IN THE SUPREME COURT OF PAKISTAN
(REVIEW JURISDICTION)

Civil Review Petition for Leave to Appeal

No._____of 2019

In

Constitution Petition No.39 of 2019

1. Federal Government through Secretary, Ministry of Defence, **Rawalpindi**
2. Prime Minister of Pakistan, Prime Minister's Office, **Islamabad**
3. President of Pakistan, President Secretariat, **Islamabad**
4. General Qamar Javed Bajwa S/o Muhammad Iqbal Bajwa, COAS, GHQ, **Rawalpindi**

….Petitioners

VERSUS

The Jurists Foundation through its Chairman Riaz Hanif Rahi, Advocate Supreme Court of Pakistan, Member Supreme Court Bar Association, Supreme Court Building, **Islamabad**

……Respondent

CIVIL REVIEW PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 188 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973 READ WITH ORDER XXVI OF THE SUPREME COURT OF PAKISTAN RULES, 1980 AND ARTICLE 187 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973

Being aggrieved with and dissatisfied by the **short order dated 28.11.2019 and long judgment also dated 28.11.2019 but released on 16.12.2019 (hereafter: "Impugned Judgment")**of a learned Full Bench of the Hon'ble Supreme Court, comprising Asif Saeed Khan Khosa, CJ (since retired), Mazhar Alam Khan Miankhel and Syed Mansoor Ali Shah, JJ, in Constitution Petition 39 of 2019, the Petitioners respectfully file the

instant Civil Review Petition for Leave to Appeal on questions of law, facts and grounds, *inter alia*, as follows:-

QUESTIONS OF LAW

1. *"Whether the Impugned Judgment suffers from material irregularities of such a nature which has converted the process from being one in aid of justice to a process of injustice?"*
2. *"Whether the Impugned Judgment has completely overlooked important provisions of the Constitution and law, while also ignoring the basic principles of constitutional law?"*
3. *"Whether the errors in the Impugned Judgment are manifest that they float on the surface so that if the same had been noticed prior to the rendition of the Impugned Judgment, the Hon'ble Court would have arrived at a different conclusion?"*
4. *"Whether glaring omissions and patent mistakes have crept into the Impugned Judgment, violating the law, Constitution and public policy and are floating on the surface?"*
5. *"Whether the Impugned Judgment was warranted in the interest of public good, and in keeping with the constitutional conscience of the state, the society and the public good?"*
6. *"Whether the Impugned Judgment has interfered with the considered policy of the Federal Government and whether there was no justification to do so?"*

7. *"Whether the Hon'ble Court was justified to ignore and upset the age-long accepted conventions, usages and departmental practices, which were not violative of any statute?"*

8. *"Whether the Hon'ble Court had fallen into an error by completely failing to construe the jurisprudence in service matters?"*

9. *"Whether the tenures and terms and conditions of service of the military personnel could be regulated by departmental instructions, office memoranda conventions, customs, usages and other executive instructions, which are not in violation of any statutory provisions?"*

10. *"Whether the appointment of the Petitioner No.04 in terms of the notification dated 28.11.2019 was in keeping with the settled and age-long accepted departmental practice and conventions, conferring a vested right which could not be taken away?"*

11. *"Whether clauses (3) and (4) of the Article 243 are distinct, occupying different fields?"*

12. *"Whether the expression "subject to law" used in Article 243(3) of the Constitution is not confined to statutes only, but the same also refers to delegated legislation, customs, usages, conventions and departmental practices?"*

13. *"Whether Article 243(3) of the Constitution is independent of Article 240(a) of the Constitution?"*

14. *"Whether the Army Regulations (Rules), 1998 (**ARR**) has constitutional protection under Article 241?"*

15. *"Whether section 176-A of the Army Act, 1952 and ARR are lawful and not hit by the doctrines of 'excessive legislation' and 'abdication of legislative powers'?"*

16. *"Whether the ARR, envisaging a very broad expanse is not eclipsed by Rule 12 of the Army Act, 1952 or the Army Act Rules 1954?"*

