 21 is saved by Art. 33 which carves out an exception in so far as the applicability of fundamental rights to members of the Armed Forces and the Forces charged with the maintenance of public order is concerned. On a plain grammatical construction of its language, Art. 33 does not require that Parliament itself must by law restrict or abrogate any of the fundamental rights in order to attract the applicability of that Article. What it says is only this and no more, namely that Parliament may by law determine the *permissible extent* to which any of the fundamental rights may be restricted or abrogated in their application to the members of the Armed Forces and the Forces charged with the maintenance of public order. Parliament itself can by enacting a law restrict or abrogate any of the fundamental rights in their application to the members of these forces as in fact it has done by enacting the Army Act. But having regard to the varying requirement of army discipline and the need for flexibility in this sensitive area it would be inexpedient to insist that Parliament itself should determine what particular restrictions should be imposed and on which fundamental rights in the interest of proper discharge of duties by the members of these Forces and maintenance of discipline among them The extent of such restrictions would necessarily depend upon the prevailing situation at a given point of time and it would be inadvisable to encase it in a rigid statutory formula. The Constitution makers were obviously anxious that no more restrictions should be placed on the fundamental rights of the members of these Forces than are absolutely necessary for ensuring proper discharge of E F G H

their duties and the maintenance of discipline among them. They therefore, decided to introduce a certain amount of flexibility in the imposition of such restrictions and, by Art. 33, empowered Parliament to determine the permissible extent to which any of the fundamental rights in their application to the members of these Forces may be restricted or abrogated so that, within such permissible extent determined by Parliament, any appropriate authority authorised by Parliament may restritrict or abrogate any such fundamental rights. Parliament was therefore, within its power under Art. 33 to enact s. 21. The extent to which restrictions may be imposed on the fundamental rights under cls. (a), (b) and (c) of Art. 19(1) is clearly indicated in cls. (a), (b) and (c) of s. 21 and the Central Government is authorised to impose restrictions on these fundamental rights only to the extent of the rights set out in cls. (a), (b) and (c) of s. 21 and no more. The guidelines for determing as to which restrictions should be considered necessary by the Central Government within the permissible extent determined by Parliament is provided in Art. 33 itself, namely, that the restrictions should be such as are necessary for ensuring the proper discharge of their duties by the members of the Armed Forces and the maintenance of discipline among them The Central Government has to keep this guideline before it in exercising the power of imposing restrictions under s. 21. Once the Central Government has imposed restrictions in exercise of this power, the Court will not ordinarily interfere with the decision of the Central Government that such restrictions are necessary because that is a matter left by Parliament exclusively to the Central Government which is best in a position to know what the situation demands. Section 21 must, in the circumstances, be held to be constitutionally valid as being within the power conferred under Art. 33. [83 B-D, 78 -81 C]

Ram Swarup v. *Unian of India*, [1964] 5 S.C.R. 931, referred to.

ORIGINAL JURISDICTION : W. P. (CRL) Nos. 815, 843, 632/80, 844, 5116/81, 1301-04, 1383, 3460, 4510, 4511, 4512, 4551/80 & 3861, 3848, 8317/81 and 59 of 1982.

(Under article 32 of the Constitution of India)

AND

Special Leave Petition (Crl.) Nos. 2061-65 of 1980.

From the Judgment and Order dated the 19th May, 1980 of the Delhi High Court in Criminal Writ Petition Nos. 24-27/80 & 30/80.

K. K. Venugopal, Miss Mridula Roy, D. P. Mukherjee, A. K. Ganguli & G. S. Chatterjee, with him for the Petitioners in WPs. 815, 5116, 843, 844, 8317.

M. K. Ramamurthy, *Janardhan Sharma* and *P. Gaur* with him for the Petitioners in WPs. 3460, 1383, 4510, 4551, 1301-04, 4511, & SLPs. 2061-65. A

Miss Kailash Mehta for the Petitioners in WP. 3861.

M. M. L. Srivastava for the Petitioner in WP. 3848. B

Chandramouli—Petitioner in person—in WP. 632.

Nemo in WP. 59.

R. K. Mehta for the Petitioner in WP. 4512/80. C

L. N. Sinha, Attorney General, *M. K. Banerji*, Additional Solicitor General, *K. M. Abdul Khader*, *Girish Chandra* and *Miss A. Subhashini* with them for the Respondents.

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The Judgment of the Court was delivered by

BHAGWATI, J. These writ petitions raise a short but interesting question of law relating to the interpretation of Article 33 of the Constitution. The question is whether section 21 of the Army Act 1950 read with Chapter IV of the Army Rules 1954 is within the E scope and ambit of Article 33 and if it is, whether Central Government Notifications Nos. SRO 329 and 330 dated 23rd September 1960 making *inter alia* section 21 of the Army Act 1950 and Chapter IV of the Army Rules 1954 applicable to the General Reserve Engineering Force are *ultra vires* that Article since the General Reserve F Engineering Force is neither an Armed Force nor a Force charged with the maintenance of public order. It is a question of some importance since it affects the fundamental rights of a large number of persons belonging to the General Reserve Engineering Force and in order to arrive at a correct decision of this question, it is necessary first of all to consider the true nature and character of the General G Reserve Engineering Force.

In or about 1960 it was felt that economic development of the North and North Eastern Border areas were greatly handicapped by H meagre and inadequate communications and defence of these areas also required a net work of roads for effective movement and deployment of Armed Forces. This was rendered all the more necessary

because the relations of India with its neighbours were in a state of potential conflict and part of the Indian territory was under foreign occupation and there were also hostile forces inviting some sections of the people to carry on a campaign for secession. The Government of India therefore, with a view to ensuring coordination and expeditious execution of projects designed to improve existing roads and construct new roads in the border areas is order to improve the defence preparedness of the country, created several posts in the Directorate General of Works. Army Head Quarters for work connected with the development of border roads as per letter dated 9th April 1960 addressed by the Under Secretary to the Government of India, Ministry of Defence to the Chief of the Army Staff. On 18th April 1960, within a few days thereafter, the Government of India sanctioned the post of Director General Border Roads in the rank of Major-General in the Directorate General of Works, Army Head Quarters; vide letter dated 18th April 1960 addressed by the Under Secretary to the Government of India, Ministry of Defence to the Chief of the Army Staff. The Director General Border Roads was placed in charge of this new organisation which started originally as part of the Directorate General of Works, Army Head Quarters. But subsequently, for reasons of high policy, it was decided that this Organisation should not continue as part of the Directorate General of Works, Army Head Quarters but should be under the Board Roads Development Board set up by the Government of India as a separate self contained Authority under the Chairmanship of the Prime Minister with the Defence Minister as Deputy Chairman, the Financial Adviser (Defence) as Financial Adviser and a few other members nominated by the Prime Minister. The budget of the Border Roads Development Board formed part of the budget of the Ministry of Shipping and Transport but the financial control was vested in the Ministry of Finance (Defence). The Government of India by a letter dated 16th June 1960 addressed by the Secretary of the Border Roads Development Board to the Director General, Border Roads conveyed the sanction of the President to "raising and maintenance of a General Reserve Engineering Force for the construction of roads in the border areas and such other tasks as may be entrusted to it by the Border Roads Development Board". It was directed that the General Reserve Engineering Force will be "under the over all command of the Director General Border Roads under whom will be Regional Chief Engineers/ Independent Deputy Chief Engineers who will exercise command

over the units of the Force placed under their control". The General Reserve Engineering Force (hereinafter referred to as GREF) was thus raised under the authority of the Government of India and it was placed under the over all command of the Director General, Border Roads. Ever since then the Director General, Border Roads, has always been an army officer of the rank of Major General and he functions under the directions of the Border Roads Development Board,