17. *"Whether the undertaking or concession given by the learned Attorney General to legislate a new law, was general, and being subject to the approval of the Cabinet and the Parliament, is not an obstacle to the filing of this Review Petition, and further that there exists no estoppel against the statute and there can be no consent to jurisdiction or illegality?"*

18. *"Whether the Hon'ble Court has fallen into a fundamental error in directing the Parliament to codify constitutional and legal conventions, customs, usages and departmental practices?"*

19. *"Given the fifth generation war, whether the interference in the appointment of General Bajwa and the military dispensation, laws, rules and regulations, was opposed to public policy, public good and the constitutional conscience of the state and the society?"*

20. *"Whether the petition filed by the Respondent was maintainable?"*

21. *"Whether the Impugned Judgment is void as it has been rendered in breach of natural justice and Article 10-A of the Constitution?"*

22. *"Whether the term 'appointment' includes 'reappointment' or 'any extension in the appointment'?"*

23. *"In the absence of any law, rules or regulations with regard to the tenure or terms and conditions of service, whether the authority which has the power to appoint, has also the power to prescribe the tenure or the terms and conditions of employment?"*

24. *"Whether Rule 255 of the ARR had sufficiently provided for reappointment and extension?"*

25. *"Whether the ARR sufficiently contains the 'key structural areas' that constitute the raising and maintaining of an Army, Commissioned Officers and their Commanders in Chief?"*

26. *"Whether the non-prescription of tenure, terms and conditions and retirement age of General/COAS through a statute or delegated legislation could be regulated through convention?"*

FACTS

1. On 25.11.2019, the Respondent *mala fidely* preferred a direct Petition No.39 of 2019 before this Hon'ble Court under Article 184(3) of the Constitution, challenging the appointment of the Petitioner No.4 as the Chief of the Army Staff ("**COAS"**), for a second term of three years, commencing from 29.11.2019 to 29.11.2022. On the same day the learned Attorney General was called by the then Chief Justice i.e. Asif Saeed Khan Khosa CJ in his Chamber, informing him of the filling of the petition, giving him a copy thereof and asking him to give the details with documents relating to the appointment of

the Petitioner No.4, which were duly given to him by the learned Attorney General On the very next day of filing i.e. 26.11.2019, the Petition was fixed before a learned full Bench of this Hon'ble Court, which was pleased to grant an ad interim order, suspending the operation of the Notification dated 19.08.2019 whereby the Petitioner No.4 had been appointed for a second term.

2. The learned Attorney-General for Pakistan i.e. Mr. Anwar Mansoor Khan, in the spirit of treating the petition as inquisitorial proceedings **(see para 6 of the Impugned Judgment)**, attempted to beseech the Court's guidance **(see para 8 of the Impugned Judgment**), from time to time, withdrawing notifications and filing fresh ones, so that the appointment of the Petitioner No.4 for another term of three years could be instilled to the satisfaction of the Hon'ble Court. In sum and substance, a conscious decision had been taken by the Federal Government to appoint the Petitioner No.4 for another term of three years, as the **COAS**. The rest were just administrative matters.

3. The hearing of the matter went on for three days, while on the last day i.e. 28.11.2019, the learned Attorney-General presented to the Hon'ble Court, a Notification of the Defence Division bearing No.3/11/D-2(A-II)/2019-Rawalpindi dated 28.11.2019, whereby in the exercise of powers conferred under Article 243(4)(b) of the Constitution, the President on the advice of the Prime Minister, was

pleased to appoint the Petitioner No.4 as the **COAS** with effect from 28.11.2019.

4. Vide short order dated 28.11.2019, the Hon'ble Court was pleased to dispose of the Petition, holding that the current appointment of the Petitioner No.4 as **COAS** shall be subject to legislation and shall continue for a period of six months, whereafter the new legislation shall determine his tenure and other terms and conditions of service.