The General Reserve Engineering Force (GREF) is organised on army pattern in units and sub units with distinctive badges of rank and a rank structure equivalent to that in the army. The officers and other personnel of GREF are required to be in uniform right from class IV to Class I personnel. Though GREF is undoubtedly a departmental construction agency, it is maintained by the Government of India to meet the operational requirements of the army whose operational planning is based on the availability of the units of GREF for operational purposes. In fact GREF provided support to the Army during Indo-China conflict of 1962 and Indo-Pakistan conflicts of 1965 and 1971 and also assisted the Army in the maintenance of public order during the disturbances in Mijoram in 1966 and in Assam in 1980-81. The personnel of GREF are primarily drawn from two sources and they consist of (1) officers and men belonging to the Army and (2) officers and men recruited through the Union Public Service Commission in case of officers and departmentally in case of other ranks. A ten per cent quota is reserved for recruitment of ex-servicemen. The posting of Army officers and men in GREF is done, not on any ad hoc basis, but in accordance with a well thought out manning policy laid down by the Government of India for the purpose of maintaining at all times and at all levels the special character of GREF as a force designed to meet the operational requirement of the Army. The manning policy laid down by the Government of India in respect of officers is as under :

Posts	*Army*	*GREF*
Brig/Col/Chief Engineer Gr. I & II	75%	25%
Lt. Col./Superintending Engineer	50%	50%
Major/Executive Engineer	42%	58%
Capt./Asstt. Executive Engineer	20%	80%
Assistant Engineer	—	100%

So far as officers and men recruited through the Union Public Service Commission or departmentally are concerned, all of them are given training at the GREF Centre, immediately after recruitment. The GREF Centre is organised on lines similar to an Army Regimental Centre and also functions in the same manner. It is located at a place adjoining an Engineer Regimental Centre, initially at Roorkee and now at Pune, so that it can, if necessary, draw upon the resources of the Engineer Regimental Centre. The new recruits are imparted training in the following three military disciplines :

(a) Discipline, which includes drill, marching and saluting.

(b) Combat training, including physical training i.e. standing exercises, beam exercises, rope work, route marches etc., harbour deployment drills, camp protection etc.

(c) Combat Engineering Training, including field engineering, handling of service explosives, camouflage, combat equipment, bridging, field fortifications, wire obstacles etc.

GREF personnel are not trained in the use of arms, since the role to be performed by GREF is such that its personnel are not required to use arms and they need arms only for static protection and for use during emergency. Therefore in GREF issue of arms is restricted only to Army personnel and ex-servicemen apart from certain units like the Provost Units (GREF Police) which having regard to the nature of their duties, have necessarily to be armed.

The tasks which are to be carried out by GREF comprise not only maintenance of strategic roads but also support for the operational plans of the Army in place of Army Engineer Regiments. We shall presently elaborate these tasks in order to highlight the true character of GREF, but before we do so, we may point out that the role and organisation of GREF units have been reviewed from time to time in consultation with the Army Headquarters and as a result of a major review carried out after the Indo-Pakistan Conflict of 1971, the Army Headquarters defined the role and organisation of GREF units in a secret document dated 24th January 1973. It is clear from this document that, according to the Army Headquarters,

a minimum of 17 Border Roads Task Forces and 34 Pioneer Companies are permanently required for providing engineer support to the Army and over the years, this minimum requirement has been fulfilled and 17 Border Roads Task Forces and 34 Pioneer Companies have been made permanent. These 17 Border Roads Task Forces and 34 Pioneer Companies have to be maintained as essential units of GREF for meeting the operational requirement of the Army, even if sufficient work load is not available in Border Areas at any given point of time. There are, in fact, at present 21 Border Roads Task Forces and 34 Pioneer Companies, that is, four Border Roads Task Forces more than the minimum required by the Army Authorities The requirement of these four additional Border Roads Task Forces is reviewed from time to time depending on the work-load. What should be the composition of the Border Roads Task Forces is laid down in the document dated 24th January 1973 and this document also sets out the tasks to be carried out by the Border Roads Task Forces which may be briefly summarised as follows :

(a) Maintenance of line of communication in rear areas of the theatre of operations including roads constructed by the Border Roads and roads maintained by CPWD, State PWD and MES.

(b) Improvement and maintenance of operational roads and tracks constructed by combat engineers;

(c) Construction and maintenance of AICs and helipads;

(d) Improvement and repairs to airfields;

(e) Construction of accommodation and all allied facilities for maintenance areas required for sustaining operations;

(f) Construction of defence works and obstacles; and

(g) Water supply in difficult terrain and deserts.

These tasks are required to be carried out by the Border Roads Task Forces during operations with a view to providing engineering support to the army in its operational plans. The Border Roads Task Forces have to perform these tasks not only within the country

upto the border but also beyond the border upto the extent of advance into enemy's territory. Even during peace time the Border Roads Task Forces have to be suitably positioned in the likely area of operations so that they can, in the event of hostilities, be quickly deployed on their operational tasks. The Border Roads Tasks Forces alongwith the Pioneer Companies attached to them are also included in the Order of Battle of the Army so that the support of these units to the Army is guaranteed and can be requistioned at any time. These units of GREF are further sub-allotted to the lower army formations such as Command, Corps and Division and they appear on the Order of Battle of these formations. Their primary function is to carry out works projected by the General Staff, Army Headquarters to meet the operational requirements and these works, include, *inter alia,* construction and maintenance of roads operational tracks, airfields, ditch-cum-bund (water obstacles on the border) and field fortifications like bunkers fire trenches and Pill Boxes. If after meeting the requirements of the General Staff, Army Headquarters, there is spare capacity available with these units of GREF, they undertake construction work on behalf of other ministries or departments, though even there, preference is given to strategic and other roads in sensitive border areas. The funds allocated for the Border Roads Organisation are non-plan funds meant exclusively to meet the requirements of the General Staff, Army Headquarters and they cannot be used for carrying out the works of other ministries or departments. When works are undertaken by GREF units on behalf of other ministries or departments, they are treated as works on agency basis and, where applicable, agency charges are collected by the Border Roads Organisation from the ministries or departments whose work is carried out by them. GREF units undertake, as far as possible, only those tasks which are similar in nature to the tasks for which they are primarily designed to meet Army requirements. It is apparent from the further affidavit of Lt. Col. S.S. Cheema that the major portion of the work carried out by GREF units consists of tasks entrusted by the General Staff, Army Headquarters and the tasks carried out on agency basis on behalf of other ministries or departments are comparatively of much lesser value. In fact, until 1966 no work on agency basis was undertaken by GREF units and during the period 1967 to 1970 less than 2 percent of the total work was executed by GREF units for other ministries or departments. Even during the years 1970-71 to 1980-81,

the percentage of work carried out by GREF units on behalf of other ministries of departments did not on an average exceed 15 per cent of the total work. The figures for the year 1980-81 also reveal the same pattern. During 1981-82 the work executed by GREF units for General Staff, Army Headquarters consisted of construction and maintenance of 12865 kms. of roads out of the funds of the Border Roads Organisation and 310 kms. of ditch-cum-bunds out of funds provided bs the Defence Ministry while the agency work entrusted by the Ministry of Shipping and Transport did not cover more than 519 km. of strategic roads, 216 kms. of sensitive broder area roads and 376 kms. of National Highways in border areas and the agency work entrusted by other ministries was limited only to 702 kms. of roads. It will thus be seen that the major part of the work executed by GREF units consists of tasks entrusted by the General Staff, Army Headquarters and only a small percentage of work is being done on behalf of other ministries or departments when spare capacity is available.

So far as the personnel of GREF are concerned, they are partly drawn from the Army and partly by direct recruitment. Army personnel are posted in GREF according to a deliberate and carefully planned manning policy evolved with a view to ensuring the special character of GREF as a force intended to support the Army in its operational requirements. The posting of Army personnel in GREF units is in fact regarded as normal regimental posting and does not entitle the Army personnel so posted to any deputation or other allowance and it is equated with similar posting in the Army for the purpose of promotion, career planning, stc. The tenure of Army personnel posted in GREF units is treated as normal Regimental Duty and such Army personnel continue to be subject to the provisions of the Army Act 1950 and the Army Rules 1954 whilst in GREF. But quite apart from the Army personnel who form an important segment of GREF, even tne directly recruited personnel who do not come from the Army are subjected to strict Army dicipline having regard to the special charcter of GREF and the highly important role it is called upon to play in support of the Army in its operational requirements. Since the capacity and efficiency of GREF units in the event of outbreak of hostilities depends on their all time capacity and efficiency they are subjected to rigorous discipline even during peace time, because it is elementary that they cannot be expected suddenly to rise to the occasion and provide necessary support to the Army during military operations unless they

are properly disciplined and in fit condition at all times so as to be prepared for any eventuality. The Government of India has in exercise of the power conferred upon it by sub-sections (1) and (4) of Section 4 of Army Act 1950 issued a Notification bearing SRO 329 dated 23rd September 1960 applying to GREF all the provisions of that Act with the exception of those shown in Schedule A, subject to the modifications set forth in Schedule B and directing that the officers mentioned in the first column of Schedule C shall exercise or perform, in respect of members of the said Force under their command, the jurisdiction, powers and duties incident to the operation of that Act specified in the second column of Schedule C. This Notification makes various provisions of Army Act 1950 applicable to GREF and amongst them is Section 21 which provides :

> 21. Subject to the provisions of any law for the time being in force relating to the regular Army or to any branch thereof, the Central Government may, by notification, make rules restricting to such extent and in such manner as may be necessary the right of any person subject to this Act :—
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> (a) to be a member of, or to be associated in any way with, any trade union or labour union or any class of trade of labour unions, or and society, institution or association or any class of institution or associations;
>
> (b) to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes;
>
> (c) to communicate with the press or to publish or cause to be published any book, letter or other documents.

The other sections which are made applicable deal with special privileges, offences, punishments, penal deductions, arrest and proceedings before trial, Court-Martial and other incidental matters. These section which are made applicable are primarily intended to impose strict discipline on the members of GREF the same kind of discipline which is required to be observed by the regular Army personnel. The Government of India has also in exercise of the powers of conferred by Section 21, sub-section (4) of Section 102 and section

191 of the Army Act 1950 issued another Notification bearing SRO 330 on the same day, namely, 23rd September 1960, directing that the Army Rules 1954 as amended from time to time shall, with the exception of Rules 7 to 18, 168, 172 to 176, 190 and 191, be deemed to be Rules made under the Army Act 1950 as applied to GREF. Rules 19, 20 and 21 of the Army Rules 1954 are material for the purpose of the present writ petitions and they provide *inter alia* as follows

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19. Unauthorisad organisations—No person subject to the Act shall, without the express sanction of the Central Government :—

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(i) take official cognizance of, or assist or take any active part in, any society, institution or organisation not recognised as part of the Armed Forces of the Union; unless it be of a recreational or religious nature in which case prior sanction of the superior officer shall be obtained;

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(ii) be a member of, or be associated in any way with, any trade union or labour union, or any class of trade or labour unions.

20. Political and non-military activities—(1) No person subject to the Act shall attend, address, or take part in any meeting or demonstration held for a party or any political purposes, or belong to join or subscribe in the aid of, any poltitical association or movement.

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(2) No person subject to the Act shall issue an address to electors or in any other manner publicly announce himself of allow himself to be publicly announced as a candidate or as a prospective candidate for election to Parliament, the legislature of a State, or a local authority, or any other public body or act as a member of a candidate's election committee or in any way actively promote or prosecute a candidate's interests.

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21. Communications to the Press, Lectures, etc—No person subject to the Act shall.—

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(i) publish in any from whatever or communicate directly or indireclty to the Press any matter in rela-

tion to a poltical question or on a service subject or containing any service information, or publish or cause to be published any book or letter or article or other document on such question or matter or containing such information without the prior sanction of the Central Government, or any officer specified by the Central Government in this behalf; or

(ii) deliver a lecture or wireless address, on a matter relating to a political question or on a service subject or containing any information or views on any service subject without the prior sanction of the Central Government or any officer specified by the Central Government in this behalf.

These rules obviously owe their genesis to Section 21 and they impose restrictions on the fundamental rights of members of GREF. Since the Army Act 1950 and Army Rules 1954 are made applicable by virtue of SRO Nos. 329 and 330 dated 23rd September, 1960, GREF personnel when recruited, are required to accept certian terms and conditions of appointment which include *inter alia* the following :

"5 (iv) : You will be governed by the provisions of Central Civil Service (Classification, Control and Appeal) Rules, 1965, as amended from time to time. Notwithstanding the above, you will be further subject to certain provisions of the Army Act, 1950, and Rules made thereunder, as laid down in SROs. 329 and 330 of 1960, for purposes of discipline. It will be open to the appropriate disciplinary authority under the Army Act 1950 to proceed under its provisions wherever it considers it expedient or necessary to do so."

5 (v) : You will be required to serve anywhere in India or outside India and when so called upon by the Government or the appointing authority or your superior officer, you shall proceed on field service.