5. Subsequently, on 16.12.2019 the long order containing reasons was issued. The Petitioners hereby challenge the Impugned Judgment on grounds, *inter alia*, as follows:-

GROUNDS

A. The Impugned Judgment is bad in law and facts. The same is completely without jurisdiction, *void ab initio* and of no legal effect.

B. The Impugned Judgment suffers from material irregularities of such a nature which has converted the process from being one in aid of justice to a process of injustice.

C. It is respectfully pointed out that the Impugned Judgment has completely overlooked important provisions of the Constitution and law, while also ignoring the basic principles of constitutional law. In fact, the Impugned Judgment has also completely overlooked vital facts.

D. The errors in the Impugned Judgment, pointed out below, are so manifest that they float on the surface. It is respectfully pointed out that if the said errors had been noticed prior to the rendition of the Impugned Judgment, this Hon'ble Court would have arrived at a different conclusion.

E. It is respectfully pointed out that glaring omissions and patent mistakes have crept into the Impugned Judgment, violating the law and the Constitution.

F. It is respectfully pointed out that the review of the Impugned Judgment is warranted in the interest of public good and with a view to protect the fundamental rights of the citizens at large.

G. The nature of the controversy at hand was really the rarest of the rarest cases in which Hon'ble Court should not have interfered on the grounds of public policy and collective conscience. In fact, the Hon'ble Court had no role to upset the age-long accepted conventions and the considered policy of the Government.

H. *Inter alia,* the Hon'ble Court in the Impugned Judgment has held as follows:-

i) in para 11(b) of the Impugned Judgment, the Hon'ble Court has observed that there is no legal basis to appoint the **COAS** for a term of three years;

ii) in para 11(c) of the Impugned Judgment it has been held that there is no provision for the tenure of three years or extension of such tenure under the law or the Constitution;

iii) in para 11(d) of the Impugned Judgment it has been observed that there is no law which provides for retirement of a General;

iv) in para 11(e) of the Impugned Judgment it is stated that there is no tenure prescribed for a General and that there is no provision for extension for another tenure in the Pakistan Army Act, 1952 **(hereafter: "the 1952 Act")**, "Pakistan Army Act Rules, 1954 **(hereafter: "the 1954 Rules")** or the Army Regulations (Rules), 1998 **(hereafter: "ARR")**;

v) in para 11(f) of the Impugned Judgment it has been held that the President has no power to grant extension to **COAS** under the law or the Constitution;

vi) in para 11(g) of the Impugned Judgment it has been mentioned that no tenure or age of retirement has been

prescribed for a General in the ARR, including Regulation 255 thereof;

vii) in para 11(j) of the Impugned Judgment it has been held that since the law does not provide for a tenure or retirement age of a General, the exercise of amending the Regulation 255 of the ARR was not useful;

viii) in para 11(k) of the Impugned Judgment it has been held that there can be no presumption that the first tenure of the Petitioner No.4 has expired;

ix) in paras 16 &17 of the Impugned Judgment it is mentioned that the 1952 Act did not contain the constitutional structural requirements which were necessary to raise and maintain an Army, grant Commissions and appoint the **COAS**. The constitutional mandate was not actualized through legislation and even today this constitutional mandate remains unrealised;

x) in para 18 of the Impugned Judgment it is stated that even after the 1973 Constitution, the constitutional mandate of Article 243 remained unrealised;

xi) in para 18 of the Impugned Judgment it is further mentioned that the power to appoint the **COAS** under

Article 243(4) of the Constitution could not be read in isolation “but stands rooted and connected” to the Army being raised and maintained under Article 243(3) of the Constitution. It is also stated that integral and intrinsic to raising and maintaining an Army is to first provide its Commanding Officers. Clauses (2) and (3) of Article 243 of the Constitution are to be read together. This means that the words “subject to law” appearing in clause (3) of Article 243 of the Constitution are to be read into clause (4) of Article 243 of the Constitution; which further means that the appointment of **COAS** under clause (4) of Article 243 of the Constitution is to be made subject to law. In paras 26 and 27 of the Impugned Judgment it has been observed that clauses (3) and (4) of the Article 243 of the Constitution are to be read together in tandem;

xii) in para 21 of the Impugned Judgment it is held that in the 1952 Act there is no mention of the **COAS**, and the Commanders of the Army, General Officers or other Commissioned Officers or their terms and conditions of service. The 1952 Act governs Commissioned Officers but there is nothing in the Act which prescribes their terms and conditions of service. The 1952 Act is silent about the “key structural areas” that constitute the

raising and maintaining of an Army, Commissioned Officers and their Commanders in Chief;

xiii) most importantly, in para 22 of the Impugned Judgment it has been mentioned that in order to make provisions for the key structural areas, necessary for raising and maintaining an Army, a hurried and slipshod attempt was made in 1965 so as to insert section 176-A to the 1952 Act, which did not meet the requirements of Article 243(3) of the Constitution, as the primary legislation in terms of Article 243(3) of the Constitution was missing. Therefore, the 1952 Act falls deficient of the constitutional requirement under Article 243(3) as the same does not provide for the essential elements required to raising and maintaining an Army, in particular the grant of commissions in the Army and terms and conditions of service of Commissioned Officers. If this had been done the question raised in the matter would not have arisen;

Note: It appears that the Hon'ble Court is of the view that the Army could only be raised or maintained through statute and that the grant of Commission and terms and conditions of Commissioned Officers could only be granted through statute;

xiv) in para 25 of the Impugned Judgment a number of questions have been raised and it is concluded that the

appointment of the **COAS** cannot go unregulated under a written Constitution;

xv) in para 30 of the Impugned Judgment it is observed that the 1952 Act and the 1954 Rules are silent about the tenure and retirement age of a General. Section 18 of the 1952 Act and Rule 12 of the 1954 Rules do not provide for the age of retirement or tenure of Army Officers, including a General;

xvi) in para 32 of the Impugned Judgment it is reiterated that the laws relating to the Army do not provide for a tenure or retiring age of a General. This para notes a concession of the Attorney General that the tenure of 3 years, for a General and **COAS,** is regulated by institutional conventions and practice. It is observed that the institutional practice is not a valid substitute of law, which is required to be made under Article 243 and this is a serious legislative omission. Service in Armed Forces is Service of Pakistan. Hence the same must be regulated by or under the law as per Article 240 read with Article 243(3), otherwise the highest rank i.e. **COAS** would have no tenure or retirement age or other terms of service;

xvii) in para 33 of the Impugned Judgment it is mentioned that the amendment to Regulation 255 dated

26.11.2019 did not serve any purpose as the tenure and retirement age of a General was not specified by law;

xviii) in paras 34, 35 & 36 of the Impugned Judgment it is provided that Regulation 255 of the ARR is aimed only to deal with a temporary arrangement and is only to be followed in the exigency of service and public interest . Therefore, a new tenure or fresh appointment or extension could not be given under Regulation 255, which is to be read along with 255-A of ARR;

xix) in paras 35, 36 & 37 of the Impugned Judgment it has been held that since “retirement” is provided for in Rule 12, the ARR (through Regulation 255 or otherwise) could not provide for retirement as regulations under 176-A could only be framed for subject matters not dealt by the 1954 Rules made under section 176;

xx) in para 40 of the Impugned Judgment it is mentioned that the ARR, despite legislation in terms of section 176-A, did not flow from the Act. The power of the Parliament cannot be delegated as this is an abdication of the essential legislative powers;

xxi) in para 41 of the Impugned Judgment it is held that section 176-A amounts to excessive delegation;

xxii) in para 42 of the Impugned Judgment it has been suggested that ARR suffers from excessive delegation;