5 (vi) : You shall, if required, be liable to serve in any Defence Service or post connected with the defence of India.

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5 (xi) : On your appointment, you will be required to wear the prescribed uniform while on duty, abide by such rules and instructions issued by your superior authority regarding discipline, turnout, undergo such training and take such departmental test as the Government may prescribe."

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The result is that the directly recruited GREF personnel are governed by the provisions of Central Civil Service (Classification, Control and Appeal) Rules 1965 as amended from time to time but for purposes of discipline, they are subject to certain provisions of the Army Act 1950 and the Army Rules 1954 as laid down in SROs 329 and 330 dated 23rd September 1960.

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The material facts in all the writ petitions which are being disposed of by this Judgment are similar and hence it is not necessary to set out separately the facts of each writ petition. It will suffice to set out the facts of writ petition No. 815 of 1980 which was tried as the main writ petition and whatever we say in regard to the facts of this writ petition must apply equally in regard to the other writ petitions. The petitioners in writ petition No. 815 of 1980 are 24 in number and at all material times they were members of GREF. Out of them, petitioner Nos. 1 and 24 were deserters from service and warrants were issued for their arrest under the provisions of the Army Act 1950 but the Police Authorities were not able to apprehend them. So far as petitioners Nos. 2 to 23 are concerned, they were charged before the Court-Martial for offences under section 63 of the Army Act 1950 in that they alongwith some other GREF personnel assembled in front of HQ Chief Engineer (Project) Vartak shouting slogans and demanding release of HQ CE (P) Vartak personnel placed under arrest, removed their belts and threw them on the ground in the vicinity of OC's Office, participated in a black flag demonstration and failed to fall in line though ordered to do so by Brig. Gosain, Chief Engineer Project, Vartak and also associated themselves with an illegal association called "All India Border Roads Employees Association". These 22 petitioners were tried by the Court-Martial in accordance with the procedure prescribed by the Army Act 1950 and the Army Rules 1954 as applicable to the members of GREF and on being convicted, they were dismissed from service. The petitioners thereupon preferred writ petition No. 815 of 1980 challenging the validity of SROs. 329 and 330 dated 23rd September 1960 since these Notifications had the effect

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of applying the provisions of the Army Act 1950 and the Army Rules 1954 to the members of GREF and restricting their fundamental rights. The petitioners contended that GREF was not a Force raised and maintained under the authority of the Central Government and SROs. 329 and 330 dated 23rd September 1960 were *ultra vires* the powers of the Central Government under sub-sections (1) and (4) of Section 4 of the Army Act 1950. The petitioners also urged that in any event the application of Section 21 of the Army Act 1950 read with Rules 19 to 21 of the Army Rules 1954 to the members of GREF was unconstitutional since it restricted the fundamental rights of the members of GREF in a manner not permitted by the Constitution and such restriction of the fundamental rights was not protected by Article 33, because the members of GREF were not "members of the Armed Forces or the Forces charged with the maintenance of public order" within the meaning of that Article. There was also one other contention advanced on behalf of the petitioners which, if well founded would render it unnecessary to examine whether GREF was a Force raised and maintained under the authority of the Central Government and the members of GREF were members of the Armed Forces or the Forces charged with the maintenance of public order and that contention was that Section 21 of the Army Act 1950 was in any event not justified by the terms of Article 33, since under that Article it was Parliament alone which was entrusted with the power to determine to what extent any of the fundamental rights shall, in application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline amongst them and Parliament could not leave it to the Central Government to determine the extent of such restriction or abrogation as was sought to be done under-Section 21. Section 21 was therefore, according to the petitioners, unconstitutional and void and alongwith Section 21 must fall Rules 19 to 21 of the Army Rules 1954. The petitioners contended that in the circumstances they were entitled to exercise their fuhdamental rights under Clauses (a), (b) and (c) of Art. 19 (1) without any of the restriction imposed by Rules 19 to 21 of the Army Rules 1954 and if that be so, they could not be charged under section 63 of the Army Act 1950 on the facts alleged against them and their convictions by the Court-Martial were illegal and void and consequently they continued in service of GREF. The self same contentions were repeated on behalf of the petitioners in

the other writ petitions. The respondents disputed the validity of these contentions and submitted that GREF was a Force raised and maintained under the authority of the Central Government and having regard to the special character of GREF and the role which it was required to play in support of the Army operations, the members of GREF could legitimately be regarded as members of the Armed Forces within the meaning of Art. 33 and the Central Government was therefore entitled to issue SROs. 329 and 330 dated 23rd September 1960 making the provisions of the Army Act 1950 and the Army Rules 1954 and particularly Section 21 and Rules 19 to 21 applicable to the members of GREF. The respondents defended the validity of Section 21 and contended that it was a proper exercise of power by Parliament under Art. 33 determining the extent to which the Fundamental Rights may, in their application to the members of the Armed Forces including GREF, be restricted or abrogated and it was not outside the power conferred on Parliament by that article and, read with Rules 19 to 21, it validly restricted the Fundamental Rights of the members of GREF. The respondents submitted that in the circumstances the petitioners were rightly charged under Section 63 of the Army Act 1950 and their convictions by the Court-Martial and subsequent dismissals were valid. The respondents thus sought to sustain the validity of the action taken by the authorities against the petitioners.

Now the first question that arises for consideration on these rival contentions is as to the constitutional validity of Section 21. That section empowers the Central Government by notification to make rules restricting "to such extent and in such manner as may be necessary" three categories of rights of any person subject to the Army Act 1950, namely, (a) the right to be a member of or to be associated in any way with, any trade union or labour union, or any class of trade or labour unions, or any society, institution or association or any class of institution or associations ; (b) the right to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes; and (c) the right to communicate with the press or to publish or cause to be published any book, letter or other document. These rights which are permitted to be restricted are part of the Fundamental Rights under clauses (a), (b) and (c) of article 19(1) and under the constitutional scheme, they cannot be restricted by executive action unsupported by law. If any restrictions are to be be imposed, that can be done only by law and such law must satisfy

the requirements of clause (2), (3) or (4) of article 19 according as the right restricted falls within clause (a), (b) or (c) of article 19(1). The restrictions imposed must be reasonable and in case of right under clause (a) of article 19(1), they must be "in the interest of the sovereignity and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence" as provided in clause (2) of article 19, in case of right under clause (b) of article 19(1), they must be "in the interest of the sovereignty and integrity of India or public order" as provided in clause (3) of article 19 and in case of right under clause (c) of article 19(1), they must be "in the interest of the sovereignty and integrity of India or public order or morality" as provided in clause (4) of article 19. Then only they would be valid; otherwise they would be unconstitutional and the law imposing them would be void. Now here we find that Section 21 does not itself impose any restrictions on the three categories of rights there specified. If Section 21 had itself imposed any such restrictions, it would have become necessary to examine whether such restrictions are justified under clause (2), (3) or (4) of article 19, as may be applicable. But Section 21 leaves it to the Central Government to impose restrictions on these three categories of rights without laying down any guidelines or indicating any limitations which would ensure that the restrictions imposed by the Central Government are in conformity with clause (2), (3) or (4) of article 19, whichever be applicable. It confers power on the Central Government in very wide terms by providing that the Central Government may impose restrictions on these three categories of rights "to such extent and in such manner as may be necessary." The Central Government is constituted the sole judge of what restrictions are considered necessary and the Central Government may, in terms of the power conferred upon it, impose restrictions it considers necessary, even though they may not be permissible under clauses (2), (3) and (4) of article 19. The power conferred on the Central Government to impose restrictions on these three categories of rights which are part of the Fundamental Rights under clauses (a), (b) and (c) of article 19(1) is thus a broad uncanalised and unrestricted power permitting violation of the constitutional limitations. But, even so, section 21 cannot be condemned as invalid on this ground, as it is saved by article 33 which permits the enactment of such a provision. Article 33 carves out an exception in so far as the applicability of Fundamental Rights to members of the Armed Forces and the Forces charged with the maintenance of public order is

concerned. It is elementary that a highly disciplined and efficient armed force is absolutely essential for the defence of the country. Defence preparedness is in fact the only sure guarantee against aggression. Every effort has therefore to be made to build up a strong and powerful army capable of guarding the frontiers of the country and protecting it from aggression. Now obviously no army can continuously maintain its state of preparedness to meet any eventuality and successfully withstand aggression and protect the sovereignty and integrity of the country unless it is at all times possessed of high morale and strict discipline. Morale and discipline are indeed the very soul of an army and no other consideration, howsoever important, can outweigh the need to strengthen the morale of the armed forces and to maintain discipline amongst them. Any relaxation in the matter of morale and discipline may prove disastrous and ultimately lead to chaos and ruination affecting the well being and imperilling the human rights of the entire people of the country. The constitution makers therefore placed the need for discipline above the fundamental rights so far as the members of the Armed Forces and the Forces charged with the maintenance of public order are concerned and provided in Article 33 that Parliament may by law determine the extent to which any of the Fundamental Rights in their application to members of the Armed Forces and the Forces charged with the maintenance of public order, may be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them. Article 33 on a plain grammatical construction of its language does not require that Parliament itself must by law restrict or abrogate any of the Fundamental Rights in order to attract the applicability of that Article. What it says is only this and no more, namely, that Parliament may by law determine the *permissible extent* to which any of the Fundamental Rights may be restricted or abrogated in their application to the members of the Armed Forces and the Forces charged with the maintenance of public order. Parliament itself can, of course, by enacting a law restrict or abrogate any of the Fundamental Rights in their application to the members of the Armed Forces and the Forces charged with the maintenance of public order as, in fact, it has done by enacting the Army Act, 1950, the provisions of which, according to the decisions of a Constitution Bench of this Court in *Ram Swarup* v. *Union of India*[1] are protected by article 33 even if found to affect one or more of the Fundamental Rights. But

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(1) [1964] 5 S.C.R. 931.

having regard to varying requirement of army discipline and the need for flexibility in this sensitive area, it would be inexpedient to insist that Parliament itself should determine what particular restrictions should be imposed and on which Fundamental Rights in the interest of proper discharge of duties by the members of the Armed Forces and the Forces charged with the maintenance of public order maintenance of discipline among them. The extent of restrictions necessary to be imposed on any of the Fundamental Rights in their application to the members of the Armed Forces and the Forces charged with the maintenance of public order for the purpose of ensuring proper discharge of their duties and maintenance of discipline among them, would necessarily depend upon the prevailing situation at a given point of time and it would be inadvisable to encase it in a rigid statutory formula. The Constitution makers were obviously anxious that no more restrictions should be placed on the Fundamental Rights of the members of the Armed Forces and the Forces charged with the maintenance of public order than are absolutely necessary for ensuring proper discharge of their duties and the maintenance of discipline among them, and therefore they decided to introduce a certain amount of flexibility in the imposition of such restrictions and by article 33, empowered Parliament to determine the permissible extent to which any of the Fundamental Rights in their application to the members of the Armed Forces and the Forces charged with the maintenance of public order may be restricted or abrogated, so that within such permissible extent determined by Parliament, any appropriate authority authorised by Parliament may restrict or abrogate any such Fundamental Rights. Parliament was therefore within its power under article 33 to enact Section 21 laying down to what extent the Central Government may restrict the Fundamental Rights under clauses (a), (b) and (c) of article 19(1), of any person subject to the Army Act, 1950, every such person being clearly a member of the Armed Forces. The extent to which restrictions may be imposed on the Fundamental Rights under clauses (a), (b) and (c) of article 19(1) is clearly indicated in clauses (a), (b) and (c) of section 21 and the Central Government is authorised to impose restrictions on these Fundamental Rights only to the extent of the rights set out in clauses (a), (b) and (c) of section 21 and no more. The permissible extent of the restrictions which may be imposed on the Fundamental Rights under clauses (a), (b) and (c) of Article 19 (1) having been laid down in clauses (a), (b) and (c) of section 21, the Central Government is empowered to impose restrictions within such permissible limit, "to such extent and

i uch manner as may be necessary." The guideline for determining as to which restrictions should be considered necessary by the Central Government within the permissible extent determined by Parliament is provided in article 33 itself, namely, that the restrictions should be such as are necessary for ensuring the proper discharge of their duties by the members of the Armed Forces and the maintenance of discipline among them. The Central Government has to keep this guideline before it in exercising the power of imposing restrictions under Section 21 though, it may be pointed out that once the Central Government has imposed restrictions in exercise of this power, the court will not ordinarily interefere with the decision of the Central Government that such restrictions are necessary because that is a matter left by Parliament exclusively to the Central Government which is best in a position to know what the situation demands. Section 21 must, in the circumstances, be held to be constitutionally valid as being within the power conferred under article 33.

That takes us to the next question whether the Central Government was entitled to issue SROs. 329 and 330 applying certain provisions of the Army Act 1950 and the Army rules 1954 to the members of GREF. We will first consider the question of validity of SRO 329 because if that notification has been validly issued and the provisions of section 21, sub-section (4) of section 102 and section 191 of the Army Act 1950 made applicable to the members of GREF, SRO 330 applying certain provisions of the Army Rules, 1954 to the members of GREF in exercise of the powers conferred under section 21, sub-section (4) of section 102 and section 191 of the Army Act 1950 would be *fortiori* be valid. Now SRO 329 is issued by the Central Government under sub-sections (1) and (4) of section 4 of the Army Act 1950 which provide *inter alia* as under :

> "Sec. 4 (1) The Central Goverment my, by notification, apply with or witout modifications, all or any of the provisions of this Act to any force raised and maintained in India under the authority of that Government, and suspend the operation of any other enactment for the time being applicable to the said force.
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> (2) ... ...
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> (3) ... ...
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> (4) While any of the provisions of this Act apply to the said force, the Central Government

my, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provision shall be exercised or performed in respect of the said force.