xxiii) in para 44 of the Impugned Judgment it is mentioned that there is no provision with regard to the tenure and retirement age of a General or **COAS**. No statutory provision exists for the extension of the tenure or fresh appointment for another term of the **COAS.** As there is legal vacuum the executive exercise is meaningless. The Attorney General's assurance to carry out legislation in the shape of an Act within 6 months, was recorded, so as to provide for the terms of service of a General/**COAS.** It was observed that the court can direct the legislature to legislate. The Federal Government may specifically provide for the extension of tenure of a General in the Act, with grounds for extension so that the Federal Government's discretion is structured in the granting of extension. ARR appears to be without legal cover as it falls outside the scope of the 1952 Act. Hence, necessary amendments in the law may be made;

xxiv) in para 45 of the Impugned Judgment it has been held that although where the law is silent an institutional practice can resolve the controversy, but for a

constitutional post in the “Service of Pakistan” it is “inconceivable” that the matter is left unregulated to continue forever. The chosen representatives should decide the length of tenure of General/**COAS**. The people of Pakistan may accept or reject the institutional practice through their chosen representatives in the Parliament. With due respect this means that the appointment has to be made through the chosen representatives, who have left the matter to be dealt by conventions by not legislating for 7 decades and there is nothing wrong with this. It is also held in that para that the matter in question is with regard to tenure, extension and extension of service for another tenure/term, which requires legislation. The assurance of the Attorney General to bring legislation within 6 months was repeated herein and it is because of this assurance that the court has exercised judicial restraint;

xxv) in para 47 of the Impugned Judgment the Court has relied upon judgments in which a court can give directions to the legislature to legislate. Directions by Courts to be given where there is unconstitutionality or illegality and not where conventions fill the gaps;

xxvi) in para 48 of the Impugned Judgment a six(6) month tenure is currently fixed for the **COAS.**

I. With the highest respect at our command, the entire Impugned Judgment, in particular the observation, as above, of the Hon'ble Supreme Court are patently erroneous. The errors in the Impugned Judgement are floating on the face of the record, as the same ignores binding judgments of the Supreme Court, express provisions of the Constitution and the precepts of constitutional law. In this regard the following may be noted:-

a) while on a general plane it may be true that the delegated legislation such as rules and regulations cannot go beyond the parent statute. The jurisprudence in service matters is absolutely different which the Supreme Court has fundamentally failed to note;

b) service rights, terms and conditions and tenure of an incumbent can be regulated by departmental instructions, office memoranda, conventions, customs, usages and other executive instructions, provided they are not in violation of any statutory provisions;

c) in the present case, the appointment of the **COAS** was strictly in accordance with the settled departmental practice followed for seven decades or so. This departmental practice has earned a vested right in favour of the Petitioner No.4/**COAS**;

d) the appointment of the COAS is an appointment made under Article 234(4) of the Constitution by the President on the advice of the Prime Minister. All the terms and conditions of the COAS are stipulated by the President on the advice of the Prime Minister. The same cannot be interfere with;

e) there is no provision of the law or any rule which was violated in making the appointment of the present **COAS.** None has been pointed out in the subject judgment;

f) there is also binding authority for the proposition that in case of a constitutional or legislative vacuum i.e. where the constitution or law is silent, conventions have a binding authority;

g) binding judgments on excessive delegation of the Supreme Court have been ignored in the subject judgement;

h) clauses (3) and (4) of Article 243 of the Constitution are distinct. The two occupy different fields. The raising and maintaining of the Military, Naval and Air Forces, as per sub-clause (a) of clause (3) of Article 243 of the Constitution, have to be done, subject to law. The latter expression cannot be read into clause (4) of Article 243 of the Constitution, which deals, *inter alia*, with the appointment of the **COAS**, specifically. Hence the appointment of the **COAS** cannot be

made subject to any law. The same does not require any legislation;

i) very importantly it may be pointed out that under Article 243(3) of the Constitution the words “subject to law” have been used. Conspicuously, the constitution-makers have not employed the words “subject to statute”. Therefore, the word “law” appearing in Article 243(3) of the Constitution cannot be construed to mean a statute. For guidance one may look into Article 268(7) which defines the term “existing laws” to mean all laws, including Ordinances, Orders-in-Council, Orders, rules, bye-laws, regulations etc. Similarly, Article 203-B(c) of the Constitution defines “laws” to include a custom or usage. It is a settled principle of law that any custom, usage, convention or departmental practice, if not opposed to any statutory law or Islam, has a binding effect;