The Central Government is empowered under sub-section (1) of section 4 to apply any of the provisions of the Army Act, 1950 to any force raised or maintained in India under the authority of that Government and when any such provisions of the Army Act, 1950 are applied to that force under sub-section (1), the Central Government can by notification issued under sub-section (4), direct by what authority, the jurisdiction, powers and duties incident to the operation of those provisions shall be exercised or performed in respect of that force. SRO 329 applying certain provisions of the Army Act, 1950 to the members of GREF and directing by what authority, the jurisdiction, powers and duties incident to the operation of those provisions shall be exercised or performed in respect of GREF, would therefore be within the power of the Central Government under sub-section (1) and (4) of section 4, if GREF could be said to be a force raised and maintained in India under the authority of the Central Government. The question is : what is the true meaning and scope of the expression "any force raised and maintained in India under the authority of the Central Government." The word "force" is not defined anywhere in the Army Act, 1950. There is a definition of the expression "the forces" in section 3 (xi) but it does not help, because the expression we have to construe is "force" which is different from "the forces". There is however an indication to be found in sub-section (2) of section 4 which throws some light on the sense in which the word "force" is used in sub-section (1) of section 4. Section 4, sub-section (2) clearly contemplates that the "force" referred to in sub-section (1) of section 4 must be a force organised on similar lines as the army with rank structure. So far as GREF is concerned, there can be no doubt that it is a force organised on army pattern with units and sub units and rank structure. Moreover, as is clear from the letter dated 16th June, 1960 addressed by the Secretary, Border Roads Development Board to the Director General Border Roads, GREF is a force raised and maintained under the authority of the Central Government. The Central Government therefore had power under sub-sections (1) and (4) of section 4 to issue SRO 329 applying some of the provisions of the Army Act, 1950 to GREF and directing by what authority the jurisdiction

powers and duties incident to the operation of these provisions shall be exercised or performed in respect of GREF. But the question is, and that is the more important question to which we have to address ourselves, whether, even if GREF was a force raised and maintained under the authority of the Central Government, the Central Government could, in exercise of the powers conferred under sub-section (1) of section 4, validly apply section 21 to the members of GREF. Section 21 empowers the Central Government to make rules restricting "to such extent and in such manner as may be necessary" the rights set out in clauses (2), (b) and (c) of that section and in exercise of this power, the Central Government has made rules 19 to 21 to which reference has already been made by us. Now as already pointed out above, section 21 is protected against invalidation by Article 33, since it lays down in clauses (a), (b) and (c) the possible extent to which the fundamental rights of any person subject to the Army Act, 1950 may be restricted and every person subject to the Army Act 1950 would clearly and indubitably be a member of the Armed Forces within the meaning of Article 33. But if section 21 were to be applied to persons who are not members of the Armed Forces of the forces charged with the maintenance of public order, Article 33 would not afford any protection to section 21 in so far as it applies to such persons and the application of section 21 to such persons would be unconstitutional. We must therefore proceed to consider whether the members of GREF could be said to be members of the Armed Forces within the meaning of Article 33. If they cannot be said to be members of the Armed Forces, the application of section 21 to them would not have the protection of Article 33 and would be clearly void.

The history, composition, administration, organisation and role of GREF which we have described above while narrating the facts clearly show that GREF is an integral part of the Armed Forces. It is undoubtedly a departmental construction agency as contended on behalf of the petitioners but it is distinct from other construction agencies such as Central Public Works Department etc., in that it is a force intended primarily to support the army in its operational requirement. It is significant to note that the Border Roads organisation, which is in over all control of GREF was originally created as part of Army Headquarters and it was only later, for reasons of high policy, that it was separated from Army Headquarters and placed under the Border Roads Development Board. Though the budget of the Border Roads Organisation forms

part of the budget of Ministry of Shipping and Transport, the financial control is vested in the Minsitry of Finance (Defence). The entire infra-structure of GREF is modelled on the pattern of the Army and it is organised into units and sub-units with command and control system similar to that in the Army. The personnel of GREF right from class IV to class I have to be in unifrom with distinctive badges of rank and they have a rank structure equivalent to that of the Army. GREF is primarily intended to carry out defence and other works projected by the General Staff, Army Headquarters and it is only where spare capacity is available that GREF undertakes works of other ministries or departments on agency basis and there also, preference is given to strategic and other roads in sensitive areas. The funds which are provided to the Border Roads Organisation are meant exclusively for carrying out the works entrusted by the General Staff, Army Headquarters and so far as the works carried out for other ministries or departments on agency basis are concerned, the funds of the Border Roads Organisation are not permitted to be used for carrying out those works and they are paid for by the respective ministries or departments and where applicable, agency charges for executing the works are also collected. The statistics given in the earlier part of the judgment show that the major portion of the work executed by GREF units consists of tasks entrusted by the General Staff, Army Headquarters and only a small percentage of the work is being done on behalf of other ministries or departments. GREF units carry out essentially those tasks which are otherwise carried out by Army Engineering Regiments and they provide engineering support to the Army both during peace time as also during hostilities. It was found necessary as a result of a major review carried out by Army Headquarters after 1971 that a minimum of 17 Border Road Task Forces and 34 Pioneer Companies would be permanently required for providing engineering support to the Army and accordingly 17 Border Road Task Forces and 34 Pioneer Companies have been made permanent and their composition has been reorganised in accordance with the recommendations of the Army Headquarters. These 17 Border Road Task Forces and 34 Pioneer Companies are being maintained as essential units of GREF for meeting the operational requirements of the Army, even if sufficient work is not available for them at any given point of time. The operational planning of the Army is in fact based on availability of these 17 Border Road Task Forces and 34 Pioneer Companies and during operations, they have to carry out tasks which would otherwise have been done by equal number of Army Engineering

Regiments. It may be pointed out that these 17 Border Road Task Forces and 34 Pioneer Companies have replaced corresponding number of Army Engineering Regiments and Pioneer Companies in the Army. The tasks required to be carried out by the Border Road Task Forces have already been described in some details in the opening part of the Judgment while narrating the facts and we need not repeat the same over again. Suffice it to state that these tasks are required to be carried out by the Border Road Task Forces during operations with a view to providing engineering support to the Army in its operational plans. The Border Road Task Forces have to perform these tasks and provide engineering support to the Army not only upto the border but even beyond upto the exent of advance into enemy territories. Even in peace time, the Border Road Task Forces have to undertake works projected by General Staff, Army Headquarters to meet their operational requirements and these work include construction and maintenance of roads, operational tracks, ditch-cum-bund (water obstacles on the broder), field fortifications like bunkers, fire trenches and pill boxes, helipads and airfields. It is also significant to note that the Border Road Task Forces and Pioneer Companies attached to them are included in the Order of Battle of the Army which implies that support of these units to the Army is guaranteed and can be requisitioned at any time. The Border Road Task Forces are also sub-allotted to lower army formations and they appear on the Order of Battle of these formations. GREF units consisting of these Broder Road Task Forces and Pioneer Companies are placed under the direct control of the Army during emergencies when the entire control of this Force is entrusted to the Chief of the Army Staff. Even during peace time, the Chief of the Army Staff exercises control over the discipline of the members of GREF units through the applicability of the provisions of the Army Act 1950. The Director General, Border Roads who is in over-all control of GREF units is always an army officer of the rank of Major General and his confidential reports are written by the Chief of the Army Staff. The signal communication of GREF is also intergrated with the Army communication set up not only during operations but also in normal peace time. It is also a factor of vital significance which emphasises the special character of GREF as a force intended to provide support to the Army in its operational plans and requirements that Army personnel are posted in GREF units according to a carefully planned manning policy so that GREF units can in times of war or hostilities be able to provide effective support to the Army. The tenure of office of the Army