j) Article 243(3) is independent of Article 240 of the Constitution. It is true that the “Armed Forces” fall within the definition of the term “Service of Pakistan” as defined in Article 260. It is also true that under Article 240(a), “Service of Pakistan” is to be regulated by an Act of Parliament. However, if there are two provisions of the law and Constitution which overlap, then special provisions take precedence and have application as compared to general provisions. In the present case, Article 243 is a special provision with regard to the Armed Forces,

and Article 243(3) employs the word “law”. In contra-distinction the general provision pertaining to “Service of Pakistan” i.e. Article 240(a) uses the words “Act of *Majlis-e-Shoora* (Parliament)”. An Act of Parliament would not include delegated legislation such as rules or regulations. However, the term “law” as stated aforesaid include rules, regulations, conventions, customs and usage. In view of the conflict between Article 240(a) and 243(3), both mentioning two different sources of law, the special provision i.e. 243(3) would apply to Armed Forces;

k) without prejudice to above, if it is assumed that the appointments in the Armed Forces are also subject to Article 240(a), in addition to Article 243, then surely Article 241 will apply with full force which means that any rule and regulation such as the **ARR** would have constitutional protection; alternatively, the **ARR** has an elevated status of constitutional rules;

l) in the wake of introduction of section 176-A of the 1952 Act, no concept of excessive legislation and abdication of legislative powers could be mooted;

m) Rule 12 of the 1954 Rules apply to only retirement, release or discharge, whereas the **ARR** envisages a very broad expanse;

n) the concession given by the learned Attorney General was general in nature, and indeed subject to the approval of the Cabinet and concurrence of the Parliament. This could not be a stumbling block to the filing of this Review Petition; as there is no estoppel against law and the Constitution. Even otherwise the concession could only be have a lawful direction and not a something patently erroneous. Without prejudice to the above, the Petitioner No.04 or his counsel has never given any undertaking. In fact the notification dated 28.11.2019 is premised upon convention and departmental practice, which has conferred a vested right in favour of the Respondent No.04, which now cannot be taken away. In fact, the Petitioners having acted upon the said notification dated 28.11.2019, the Petitioner No.4's appointment is a past and closed transaction;

o) The impugned judgment is inherently contradictory in nature.

J. It is respectfully pointed out that if a gap is filled through legal or constitutional conventions, customs, usages or departmental practices, the Court cannot insist to convert such conventions ***et. al*** into acts of Parliament. If the Parliament in the last 7 decades or so has consciously chosen, with open eyes, not to legislate in a particular sphere and let the issue/matter be governed through conventions or practices/customs/usages, this is sufficient indicator that the Parliament i.e. the chosen representatives of the people,

has exercised its choice not to legislate. Equally, there is nothing in constitutional jurisprudence which provides that where a constitution is written, no gaps or vacuums could be filled through conventions and that all conventions need to be converted into codified law.

K. It is a settled principle of law that even where on facts and law a case is made out, the court would not grant relief where the granting of such relief fosters or perpetuates injustice and gives rise to a situation which is adverse to the public interest and the collective conscience of the state and the society.

L. The enemies of Pakistan were extremely happy when they thought that General Bajwa's extension or re-appointment had fallen into jeopardy. Pakistan is undergoing a 5th generation war. Very recently, the Pulwama incident bears testimony to the preparedness of our Armed Forces under the able captaincy of General Bajwa, who on his proactive initiative has also mustered healthy military international relations and support for Pakistan. The war on terror is not over. The wounds from the APS incident are not forgotten. The preservation of two leading institutions of the state i.e. the Armed Forces and the Superior Judiciary are necessary concomitants to a healthy democracy, rule of law and safety and security against internal and external aggression. The enemies of the state, now for a number of years have ganged up to destabilize and discreate Pakistan. General Bajwa's contribution to take vital steps so as to facilitate safety and security in the country, will go down in history.