personnel in GREF units is regarded as normal regimental duty and is equated with similar appointments in the Army for the purpose of promotion, career planning etc. Even the directly recruited personnel of GREF are given training at the GREF Centre before they are posted and the training given is in three military disciplines which we have described in detail in the opening part of the Judgment. The training includes not only drill, marching and saluting but also combat training including physical training such as standing exercises, beam exercises, rope work, route marches etc. and combat engineering training including field engineering, handling of service explosives, camouflage, combat equipment, bridging, field fortifications, wire obstacles etc. Moreover, the directly recruited personnel are taken up only after they voluntarily accept the terms and conditions of employment which include inter alia conditions 5 (iv), 5 (v). 5 (vi) and 5 (xi) which have been reproduced in full while narrating the facts. These conditions make it clear the directly recruited personnel my be required to serve anywhere in India and outside India and when directed, they would have to proceed on field service and if required, they would also be liable to serve in any Defence Service or post connected with the defence of India. It is also stipulated in these conditions that on their appointment, the directly recruited personnel would have to wear the prescribed uniform while on duty and that they would be subject to the provisions of the Army Act 1950 and the Army Rules 1954 as laid down in SROs. 329 and 330 for purpuoses of discipline. It is abundantly clear from these facts and circumstances that GREF is an integral part of the Armed Forces and the members of GREF can legitimately be said to be members of the Armed Forces within the meaning of article 33.

The petitioners however tried to combat this conclusion by pointing out that the services constituted under Border Roads Engineering Service Group A, Rules 1977 and the Border Roads Engineering Service Group B, Rules, 1977 both of which were made by the President in exercise of the powers conferred under article 309 and brought into force with effect from 20th September 1977, were expressly designated as Central Civil Services and that in reply to Unstarred Question No. 1100, the Minister for Defence stated on 18th June, 1980 that "GREF as at present organised is a civilian construction force" and similarly in reply to Unstarred Question No. 6002, the Minister of Defence observed on 1st April 1981 that "the civilian employees serving with the Border Roads Organisation and

GREF are not under administrative control of Ministry of Defence but are under the administrative control of the Border Roads Development Board" and so also Minister of Defence stated on 25th February 1983 in answer to Unstarred Question No. 938 that "the members of the General Reserve Engineer Force of the Border Roads-Organisation are civilian employees of the Central Government". The petitioners contended on the basis of these statements that GREF was not an Armed Force but was a civilian construction agency and the members of GREF could not possibly be regarded as members of the Armed Forces so as to fall within the scope and ambit of article 33. This contention, though it may appear at first blush attractive, is in our opinion not well founded and must be rejected. It is undoubtedly true that as stated by the Minister of Defence, GREF is a civilian construction force and the members of GREF are civilian employees under the administrative control of the Border Roads Development Board and that the engineer officers amongst them constitute what may be designed as "Central Civil Services" within GREF, but that does not mean that they cannot be at the same time form an integral part of the Armed Forces. The fact that they are described as civilian employees and they have their own special rules of recruitment and are governed by the Central Civil Service (Classification, Control and Appeal) Rules, 1965 is not determinative of the question whether they are members of the Armed Forces. It may be noted that even the members of the Civil General Transport Companies constituted under Government of India, War Department, notification No. 1584 dated 29th June, 1946 as also the members of the Independent Transport Platoons have been treated as members of the Armed Forces for the purpose of application of the provisions of the Army Act 1950 by SRO 122 dated 22nd July 1960 and SRO 282 dated 17th August 1960. So also when personnel of Military Engineer Service have to function in operational areas under the army, they too are brought under the provisions of the Army Act 1950 for the purpose of discipline. The question whether the members of GREF can be said to be members of the Armed Forces for the purpose of attracting the applicability of article 33 must depend essentially on the character of GREF, its organisational set up, its functions, the role it is called upon to play in relation to the Armed Forces and the depth and intimacy of its connection and the extent of its integration with the Armed Forces and if judged by this criterian, they are found to be members of the Armed Forces, the mere fact that they are non-combatant civilians

governed by the Central Civil Services (Classification Control and Appeal) Rules 1965, cannot make any difference. This view which we are taking on principle finds ample support from the decision of this Court in *Ous Kutilingal Achudan Nair & Ors.* v. *Union of India & Ors.*(1) where the question was whether certain employees in the Defence Establishment such as cooks, chowkidars, laskers, barbers, carpenters, mechanics, boot-makers, tailors etc. who were non-combatant civilians governed by the Civil Service Regulations for purpose of discipline, leave, pay etc. and were eligible to serve upto the age of 60 years unlike the members of the Armed Forces, could be validly called "members of the Armed Forces" covered by article 33, because it was only if they were members of the Armed Forces within the meaning of that article that the restrictions imposed upon their right to form association could be sustained. This Court speaking through Sarkaria, J. held that the employees in question were members of the Armed Forces and gave the following reasons in support of its view :

> "The members of the Unions represented by the appellants fall within this category. It is their duty to follow or accompany the Armed personnel on active service, or in camp or on the march. Although they are non-combatants and are in some matters governed by the Civil Service Regulations, yet they are integral to the Armed Forces. They answer the description of the "members of the Armed Forces" within the contemplation of Article 33."

Here also it is indisputable on the facts and circumstances mentioned above that the functions and duties of GREF are integrally connected with the operational plans and requirements of the Armed Forces and the members of GREF are, to use the words of Sarkaria, J. "integral to the Armed Forces'. There can be no doubt that without the efficient and disciplined operational role of GREF the military operations in border areas during peace as also in times of war will be seriously hampered and a highly disciplined and efficient GREF is absolutely essential for supporting the operational plans and meeting the operational requirements of the Armed Forces. It must therefore be held that the members of GREF answer the description of "members of the Armed Forces" within the meaning of article 33 and consequently the application of section 21 of the Army

(1) [1976] 2 SCR 769.

Act 1950 to the members of GREF must be held to be protected by that Article and the Fundamental Rights of the members of GREF must be held to be validly restricted by section 21 read with Rules 19 to 21 of the Army Rules 1954. If that be so, the petitioners were liable to be charged under section 63 of the Army Act 1950 for the alleged violations of Rules 19 to 21 and their convictions by Court Martial as also subsequent dismissals must be held to be valid.