The pulse of the people at large is that General Bajwa's re-appointment has been warmly welcomed. There were seminars and processions in favour of General Bajwa's re-appointment, from which the pulse of the public opinion can be appreciated. In the present times, it was most appropriate to re-appoint General Bajwa, who himself never sought a re-appointment.

M. This was not a case where a Court ought to have interfered. The Federal Government in its wisdom had taken a policy decision which was not inconsistent with the fundamental rights enshrined in the Constitution. And the same was also in line with the public opinion and popular aspirations to appoint General Bajwa for another term. The petition under Article 184(3) was not maintainable and the Fundamental Rights under Articles 19-A and 27 were hardly in question. On grounds of public policy and pre-eminent collective conscience of the state and the society, no interference should have been made in the military dispensation or the most significant military appointment.

N. The Impugned Judgment is in breach of natural justice and violates Article 10-A of the Constitution, as the judgment has been based on issues which were never before this Hon'ble Court or argued nor confronted by the Court to the Petitioners or their counsels.

O. The term "appointment" includes "re-appointment" or any extension in the appointment. The Court has to look on the substance of the

appointment and not get bogged down by or create a fetish of form and technicality.

P. it is also a settled principle of law that if no tenure or terms and conditions have been specified by the law or rules, the authority which has the power to appoint, has the power to prescribe the tenure or terms and conditions of employment.

Q. Every possible explanation is to be explored by the Court to sustain an executive action. However, in this case this principle was totally ignored, rather violated.

R. Through the Impugned Judgment the Hon'ble Supreme Court has stepped into the shoes of the executive, substituting its opinion, notwithstanding that there is nothing in the Constitution which empowers the Supreme Court to settle the tenure or terms and conditions of the **COAS**. While rendering the Impugned Judgment, this Hon'ble Court has failed to consider that Article 8 of the Constitution in its true perspective equates any law with custom or usage.

S. If one would look into the parliamentary debates or otherwise, which would make it rather clear that intentionally and deliberately the matter of the appointment or extension of the **COAS** was left at the discretion of the Prime Minister/ President.

T. Rule 262 of the **ARR** capped the retirement age of a General at 60 years. However, subsequently Rule 262-A of the **ARR** made no mention of the retiring age. The retirement age of a General was conspicuously left at the discretion of the appointing authority.

U. In the facts and circumstances of the case, the Hon'ble Court could not interfere in the legislative domain or equip itself with the function of a parallel legislative authority. It is respectfully pointed out that the direction to the legislature could only be given by the Courts so as to avert a situation of unconstitutionality or illegality. No judicial directions to the legislature could be given so as to convert a convention into codified law.

V. It is respectfully pointed out that the **ARR** sufficiently contains the "key structural areas" that constitutes the raising and maintaining of an Army, Commissioned Officers and their Commanders in Chief. Wherever it was thought necessary, the retirement age or retiring mechanism has been given in the **ARR**. With regard to a General, the retirement standard or age is governed by conventions.

W. It is respectfully pointed out that the **ARR** read with section 176-A of the 1952 Act sufficiently meets the requirements of Article 243(3).

X. It is incorrect to suggest that Regulation 255 of the **ARR** only deals with a temporary arrangement. It is respectfully pointed out that the amendment effected in Regulation 255 during the pendency of the hearing was sufficient to equip the Federal Government to grant a

re-appointment or an extension to the **COAS**. The interpretation offered in the Impugned Judgment on Regulation 255 of the ARR was totally unwarranted. The Court had no basis to read the provision of Regulation 255-A into Regulation 255. Both are independent regulations.

Y. The Petitioner craves permission for his counsel to raise any other ground at the time of hearing of this Petition.

PRAYER

It is accordingly prayed that this Hon'ble Court may please grant leave to appeal and set aside the Impugned Judgment after allowing the Petition.

Mehmood A. Shaikh
Advocate-on-Record for the
Petitioners

Islamabad,
December 26th, 2019