Before we part with this point, we may point out that an anguished complaint was made before us on behalf of the petitioners that there is considerable disparity between the Army personnel posted in GREF units and the other officers and men of GREF in so far as the terms and conditions of service, such as, salary, allowances and rations are concerned. It is not necessary for us to consider whether this complaint is justified; it is possible that it may not be wholly unjustified but we may point out that in any event it has no real bearing at all on the question whether the members of GREF can be said to be members of Armed Forces. Since the members of GREF are drawn from two different sources, it is possible that the terms and conditions of service of the personnel coming from the two sources may be different. The Army personnel posted in GREF units naturally carry their own terms and conditions of service while the other officers and men in GREF are governed by their own distinctive terms and conditions. It is difficult to appreciate how differences in terms and conditions of service between GREF personnel coming from two different streams can possibly have any impact on the character of GREF as a force integral to the Armed Forces. It is immaterial for the purpose of determining whether the members of GREF are members of the Armed Forces as to what are the terms and conditions of service of the members of GREF and whether they are identical with those of Armed personnel appointed on the same or equivalent posts in GREF units. But, we may observe that in case it is found that the terms and conditions of service of officers and men in GREF directly recruited or taken on deputation are in any way less favourable than those of Army personnel appointed to the same or equivalent posts in GREF, the Central Government might well consider the advisability of taking steps for ensuring that the disparity, if any, between the terms and conditions of service, such as, salary, alowances, rations etc. of Army personnel posted in GREF units and other officers and men in GREF is removed.

A It may be pointed out that a faint attempt was made on behalf of the petitioners to contend that their convictions by Court Martial were illegal since their trial was not in accordance with law. This contention was strongly resisted on behalf of the respondents and it was positively averred in the affidavit of Lt. Col. Shergill that disciplinary action was initiated and punishment awarded by the B competent disciplinary authority after the offences were proved in accordance with law and all possible help and opportunity was extended to the petitioners and others who were tried to defend themselves with the help of defending officers of their choice or of civil lawyers. Lt. Col. Shergill stated in the clearest terms in his affidavit in reply that "out of 357 personnel kept under military C custody, 287 have been released on the basis of their unconditional apology and those who failed to do so, have been tried by GCM/SCM summarily and awarded punishment, on the basis of the gravity of the offence proved against them.. During the trial, all possible help was provided under the rules and they were allowed to D meet/employ lawyers of their choice to defend the case. In all the cases, defending officers as per their choices have also been detailed from departmental side. The trials were held strictly in accordance with the procedure laid down in the rules, and there is no denial of natural justice." Having regard to this positive statement made on oath by Lt. Col. Shergill, it is not possible for us to hold that the E convictions of the petitioners by the Court Martial were not in accordance with law. In any event, the allegations of the petitioners in this behalf raised disputed questions of fact which it is not possible for us to try in a writ petition. We cannot in the circumstances be called upon to quash and set aside the convictions of the petitioners by the Court Martial or their subsequent dismissals from service F on the ground that they were not in accordance with law.

There was also one other contention advanced on behalf of the petitioners and it raised a question of violation of Article 14 of the G Constitution. The contention was that the members of GREF were governed both by the Central Civil Services (Classification, Control and Appeal) Rules 1965 and the provisions of the Army Act 1950 and the Army Rules 1954 in matters of discipline and therefore whenever a member of GREF was charged with misconduct amounting to an offence under the Army Act 1950, it was left to the H unguided and unfettered discretion of the authorities whether to proceed against the employee under the Central Civil Services (Classification, Control and Appeal) Rules 1965 or under the Army

Act 1950 and the Army Rules 1954 and SROs. 329 and 330 applying the provisions of the Army Act, 1950 and the Army Rules 1954 to members of GREF for purposes of discipline were therefore discriminatory and violative of Article 14. We do not think there is any substance in this contention. In the first place, the nature of the proceedings which may be taken under the Central Civil Services (Classification, Control and Appeal) Rules 1965 against an erring employee is different from the nature of the proceedings which may be taken against him under the provisions of the Army Act 1950 read with the Army Rules 1954, the former being disciplinary in character while the latter being clearly penal. It is significant to note that Section 20 of the Army Act 1950 which deals with dismissal, removal or reduction of any person subject to that Act and clauses (d), (e), (f), (g) and (k) of Section 71 which provide for punishment of cashiering, dismissal, reduction in rank forfeiture of seniority and forfeiture of pay and allowances, have not been made applicable to the members of GREF by SRO 329 with the result that, so far as disciplinary proceeding are concerned, there is no overlapping between the provisions of the Central Civil Services (Classification, Control and Appeal) Rules 1965 and the provisions of the Army Act 1950 and the Army Rules 1954 as applied to the members of GREF. Secondly, it is not possible to say that the discretion vested in the authorities whether to take action against an erring member of GREF under Central Civil Services (Classification Control and Appeal) Rules 1965 or under the Army Act 1950 and the Army Rules 1954 is unguided or uncanalised. It has been denied in the affidavit of Lt. Col. Shergill that unguided discretion ary power is vested in the disciplinary authority to proceed against an employee of GREF either under the Central Civil Services (Classification, Control and Appeal) Rules 1965 or the Army Act 1950 and the Army Rules 1954 or to switch over from one proceeding to the other at the any stage. Lt. Col. Shergill has stated positively in his affidavit that clear and detailed administrative guidelines have been laid down for the purpose of guiding the disciplinary authority in exercising its discretion whether to take action against an employee of GREF nnder the Central Civil Services (Classification, Control and appeal) Rules 1965 of the Army Act 1950 and the Army Rules 1954 and these guidelines have been set out in full in Annexure R-5 to his affidavit. Thirdly, the decision in *Northern India Caterers Ltd.* v. *Punjab*[1] on which the contention of the petitioners is based has been over-ruled by this

(1) [1967] 3 S.C.R. 399.

Court in *Maganlal Chhaganlal* v. *Municipal Corporation, Greater Bombay*(2) where it has been held that "the contention that the mere availability of two procedures will vitiate one of them, that is, the special procedure is not supported by reason or authority." And lastly, it may be noted that in any event the provisions of the Army Act 1950 and the Army Rules 1954 as applied to the members of GREF are protected by Article 33 against invalidation on the ground of violation of Article 14. The present contention urged on behalf of the petitioners must also therefore be rejected.

We may make it clear it is only in regard to the members of GREF that we have taken the view that they are members of the Armed Forces within the meaning of Article 33. So far as casual labour employed by GREF is concerned, we do not wish to express any opinion on this question whether they too are members of the Armed Forces or not, since that is not a question which arises for consideration before us. The writ petitions are accordingly dismissed with no order as to costs. The special leave petitions will also stand rejected.

H.L.C. *Petitions dismissed.*

(1) [1974] 2 S.C.C. 402.